Book Two

CRIMES AND PENALTIES

Title One

CRIMES AGAINST NATIONAL SECURITY AND THE LAW OF NATIONS

Crimes against national security.

The crimes against national security are:

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

Crimes against the law of nations.

The crimes against the law of nations are:

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

Chapter One

CRIMES AGAINST NATIONAL SECURITY

Section One. — Treason and espionage

Article 114. *Treason.*[1]— Any Filipino citizen who levies war against the Philippines or adheres to her enemies, giving them aid or comfort within the Philippines or elsewhere, shall be punished by *reclusion perpetua* to death[2] and shall pay a fine not to exceed 100,000 pesos.

No person shall be convicted of treason unless on the testimony of two witnesses at least to the same overt act or on confession of the accused in open court.

Likewise, an alien, residing in the Philippines, who commits acts of treason as defined in paragraph 1 of this article shall be punished by *reclusion temporal* to death[3] and shall pay a fine not to exceed 100,000 pesos. *(As amended by Sec. 2, Republic Act No. 7659, which took effect on 31 December 1993)*

Elements of treason:

1. That the offender is a Filipino citizen or an alien residing in the Philippines;
2. That there is a war in which the Philippines is involved;
3. That the offender either —
   a. levies war against the Government, or
   b. adheres to the enemies, giving them aid or comfort.

[1]The Indeterminate Sentence Law is not applicable.
[2]See Appendix "A," Scale of Penalties.
[3]See Appendix "A," Scale of Penalties

Treason, defined.

Treason is a breach of allegiance to a government, committed by a person who owes allegiance to it. (63 C.J. 814)

Nature of the crime.

Treason, in its general sense, is the violation by a subject of his allegiance to his sovereign or to the supreme authority of the State. (U.S. vs. Abad, 1 Phil. 437)

The offender in treason is either a Filipino citizen or a resident alien.

Under the first paragraph of Art. 114, the offender in treason must be a Filipino citizen, as he should not be a foreigner. Before Art. 114 was amended by Executive Order No. 44, it was not possible under the Revised Penal Code to punish for treason, resident aliens who aided the enemies. Now, as amended, the Revised Penal Code punishes a resident alien who commits treason. (People vs. Marcaida, 79 Phil. 283)

How to prove that the offender is a Filipino citizen.

When the accused is allegedly a Filipino, his being a Filipino citizen may be proved by his prison record which sets out his personal circumstances properly identified as having been filled out with data supplied by the accused himself. (People vs. Martin, 86 Phil. 204; People vs. Morales, 91 Phil. 445)

The citizenship of the accused may also be proved by the testimony of witnesses who know him to have been born in the Philippines of Filipino parents. (People vs. Flavier, 89 Phil. 15)

Law on treason is of Anglo-American origin.

The Philippines Law on treason is of Anglo-American origin and so we have to look for guidance from American sources on its meaning and scope. (People vs. Adriano, 78 Phil. 566)

Allegiance defined.

The first element of treason is that the offender owes allegiance to the Government of the Philippines.

By the term "allegiance" is meant the obligation of *fidelity* and *obedience* which the individuals owe to the government under which they live or to their sovereign, in return for the protection they receive. (52 Am. Jur. 797)

Allegiance is either permanent or temporary.

While it is true that the *permanent* allegiance is owed by the alien to his own country, at the same time, he owes a *temporary* allegiance to the country where he resides.

Allegiance as an element of treason seems to be either permanent or temporary. Permanent allegiance consists in the obligation of fidelity and obedience which a citizen or subject owes to his government or sovereign. Temporary allegiance is the obligation of fidelity and obedience which a resident alien owes to our government. (Laurel vs. Misa, 77 Phil. 856) This justifies Executive Order No. 44, amending Art. 114.

Treason cannot be committed in time of peace.

The second element of treason is that there is a war in which the Philippines is involved.

Treason is a war crime. It is not an all-time offense. It cannot be committed in peace time. While there is peace, there are no traitors. Treason may be incubated when peace reigns. Treasonable acts may actually be perpetrated during peace, but there are no traitors until war has started.

As treason is basically a war crime, it is punished by the state as a measure of self-defense and self-preservation. The law of treason is an emergency measure. It remains dormant until the emergency arises. But as soon as war starts, it is relentlessly put into effect. (Concurring Opinion of Justice Perfecto, Laurel vs. Misa, 77 Phil. 865)

Two ways or modes of committing treason:

1. By levying war against the Government.
2. By adhering to the enemies of the Philippines, giving them aid or comfort.

Meaning of "levies war."

Levying war requires the concurrence of two things: (1) that there be an actual assembling of men, (2) for the purpose of executing a treasonable design by force. *(Ex parte* Bollman and *Ex parte* Swartwout, 1 U.S. Sup. Ct. Rep. [4 Cranch 75], p. 571)

There must be an actual assembling of men.

Upon searching the house of the accused, the Constabulary officers found a captain's commission under seal. It was held that the mere acceptance of the commission from the secretary of war of the Katipunan

Society by the accused, nothing else having been done, was not an overt act of treason within the meaning of the law. (U.S. vs. De los Reyes, 3 Phil 349)

The actual *enlistment* of men to serve against the government does not amount to levying war, because there is no actual assembling of men.

But if a body of men be *actually assembled* for the purpose of effecting by force a treasonable design, all those who *perform any part,* however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors. *(Ex parte* Bollman and *Ex parte* Swartwout, *supra)*

In treason by levying war, it is not necessary that there be a formal declaration of the existence of a state of war.

It is not necessary that there be any formal declaration of the existence of a state of war to justify the conclusion that those engaged in such attempt are levying war and therefore guilty of treason. Actual hostilities may determine the date of the commencement of war. (Justice Johnson, dissenting; U.S. vs. Lagnason, 3 Phil. 495)

The war must be directed against the government.

The levying of war must be with the intent to overthrow the government as such, not merely to resist a particular statute or to repel a particular officer. (3 Wharton's Criminal Law, 12th Ed.)

An organized attempt on the part of persons joined together in a band to overthrow and destroy the established government is a levying of war against the government and constitutes treason.

It matters not how vain and futile the attempt was and how impossible of accomplishment. It is not necessary that those attempting to overthrow the government by force of arms should have the apparent power to succeed in their design in whole or in part. (U.S. vs. Lagnason, 3 Phil. 473)

Those who, during war, rise publicly to inflict an act of hate or revenge upon the persons of public officers do not commit treason by levying war because the public uprising is not directed against the government.

Is it necessary that the purpose of levying war is to deliver the country in whole or in part to the enemy?

Yes. Levying war as an act of treason must be for the purpose of executing a treasonable design by force. Although in stating the acts constituting treason, Art. 114 uses the phrases (1) *"levies war against"* the Government of the Philippines or (2) *"adheres to" the enemies* of the

Philippines, "giving them aid or comfort," it does not mean that adhering to the enemies is required only in the second mode of committing treason. Since levying war against the Government is also punished as rebellion, there must be a difference between treason committed by levying war and rebellion.

The levying of war must be in collaboration with a foreign enemy.

If the levying of war is merely a civil uprising, without any intention of helping an external enemy, the crime is not treason. The offenders may be held liable for rebellion under Art. 135 in relation to Art. 134 of this Code.

Requirements of the second way or mode of committing treason.

In the second way or mode of committing treason, (1) *adherence* and (2) *giving aid or comfort* to the enemy must concur together. Adherence alone, without giving aid or comfort to the enemy, is not sufficient to constitute treason. And conversely, aid or comfort alone, without adherence, is not treason.

Adherence to the enemy, defined.

The phrase *"adherence to the enemy"* means intent to betray. There is "adherence to the enemy" when a citizen *intellectually or emotionally* favors the enemy and harbors sympathies or convictions disloyal to his country's policy or interest. (Cramer vs. U.S., 65 Sup. Ct. 918, April 23, 1945)

"Aid or comfort," defined.

The phrase *"aid or comfort"* means an act which strengthens or tends to strengthen the enemy *in the conduct of war* against the traitor's country and an act which weakens or tends to weaken the power of the traitor's country *to resist* or *to attack* the enemy. (Cramer vs. U.S., *supra)*

Adherence alone, without giving the enemy aid or comfort, does not constitute treason.

The fact that the accused had friendly relations with the Japanese during the war, openly revealing himself sympathetic to the cause of the enemy and also believing in the invincibility of the Japanese Armed Forces does not constitute in itself treasonable act as defined by law. The crime of treason consists of two elements: (1) adherence to the enemy; and (2) rendering him aid and comfort. (People vs. Tan, P.C., 42 O.G. 1263)

Emotional or *intellectual attachment* or *sympathy* to the enemy, without giving the enemy aid or comfort, is not treason. (People vs Roble 83 Phil. 1)

When there is no adherence to the enemy, the act which may do aid or comfort to the enemy does not amount to treason.

The sale to the enemy of alum crystals and water pipes does not *per se* constitute treason, because said articles or materials are not exclusively for war purposes and their sale does not necessarily carry an intention on the part of the vendor to adhere to the enemy. (People vs. Agoncillo, 80 Phil 33)

While the sale to the enemy of alum crystals and water pipes may do aid or comfort to the enemy, if there is no evidence of intent to betray, the person making the sale is not guilty of treason.

Giving information to, or commandeering foodstuffs for, the enemy is evidence of both adherence and aid or comfort.

The defendant's act of giving information to the enemy constituted not only giving aid and comfort, but also adherence to the enemy. (People vs. Paar, 86 Phil. 864) The defendant's act of commandeering foodstuffs for the Japanese soldiers is sufficient proof of adherence to the enemy. (People vs. Mangahas, 93 Phil. 1113)

Extent of aid or comfort.

The *aid* and *comfort* must be given to the enemy by *some kind of action.* It must be a *deed* or *physical activity,* not merely a mental operation. It must be an act that has passed from the realm of thought into the realm of action.

The expression includes such acts as furnishing the enemy with *arms, troops, supplies, information,* or *means of transportation.*

In a broad sense, the law of treason does not prescribe kinds of social, business and political intercourse between the belligerent occupants of the invaded country and its inhabitants. In the nature of things, the occupation of a country by the enemy is bound to create relations of all sorts between the invaders and the natives. What aid and comfort constitute treason must depend upon their nature, degree and purpose. To draw a line between treasonable and untreasonable assistance is not always easy. The scope of adherence to the enemy is comprehensive, its requirement indeterminate.

As a general rule, to be treasonous, the extent of the aid and comfort given to the enemies must be to render assistance to them as enemies and not merely as individuals and, in addition, be directly in furtherance of

the enemies' hostile designs. To make a simple distinction: To lend or give money to an enemy as a friend or out of charity to the beneficiary so that he may buy personal necessities is to assist him as an individual and is not technically traitorous. On the other hand, to lend or give him money to enable him to buy arms or ammunition to use in waging war against the giver's country enhances his strength and by the same count injures the interest of the government of the giver. That is treason. (People vs. Perez, 83 Phil. 314-315)

The act committed need not actually strengthen the enemy.

It is not essential that the effort to aid be successful, provided overt acts are done which if successful would advance the interest of the enemy. (Cramer vs. United States, 65 Sup. Ct. 918, cited in People vs. Alarcon, 78 Phil. 733)

It is said there is aid and comfort no matter how vain or futile the attempt may be, as long as the act committed tends to strengthen the enemy. It is not the degree of success, but rather the aim for which the act was perpetrated, that determines the commission of treason.

Commandeering of women to satisfy the lust of the enemy is not treason.

"Commandeering" of women to satisfy the lust of Japanese officers or men or to enliven the entertainments held in their honor was not treason even though the women and the entertainments helped to make life more pleasant for the enemies and boost their spirit; he was not guilty any more than the women themselves would have been if they voluntarily and willingly had surrendered their bodies or organized the entertainments. The acts herein charged were not, by fair implication, calculated to strengthen the Japanese Empire or its army or to cripple the defense and resistance of the other side. Whatever favorable effect the defendant's collaboration with the Japanese might have in their prosecution of the war was trivial, imperceptible and unintentional. (People vs. Perez, *supra)*

Specific acts of aid or comfort constituting treason.

The following are specific acts of aid or comfort:

1. Serving as *informer* and active member of the Japanese Military Police, arresting guerilla suspects in an attempt to suppress the underground movement. (People vs. Fernando, 79 Phil. 719)
2. Serving in the Japanese Army as *agent* or *spy* and participating in the raid of guerrilla hideout. (People vs. Muñoz, *et al.*, 79 Phil. 702)

3. Acting as "finger woman" when a barrio was "zonified" by the Japanese, pointing out to the Japanese several men whom she accused as guerillas. (People vs. Nunez, 85 Phil. 448)

4. Taking active part in the mass killing of civilians by the Japanese soldiers by personally tying the hands of the victims. (People vs Canibas, 85 Phil. 469)

Being a Makapili constitutes an overt act of psychological comfort.

Being a Makapili is in itself constitutive of an overt act. The crime of treason was committed if he placed himself at the enemy's call to fight side by side with him when the opportune time came even though an opportunity never presented itself. Such membership by its very nature gave the enemy aid and comfort. The enemy derived psychological comfort in the knowledge that he had on his side nationals of the country with which he was at war. It furnished the enemy aid in that his cause was advanced, his forces augmented, and his courage was enhanced by the knowledge that he could count on men such as the accused and his kind who were ready to strike at their own people. The practical effect of it was no different from that of enlisting in the invader's army. (People vs. Adriano, 78 Phil. 563; People vs. Villanueva, 92 Phil. 637)

Acceptance of public office and discharge of official duties under the enemy do not constitute per se the felony of treason.

The mere acceptance of a public office and the discharge of the functions and duties connected therewith, during the Japanese military occupation in the Philippines, do not constitute *per se* the felony of treason. But admitting that such acts were really of *aid and comfort* to the enemy, they can not be punishable in this particular case, because there is no satisfactory proof of the adherence of the accused to the cause of the enemy. (People vs. Alunan, P.C., 43 O.G. 1288)

When there is adherence to the enemy.

But when the positions to which the accused was appointed were not only highly responsible positions but also policy-determining, because they defined the norm of conduct that all the offices and officials under the departments he headed had to adopt and enforce, and helped in the propagation of the creed of the invader, and the acts and utterances of the accused while holding such position were an earnest implement to such policy, the acceptance of public office and discharge of official duties constitute treason. (People vs. Sison, P.C., 42 O.G. 748)

Mere governmental work during the Japanese regime is not an act of treason.

1. Those who refused to cooperate, in the face of danger, were patriotic citizens; but it does not follow that the faintheart, who gave in, were traitors. It is now undisputed that mere governmental work under the Japanese regime — and pilotage service may be considered in the same light — does not constitute *per se* indictable disloyalty. (People vs. Godinez, 79 Phil. 776)

2. Appellant's membership in the Bureau of Constabulary under the government of occupation is not treason. That institution was intended for the promotion and preservation of law and order which were essential, during war, to the life of the civilian population. (People vs. De Castro, 84 Phil. 118)

Membership in the police force during occupation is not treason; but active participation with the enemies in the apprehension of guerrillas and infliction of ill-treatments make such member liable for treason.

Appellant's membership in the police force of Manaoag does not in itself constitute treason; but his having accompanied the Japanese soldiers to the places of abode of guerrilla leaders and the several ill-treatments which he personally inflicted upon them because of their refusal to disclose their connection with the guerrilla forces, constitute treason. (People vs. Dizon, 84 Phil. 48; People vs. Galo, 84 Phil. 52; People vs. Badili, 84 Phil. 71)

Guerilla warfare may be unlawful, but it should not be suppressed.

The argument is made that the accused was, at the most, merely obeying superior orders in the suppression of guerrilla activities, which, in the opinion of his counsel, are outlawed by the rules of war. But the evidence is clear that he identified himself with the enemy's cause by acting as spy and causing the arrest of even his close relatives to prevent them from taking part in the resistance movement, and while guerrilla warfare may be unlawful from the standpoint of the conqueror, it cannot be so regarded by those who, by natural right, are trying to drive him out of their invaded territory. (People vs. Balingit, 83 Phil. 881)

When the arrest of persons alleged to have been guerrillas was caused by the accused due to their committing a common crime, like arson, he is not liable for treason.

The matter had no treasonous significance, when the persons arrested admitted that they were suspected of, and investigated for, having burned the house of one Pedro Daco, and were confined in the provincial jail, and not in the Japanese garrison. (People vs. Dumapit, 84 Phil. 698)

The aid or comfort given to the enemies must be after the declaration of war. The enemies must be the subject of a foreign power.

The aid or comfort given to the enemies must be after the declaration of war between the countries, and the term "enemies" applies only to the *subjects of a foreign power* in a state of hostility with the traitor's country. It does not embrace rebels in insurrection against their own country (63 C.J. 816), because they are still citizens and not enemies.

No treason thru negligence.

The overt act of aid and comfort to the enemy must be *intentional,* as distinguished from merely negligent or undesigned ones. (Cramer vs. U.S., *supra)*

Is there a complex crime of treason with murder, physical injuries, etc.?

In the case of *People vs. Prieto,* 80 Phil. 138, where the accused, besides being a Japanese spy, took part in the execution of some of the guerrilla suspects and in the infliction of physical injuries on the others, the Supreme Court held that murder and physical injuries were inherent in the crime of treason characterized by the giving of aid and comfort to the enemy.

When killings and other common crimes are charged as overt acts of treason, they cannot be regarded: (1) as separate crimes, or (2) as complexed with treason.

In treason, the giving of aid and comfort can be accomplished only by some kind of action — a *deed or physical activity.* This deed or physical activity may be and often is in itself a criminal offense under another penal statute or provision.

Thus, where the accused rendered service to the Japanese army as a secret agent, informer and spy and, in the performance of such service, he participated in the Japanese expeditions against guerrillas and committed

mass murders, arson and robberies (People vs. Villanueva, 104 Phil. 450), and those deeds or physical activities (committing mass murders, arson and robberies) were charged an element of treason (giving the enemy aid or comfort), they become identified with the crime of treason and cannot be the subject of a separate punishment or used in conjunction with treason to increase the penalty as provided in Art. 48. (People vs. Prieto, 80 Phil. 138; People vs. Vilo, 82 Phil. 524; People vs. Navea, 87 Phil. 1)

When the *raping* mentioned in the information is therein alleged not as a specific offense but as mere element of the crime of treason (People vs. Adlawan, 83 Phil. 194) and the *illegal detention* is another overt act of treason (People vs. Butawan, 83 Phil. 440), they are merged in the crime of treason.

When the accused is charged with treason and his act of arresting and detaining guerrillas is proved, not only as the element of adherence to the enemy but also as the element of giving aid or comfort, the accused cannot be considered guilty only of illegal detention under Art. 267 of the Revised Penal Code. (People vs. Tuason, 84 Phil. 670)

But this rule would not preclude the punishment of murder or other common crimes as such, if the prosecution should elect to prosecute the culprit specifically for these crimes, instead of relying on them as an element of treason. (People vs. Prieto, 80 Phil. 143)

Treason by Filipino citizen can be committed outside of the Philippines.

Treason can be committed by a Filipino who is outside of the Philippines, as Art. 114 says "in the Philippines or elsewhere."

Treason by an alien must be committed in the Philippines.

An *alien residing in the Philippines* can be prosecuted for treason. (Executive Order No. 44, May 31, 1945) Therefore, an alien who is not residing in the Philippines cannot commit treason.

Treason is a continuous offense.

Treason is of such a nature that it may be committed by one single act, by a series of acts, or by several series thereof, not only in a single time, but in different times, it being a continuous crime. (People vs. Victoria, 78 Phil. 129)

All overt acts the accused has done constitute but a single offense. (Guinto vs. Veluz, 77 Phil. 801) Proof of one count is sufficient for conviction. (People vs. San Juan, 89 Phil. 359)

No person shall be convicted of treason unless on the testimony of two witnesses at least to the same overt act or on confession of the accused in open court. (Art. 114, par. 2)

Treason cannot be proved by circumstantial evidence or by the extrajudicial confession of the accused.

The Revised Penal Code as well as the Rules of Court not authorize the conviction of a person accused of treason if the evidence against him is circumstantial, however strong or convincing it may be, or is only an extrajudicial confession.

Ways of proving treason.

A person may be convicted of treason on any of the following evidence only:

1. **Testimony of two witnesses, at least, to the same overt act; or**
2. **Confession of the accused in open court. (Art. 114, par. 2, Revised Penal Code)**

The two-witness rule.

The testimony of two witnesses is required to prove the overt act of giving aid or comfort. It is not necessary to prove adherence.

An *overt* act is defined as that *physical activity,* that deed that constitutes the *rendering of aid and comfort*.

The two-witness rule must be adhered to as to each and every one of all the external manifestations of the overt act in issue. (People vs. Abad, 78 Phil. 766)

The treasonous overt act of doing guard duty in the Japanese garrison on one specific date cannot be identified with the doing of guard duty in the same garrison on a *different* date. Both overt acts, although of the same nature and character, are two distinct acts. Either one, to serve as a ground for conviction, must be proved by two witnesses. That one witness should testify as to one, and another as to the other, was held not to be enough. (People vs. Agpangan, 79 Phil. 334)

Where two witnesses testified that the accused took part in the alleged "zoning" for the purpose of picking out the guerrillas, "but their testimony does not disclose that they were referring to the *same act, place* and *moment*

of time, it cannot be said that one corroborated the other." (People vs. Flores, *et al.*, 85 Phil. 403)

But *it is not required that their testimony be identical.* Thus, one witness might hear a gun report, see a smoking gun in the hand of the accused and see the victim fall. Another witness, who was deaf, might see the accused raise and point the gun and see a puff of smoke from it. The testimony of both would certainly be to the same overt act. (Hauft vs. United States, 67 S. Ct. 874)

The two-witness rule is "severely restrictive."

The authors of the two-witness provision in the American Constitution, from which our treason law was taken, purposely made it "severely restrictive" and conviction for treason difficult. The provision requires that each of the witnesses must testify to the whole overt act; or if it is separable, there must be two witnesses to each part of the overt act. (People vs. Escleto, 84 Phil. 121)

The defendant should be acquitted if only one of the two witnesses is believed by the court.

This provision is so exacting and so uncompromising in regard to the amount of evidence that where two or more witnesses give oaths to an overt act and only one of them is believed by the court or jury, the defendant, it has been said and held, is entitled to discharge, regardless of any moral conviction of the culprit's guilt as gauged and tested by the ordinary and natural methods, with which we are familiar, of finding the truth. Natural inferences, however strong or conclusive, flowing from the testimony of a most trustworthy witness or from other sources are unavailing as a substitute for the needed corroboration in the form of direct testimony of another eyewitness to the same overt act. (People vs. Adriano, 78 Phil. 563-567)

Illustration of a case where the two-witness rule is not complied with.

Witness A testified that he saw the defendant going to the house of Magno Ibarra in search of the latter's revolver. Witness B testified that when Magno Ibarra went to the garrison, the defendant required him (Ibarra) to produce his revolver. It was held that the search for the revolver in the house of Ibarra is one overt act and the requiring to produce the revolver in the garrison, another.

Although both acts may logically be presumed to have answered the same purpose, that of confiscating Ibarra's revolver, the singleness of purpose is not enough to make one of two acts.

The theory that where the overt act is simple, continuous and composite, made up of, or proved by several circumstances, it being not necessary that there be two witnesses to each circumstance, is not well taken. (People vs. Abad, 78 Phil. 766)

It is sufficient that the witnesses are uniform in their testimony on the overt act; it is not necessary that there be corroboration between them on the point they testified.

While witness A.S. testified that the defendant, with a Japanese interpreter, arrived at their house and inquired if his brother B.S. was at home and said that the latter was wanted at the military police headquarters for questioning, witness E.S. did not corroborate witness A.S. in this respect. Neither did witness A.S. corroborate E.S. as regards the latter's testimony that B.S. was taking a bath and that B.S. said that the defendant and his companion should wait. But said witnesses were uniform in their testimony on the overt act that B.S. was arrested and the defendant actually aided in his arrest. The two-witness rule was complied with. (People vs. Concepcion, 84 Phil. 789)

The two-witness rule is not affected by discrepancies in minor details of the testimony.

The fact that the said witnesses were not uniform on the points whether or not there were Japanese soldiers in the raiding party, or whether or not the persons arrested and confined included not only the males but some women and children, is not sufficient to entirely discredit their testimony, as the deficiency refers merely to *minor details.* Neither may the negative testimony of E.E., an alleged victim of the raid, to the effect that he did not see the appellant among the raiders prevail over the positive testimony of M.F. and T.V. who, moreover, were not shown to have had any improper motive in testifying against the appellant. (People vs. Lansanas, 82 Phil. 193)

Reason for requiring the two witnesses to testify to the same overt act.

The special nature of the crime of treason requires that the accused be afforded a special protection not required in other cases so as to avoid a miscarriage of justice. The extreme seriousness of the crime, for which death is one of the penalties provided by law, and the fact that the crime is committed on abnormal times, when small differences may in mortal enmity wipe out all scruples in sacrificing the truth, require that, at least, two witnesses must testify as to overt acts of treason, if the same should be

accepted by the tribunals as legal basis to condemn a person as a traitor. (Concurring Opinion of Justice Perfecto, People vs. Marcaida, 79 Phil. 295)

Adherence may be proved:

1. by one witness,
2. from the nature of the act itself, or
3. from the circumstances surrounding the act. (Cramer vs. U.S., *supra*, cited in People vs. Adriano, 78 Phil. 563; People vs. Canibas, 85 Phil. 469)

Adherence to the enemy may be inferred from his act of arresting persons suspected of being guerrillas, his being armed, and his being in company with armed Japanese soldiers. (People vs. Icaro, 89 Phil. 12; People vs. Bernardino, 93 Phil. 940)

Reason why adherence to the enemy need not be proved by two witnesses.

It seems obvious that adherence to the enemy, in the sense of a disloyal state of mind, cannot be, and is not required to be, proved by deposition of two witnesses, because what is designed in the mind of an accused never is susceptible of proof by direct testimony.

Confession must be made in open court.

The confession means a confession of guilt. It is not only an admission of facts made by the accused in giving his testimony after a *plea of not guilty*, from which admissions of his guilt can be inferred. Thus, if the accused testified in his behalf after he had pleaded *not guilty* that he had been carried off by force by the insurgent soldiers; that he was forced to join them; that they made him a lieutenant and gave him a revolver; and that he stayed with them two weeks, although it was against his will; there was only an admission, but not a confession of guilt. (U.S. vs. Magtibay, 2 Phil. 705) It means pleading guilty in open court; that is, before the judge while actually hearing the case.

Extrajudicial confession or confession made before the investigators is not sufficient to convict a person of treason.

Aggravating circumstances in treason.

1. *Cruelty* by subjecting guerrilla suspects to barbarous forms of torture before putting them to death; and *ignominy*, by stripping the wife of her clothes and then abusing her in the presence of her husband, a

guerrilla suspect, are aggravating circumstances in treason. (People vs. Adlawan, 83 Phil. 195)

2. Rapes, wanton robbery for personal gain, and brutality with which the killing or physical injuries are carried out are regarded as *ignominy* and *cruelty* under paragraphs 17 and 21 of Art. 14 of the Code. (People vs. Racaza, 82 Phil. 623; People vs. Prieto, 80 Phil. 138)

3. But *evident premeditation is not aggravating in treason,* because in treason, adherence and the giving of aid and comfort to the enemy is usually a long continued process requiring reflective and persistent determination and planning. (People vs. Racaza, *supra)*

4. *Superior strength* and treachery are circumstances inherent in treason. Treachery is merged in superior strength. They are, therefore, *not aggravating in treason.* (People vs. Adlawan, *supra;* People vs. Racaza, *supra)*

Art. 64 is not strictly applied to treason.

Ordinarily, when there are no mitigating and aggravating circumstances, the divisible penalty is imposed in the medium period. (Art. 64)

The penalty for treason committed by Philippine citizens is *reclusion perpetua* to death and a fine not to exceed P100,000. In determining the proper penalty for treason, the amount or degree of aid or comfort given the enemy as well as the gravity of the separate and distinct acts of treason committed by the accused, rather than the circumstances aggravating or mitigating the offense, determine the period of the penalty to be imposed.

So, where there was no killing, not even torture of prisoners, the imposition of imprisonment for 15 years, without reference to the mitigating or aggravating circumstance, is proper. (People vs. Caña, 87 Phil. 577)

Note: This ruling was made when the penalty for treason committed by Filipino citizens was still *reclusion temporal* to death.

The gravity or seriousness of the acts of treason considered.

Where the accused took part in the killing and torture of persons apprehended by the Japanese forces through him, the penalty of *reclusion perpetua* or even death was imposed. (People vs. Ortega, 92 Phil. 263)

Upon the accused whose acts in torturing and killing guerilla suspects were characterized by vindictive cruelty and inhuman savagery, death is the proper penalty. (People vs. Ingalla, 83 Phil. 239)

Considering that many deaths resulted from the defendant's adherence to the enemy, the Supreme Court believes that the appropriate penalty

should be *reclusion perpetua* besides fine of P10,000. (People vs. Castillo, 90 Phil. 298)

Defense of suspended allegiance and change of sovereignty, not accepted.

Reasons:

(a) A citizen owes an *absolute* and *permanent* allegiance to his Government;

(b) The *sovereignty* of the Government *is not transferred* to the enemy by mere occupation;

(c) The *subsistence* of the sovereignty of the *legitimate Government* in a territory occupied by the military forces of the enemy during the war is one of the rules of International Law; and

(d) What is suspended is the *exercise of the rights of sovereignty* (A. Laurel vs. Misa, 77 Phil. 856)

Defense of obedience to de facto Government.

In addition to the defense of duress, lawful obedience to a *de facto* Government is a good defense in treason. The Philippine Executive Commission, as well as the Republic established by the Japanese occupation army in the Philippines, had all the characteristics of a *de facto* Government. (Go Kim Cham vs. Valdez, *et al.*,75 Phil. 113)

Defense of loss of citizenship by joining the army of the enemy.

People vs. Manayao
(78 Phil. 721)

Facts: The accused, being a Makapili, considered himself a member of the Japanese armed forces. He contended that he thereby lost his Filipino citizenship under paragraphs 3, 4 and 6 of Sec. 1 of Commonwealth Act No. 63 providing: "... a Filipino may lose his citizenship x x x by accepting commission in the military, naval or air service of a foreign country x x x."

Held: The accused cannot divest himself of his Philippine citizenship by the simple expedient of accepting a commission in the military, naval or air service of such country. If the contention of the accused would be sustained, his very crime would be the shield that would protect him from punishment.

Defense of duress or uncontrollable fear.

In the eyes of the law, nothing will excuse that act of joining an enemy, but the fear of immediate death; not the fear of any inferior personal injury, nor the apprehension of any outrage upon property. (People vs. Bagalawis, 78 Phil. 174; People vs. Villanueva, 104 Phil. 450)

Art. 115. ***Conspiracy and proposal to commit treason***[4] **— Penalty. — The conspiracy and proposal to commit the crime of treason shall be punished respectively, by *prision mayor*[5] and a fine not exceeding 10,000 pesos, and by *prision correccional*[6] and a fine not exceeding 5,000 pesos.**

How are the crimes of conspiracy and proposal to commit treason committed?

Conspiracy to commit treason is committed when *in time of war,* two or more persons come to an *agreement* to levy war against the Government or to adhere to the enemies and to give them aid or comfort, and decide to commit it. (Arts. 8 and 114)

Proposal to commit treason is committed when *in time of war* a person who *has decided* to levy war against the Government or to adhere to the enemies and to give them aid or comfort, *proposes* its execution to some other person or persons. (Arts. 8 and 114)

Conspiracy or proposal as a felony.

Although the general rule is that conspiracy and proposal to commit a felony is not punishable (Art. 8), under Art. 115 the mere conspiracy to commit treason is a felony. The mere proposal to commit treason is also a felony. Both are punishable under Art. 115.

The reason is that in treason the very existence of the state is endangered.

[4]The Indeterminate Sentence Law is not applicable.
[5]See Appendix "A," Table of Penalties, No. 19.
[6]See Appendix "A," Table of Penalties, No. 10.

Example of conspiracy to levy war against the Government.

In 1903, a *junta* was organized and a conspiracy entered into by a number of Filipinos in Hongkong, for the purpose of overthrowing the Government by force of arms and establishing in its stead a government to be known as the *Republica Universal Democratica Filipina*; that one Primo Ruiz was recognized as the titular head of this conspiracy and Artemio Ricarte as chief of the military forces to be organized in the Philippines in furtherance of the plans of the conspirators; that Ricarte came to Manila from Hongkong; that after his arrival in Manila, he held a number of meetings whereat was perfected the conspiracy hatched in Hongkong; that defendant Francisco Bautista took part in several of the meetings whereat the plans of the conspirators were discussed and perfected; and that at one of these meetings, Bautista, in answer to the question of Ricarte, assured him that the necessary preparation had been made and that he "held the people in readiness."

Francisco Bautista, with another defendant, was convicted of the crime of *conspiracy* to overthrow, put down, and destroy by force the Government. (U.S. vs. Bautista, *et al.*, 6 Phil. 581)

The two-witness rule does not apply to conspiracy or proposal to commit treason.

The two-witness rule does not apply to this crime, because this is a separate and distinct offense from that of treason. (U.S. vs. Bautista, *et al.*, 6 Phil. 581)

Art. 116. *Misprision of treason.*[7] — Every person owing allegiance to (the United States or) the Government of the Philippine Islands, without being a foreigner, and having knowledge of any conspiracy against them, who conceals or does not disclose and make known the same, as soon as possible, to the governor or fiscal of the province, or the mayor or fiscal of the city in which he resides, as the case may be, shall be punished as an accessory to the crime of treason.[8]

[7]The Indeterminate Sentence Law is not applicable.
[8]See Appendix "A," Table of Penalties, No. 10.

Elements:

1. That the offender must be owing allegiance to the Government, and *not a foreigner.*
2. That he has knowledge of any conspiracy (to commit treason) against the Government.
3. That he *conceals* or *does not disclose* and make known the same as soon as possible to the *governor* or *fiscal* of the province or the *mayor* or *fiscal* of the city in *which he resides.*

Misprision of treason cannot be committed by a resident alien.

The offender must be owing allegiance to the Government, without being a foreigner.

The conspiracy is one to commit treason.

The phrase "having knowledge of any conspiracy against them" has reference to conspiracy to commit treason defined in Art. 115.

Art. 116 does not apply when the crime of treason is already committed by someone and the accused does not report its commission to the proper authority.

This is so because Art. 116 speaks of "knowledge of any *conspiracy against"* the Government of the Philippines, not knowledge of treason actually committed by another.

The offender in misprision of treason is pupished as an accessory to treason.

The offender under Art. 116 is "punished as an accessory to the crime of treason." Note that Art. 116 does not provide for a penalty. Hence, the penalty for misprision of treason is two degrees lower than that provided for treason.

The offender is, however, a principal in the crime of misprision of treason.

But the offender in Art. 116 is a principal in the crime of misprision of treason. Misprision of treason is a separate and distinct offense from the crime of treason.

Article 20 does not apply.

Since the offender in misprision of treason is a principal in that crime, Art. 20 does not apply, even if the offender is related to the persons in conspiracy against the government, because Art. 20 applies only to accessory.

Art. 116 is an exception to the rule that mere silence does not make a person criminally liable.

The provision of Art. 116 is an exception to the general rule laid down in connection with Art. 19 that a person who keeps silent as to what he knows about the perpetration of an offense is not criminally liable, either as a principal, or as an accomplice, or as an accessory. (U.S. vs. Caballeros, *et al.*,4 Phil. 350)

Art. 117. *Espionage.*[9]— The penalty of *prision correccional*[10] shall be inflicted upon any person who:

1. Without authority therefor, enters a warship, fort, or naval or military establishment or reservation to obtain any information, plans, photographs, or other data of a confidential nature relative to the defense of the Philippine Archipelago; or

2. Being in possession, by reason of the public office he holds, of the articles, data, or information referred to in the preceding paragraph, discloses their contents to a representative of a foreign nation.

The penalty next higher in degree[11] shall be imposed if the offender be a public officer or employee.

Espionage, defined.

Espionage is the offense of gathering, transmitting, or losing information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the Republic of the Philippines or to the advantage of any foreign nation. (See the opening sentence of Sec. 1 and other sections of Commonwealth Act No. 616)

[9]The Indeterminate Sentence Law is not applicable.
[10]See Appendix "A," Table of Penalties, No. 10.
[11]See Appendix "A," Table of Penalties, No. 19.

Two ways of committing espionage under Art. 117.

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

Elements:

(a) That the offender enters any of the places mentioned therein;

(b) That he has no authority therefor;

(c) That his purpose is to obtain information, plans, photographs or other data of a confidential nature relative to the defense of the Philippines. (Guevara)

2. By disclosing to the representative of a *foreign nation* the *contents* of the articles, data or information referred to in paragraph No. 1 of Art. 117, which he had in his *possession by reason* of the public office he holds.

Elements:

(a) That the offender is a public officer;

(b) That he has in his *possession* the articles, data or information referred to in paragraph No. 1 of Art. 117, *by reason of the public office he holds;*

(c) That he discloses their contents to a representative of a foreign nation.

To be liable under par. 1, the offender must have the intention to obtain information relative to the defense of the Philippines.

If the accused has no such intention, even if he takes possession of plans or photographs referred to in paragraph No. 1 of Art. 117, he is not liable under that provision.

Even under Com. Act No. 616, the offender in entering any of the places mentioned in Sec. 1 thereof must have the purpose of obtaining information respecting national defense.

It is not necessary that information, etc. is obtained.

Under the first way of committing espionage, it is not necessary that the offender should have obtained any information, plans, etc. mentioned in paragraph No. 1 of Art. 117. It is sufficient that he has the *purpose* to

obtain any of them when he entered a warship, fort, or naval or military establishment.

Persons liable in two ways of committing espionage.

Under paragraph No. 1 of Art. 117, the offender is any person, whether a citizen or a foreigner, a private individual or a public officer.

When the offender is a public officer or employee, the penalty next higher in degree shall be imposed.

Under paragraph No. 2, the offender must be a *public officer* who has in his possession the article, data, or information by *reason of the public office he holds*.

Other acts of espionage are punished by Com. Act No. 616.

OUTLINE OF COMMONWEALTH ACT NO. 616

An Act to Punish Espionage and Other Offenses Against National Security

SEC. 1. Unlawfully obtaining or permitting to be obtained information affecting national defense.

Different ways of violating Section 1:

a. By *going upon, entering, flying over* or otherwise by *obtaining* information concerning any vessel, aircraft, work of defense or other place connected with the national defense, or any other place where any vessels, aircraft, arms, munitions or other materials for the use in time of war are being made, or stored, for the *purpose of obtaining information* respecting national defense, *with intent to use it* to the injury of the Philippines or to the advantage of any *foreign* nation.

b. By *copying, taking, making or attempting or inducing or aiding* another to *copy, take, make or obtain any sketch, photograph, photographic negative, blue print, plan, map instrument, appliance, document, writing* or note of anything connected with the national defense, for the same purpose and with like intent as in paragraph a.

c. By *receiving or obtaining or agreeing or attempting or inducing or aiding another to receive or obtain* from any sources any of those data mentioned in paragraph b, code book or signal book,

knowing that it will be obtained or disposed of by any person contrary to the provisions of this Act.

d. *By communicating* or transmitting, or *attempting* to communicate or transmit to any person not entitled to receive it, by willfully *retaining and failing to deliver* it on demand to any officer or employee entitled to receive it, the offender being in possession of, having access to, control over, or being entrusted with any of the data mentioned in paragraph b, or code book or signal book.

e. By *permitting, through gross negligence,* to be *removed* from its proper place or custody or *delivered* to anyone in violation of his trust, or to be lost, *stolen, abstracted or destroyed* any of the data mentioned in paragraph b, code book or signal book, the offender being entrusted with or having lawful possession or control of the same.

SEC. 2. Unlawful disclosing of information affecting national defense.

Different ways of violating Section 2:

a. By *communicating, delivering* or *transmitting* or *attempting* or *aiding* or inducing another to do it, to any foreign government or any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the Philippines, or to any representative, officer, employee, subject or citizen thereof, any of the data mentioned in paragraph b of Section 1 hereof, code book or signal book.

If committed in *time of war,* the penalty is *death* or imprisonment for not more than 30 years.

b. *In time of war, by collecting, recording, publishing or communicating or attempting to* elicit any *information* with respect to the *movement, number, description, condition,* or *disposition* of any of the armed forces, ships, aircraft, or war materials of the Philippines, or with respect to the plans or conduct of any military, naval or air operations or with respect to any works or measures undertaken for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy.

The penalty is *death* or imprisonment for not more than 30 years.

SEC. 3. Disloyal acts or words in time of peace.

Different ways of violating Section 3:

a. By *advising, counselling, urging* or in any other manner by *causing* insubordination, disloyalty, mutiny or refusal of duty of any member of the military, naval or air forces of the Philippines.

b. By *distributing* any *written* or *printed* matter which advises, counsels, or urges such insubordination, disloyalty, mutiny, or refusal of duty.

SEC. 4. Disloyal acts or words in time of war.

Different ways of violating Section 4:

a. By willfully *making* or *conveying false reports* or *false statements* with intent to interfere with the operation or success of the Armed Forces of the Philippines; or

b. To promote the success of its enemies, by willfully *causing or attempting to* cause insubordination, disloyalty, mutiny or refusal of duty in the Armed Forces of the Philippines; or

c. By willfully obstructing the *recruiting* or enlistment service.

SEC. 5. Conspiracy to violate preceding sections.

Requisites:

a. Two or more persons conspire to violate the provisions of sections one, two, three or four of this Act;

b. One or more of such persons do any act to effect the object of the conspiracy.

Each of the parties to such conspiracy shall be punished as in said sections provided in the case of the doing of the act the accomplishment of which is the object of such conspiracy.

SEC. 6. Harboring or concealing violators of the law.

Requisites:

a. The offender knows that a person has *committed* or *is about to commit* an offense under this Act;

b. The offender harbors or conceals such person. x x x.

Other acts punished by Commonwealth Act No. 616.

1. Using or permitting or procuring the use of an aircraft for the purpose of making photograph, sketch, etc. of vital installations or equipment of the Armed Forces of the Philippines. (Sec. 9)
2. Reproducing, publishing, selling, etc. uncensored copies of photograph, sketch, etc. of the vital military, naval or air post, camp or station, without permission of the commanding officer. (Sec. 10)
3. Injuring or destroying or attempting to injure or destroy war materials, premises or war utilities when the Philippines is at war. (Sec. 11)
4. Making or causing war materials to be made in a defective manner when the Philippines is at war. (Sec. 12)
5. Injuring or destroying national defense material, premises or utilities. (Sec. 13)
6. Making or causing to be made in a defective manner, or attempting to make or cause to be made in a defective manner, national defense material. (Sec. 14)

Espionage distinguished from treason.

Espionage is a crime not conditioned by the citizenship of the offender. (Santos vs. Misa, 76 Phil. 415) This is also true as regards treason, in view of the amendment to Art. 114.

But treason is committed only in time of war, while espionage may be committed both in time of peace and in time of war. Treason is limited in two ways of committing the crime: levying war, and adhering to the enemy giving him aid or comfort; while espionage may be committed in many ways. (Com. Act No. 616)

Section Two. — Provoking war and disloyalty in case of war

What are the crimes classified as provoking war and disloyalty in case of war?

They are:

1. Inciting to war or giving motives for reprisals.
2. Violation of neutrality.

3. Correspondence with hostile country.

4. Flight to enemy's country.

Art. 118. ***Inciting to war or giving motives for reprisals.*** — **The penalty of** *reclusion temporal*[12] **shall be imposed upon any public officer or employee, and that of** *prision mayor*[13] **upon any private individual, who, by unlawful or unauthorized acts, provokes or gives occasion for a war involving or liable to involve the Philippine Islands or exposes Filipino citizens to reprisals on their persons or property.**

Elements:

1. That the offender performs unlawful or unauthorized acts.
2. That such acts *provoke* or *give* occasion for a war involving or liable to involve the Philippines or *expose* Filipino citizens to reprisals on their persons or property.

Examples:

The raising, without sufficient authorization, of troops within the Philippines for the service of a foreign nation against another nation

The public destruction of the flag or seal of a foreign state or the public manifestations of hostility to the head or ambassador of another state.

The intention of the offender is immaterial.

Viada says that to be liable for inciting to war or giving motives for reprisals, the intention of the accused is immaterial.

If the unlawful or unauthorized acts of the accused provoke or give occasion for a war or expose Filipino citizens to reprisals, the crime is committed regardless of his intentions. The law considers the effects produced by the acts of the accused.

Such acts might disturb the friendly relation that we have with a foreign country, and they are penalized even if they constitute a mere *imprudence.* (Albert)

[12]See Appendix "A," Table of Penalties, No. 28.
[13]See Appendix "A," Table of Penalties, No. 19.

Committed in time of peace.

The crime of inciting to war or giving motives for reprisals is committed *in time of peace.*

Penalty is higher when the offender is a public officer or employee.

If the offender is a private individual, the penalty is *prision mayor.* If the offender is a public officer or employee, the penalty is *reclusion temporal.*

Art. 119. ***Violation of neutrality.*** **— The penalty of *prision correccional*[14] shall be inflicted upon anyone who, on the occasion of a war in which the Government is not involved, violates any regulation issued by competent authority for the purpose of enforcing neutrality.**

Elements:

1. That there is a war in which the Philippines is not involved;
2. That there is a regulation issued by competent authority for the purpose of enforcing neutrality;
3. That the offender violates such regulation.

Neutrality, defined.

A nation or power which takes no part in a *contest of arms* going on between others is referred to as neutral. (Burril, L.D.)

There must be regulation issued by competent authority for the enforcement of neutrality.

It is the violation of such regulation which constitutes the crime.

[14] See Appendix "A," Table of Penalties, No. 10.

CORRESPONDENCE WITH HOSTILE COUNTRY

Art. 120. *Correspondence with hostile country.* — Any person, who in time of war, shall have correspondence with an enemy country or territory occupied by enemy troops shall be punished:

1. By *prision correccional*,[15] if the correspondence has been prohibited by the Government;

2. By *prision mayor*,[16] if the correspondence be carried on in ciphers or conventional signs; and

3. By *reclusion temporal*,[17] if notice or information be given thereby which might be useful to the enemy. If the offender intended to aid the enemy by giving such notice or information, he shall suffer the penalty of *reclusion temporal* to death.[18]

Elements:

1. That it is in time of war in which the Philippines is involved;
2. That the offender *makes* correspondence with an *enemy country* or territory *occupied by enemy troops;*
3. That the correspondence is either —
   - (a) *prohibited* by the Government, or
   - (b) carried on in ciphers or *conventional signs,* or
   - (c) containing *notice* or *information* which might be *useful to the enemy.*

Meaning of "correspondence."

Correspondence is communication by means of letters; or it may refer to the letters which pass between those who have friendly or business relations.

[15] See Appendix "A," Table of Penalties, No. 10.
[16] See Appendix "A," Table of Penalties, No. 19.
[17] See Appendix "A," Table of Penalties, No. 28.
[18] See Appendix "A," Scale of Penalties.

Even if correspondence contains innocent matters, if the correspondence has been prohibited by the Government, it is punishable.

If the correspondence with an enemy country or territory occupied by enemy troops has been prohibited by the Government, the crime is committed even if the correspondence or letter contains innocent matters, because of the possibility that some information useful to the enemy might be revealed unwittingly.

Prohibition by the Government is not essential in paragraphs 2 and 3 of Art. 120.

The phrases "if *such* correspondence" or "if notice or information be given thereby" in paragraphs 2 and 3, respectively, do not require that there should be prohibition by the Government to make the correspondence. The word "such" in paragraph 2 makes reference to the correspondence mentioned in the opening sentence of Art. 120.

Circumstances qualifying the offense.

The following must concur together:

a. That the notice or information might be *useful* to the enemy.

b. That the offender *intended* to aid the enemy.

Note: If the offender intended to aid the enemy by giving such notice or information, the crime amounts to treason; hence, the penalty is the same as that for treason.

Art. 121. ***Flight to enemy's country.*** **— The penalty of *arrestmayor*[19] shall be inflicted upon any person who, owing allegiance to the Government, attempts to flee or go to an enemy country when prohibited by competent authority.**

Elements:

1. That there is a war in which the Philippines is involved;

[19] See Appendix "A," Table of Penalties, No. 1.

2. That the offender must be owing allegiance to the Government;

3. That the offender *attempts* to flee or go to enemy country;

4. That going to enemy country is prohibited by competent authority.

An alien resident may be guilty of flight to enemy country.

An alien resident in the country can be held liable under this article. The law does not say "not being a foreigner." Hence, the allegiance contemplated in this article is either natural or temporary allegiance.

Mere attempt to flee or go to enemy country consummates the crime.

It should be noted that mere attempt to flee or go to enemy country when prohibited by competent authority consummates the felony.

"When prohibited by competent authority."

Art. 121 must be implemented by the Government. If fleeing or going to an enemy country is not prohibited by competent authority, the crime defined in Art. 121 can not be committed.

Section Three. — Piracy and mutiny on the high seas in Philippine waters

Art. 122. *Piracy*[20] *in general and mutiny on the high seas or in Philippine waters.* — The penalty of *reclusion perpetua*[21] shall be inflicted upon any person who, on the high seas or in Philippine waters, shall attack or seize any vessel or, not being a member of its complement nor a passenger, shall seize the whole or part of the cargo of said vessel, its equipment, or personal belongings of its complement or passengers.

The same penalty shall be inflicted in case of mutiny on the high seas or in Philippine waters. *(As amended by Sec. 3, Rep. Act No. 7659)*

[20]The Indeterminate Sentence Law is not applicable.
[21]See Appendix "A," Scale of Penalties.

Two ways or modes of committing piracy:

1. By *attacking* or *seizing* a vessel on the high seas or in Philippine waters;
2. By *seizing* in the vessel while on the high seas or in Philippine waters the *whole* or *part of its cargo,* its *equipment* or *personal belongings* of its complement or passengers.

Elements of piracy:

1. That a vessel is on the high seas or in Philippine waters;
2. That the offenders are not members of its complement or passengers of the vessel;
3. That the offenders (a) attack or seize that vessel, or (b) seize the whole or part of the cargo of said vessel, its equipment or personal belongings of its complement or passengers.

Meaning of "high seas."

It does not mean that the crime be committed beyond the three-mile limit of any state. It means any waters on the sea coast which are without the boundaries of low-water mark, although such waters may be in the jurisdictional limits of a foreign government. (48 C.J. 1207; footnote 13-a)

As the Supreme Court said in the case of *People vs. Lol-lo, et al.*, 43 Phil. 19, "nor does it matter that the crime was committed within the jurisdictional 3-mile limit of a foreign state."

The Convention on the Law of the Sea defines "high seas" as parts of the seas that are not included in the exclusive economic zone, in the territorial seas, or in the internal waters of a state, or in the archipelagic waters of an archipelagic state.

Definition of piracy.

It is robbery or forcible depredation on the high seas, without lawful authority and done with *animofurandi* and in the spirit and intention of universal hostility. (People vs. Lol-lo, et al., 43 Phil. 19)

Seizure of a vessel.

People vs. Catantan
(G.R. No. 118075, September 5, 1997)

Facts: Accused-appellant argues that in order that piracy may be committed it is essential that there be an attack on or seizure of a vessel.

He claims that he and his companion did not attack or seize the fishing boat of the Pilapil brothers by using force or intimidation but merely boarded the boat, and it was only when they were already on board that they used force to compel the Pilapils to take them to some other place. Appellant also insists that he and Ursal had no intention of permanently taking possession or depriving complainants of their boat. As a matter of fact, when they saw another pumpboat they ordered the complainants to approach that boat so they could leave the complainants behind in their boat. Accordingly, appellant claims, he simply committed grave coercion and not piracy.

Held: We do not agree. Under the definition of piracy in PD No. 532 as well as grave coercion as penalized in Art. 286 of the Revised Penal Code, this case falls squarely within the purview of piracy. While it may be true that complainants were compelled to go elsewhere other than their place of destination, such compulsion was obviously part of the act of seizing their boat.

Mutiny is punished in Art. 122.

The last paragraph of this article provides that the same penalty provided for piracy shall be inflicted in the case of mutiny on the *high seas* or in *Philippine waters.*

Mutiny is usually committed by the other members of the complement and may be committed by the passengers of the vessel.

Definition of mutiny.

It is the *unlawful resistance to a superior officer,* or the raising *of commotions and disturbances* on board a ship against the authority of its commander. (Bouvier's Law Dictionary, Vol. 2, p. 2283)

Piracy distinguished from mutiny.

In piracy, the persons who attack a vessel or seize its cargo are strangers to said vessels; while in mutiny, they are members of the crew or passengers.

While the intent to gain is essential in the crime of piracy, in mutiny, the offenders may only intend to ignore the ship's officers or they may be prompted by a desire to commit plunder.

Piracy and Mutiny, when considered as Terrorism.

Under Republic Act No. 9372, otherwise known as the Human Security Act of 2007, approved on March 6, 2007, a person who commits an act punishable as piracy and mutiny under Art. 122 thereby sowing and

creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism, and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole.

Art. 123. *Qualified* ***piracy.***[22]— The penalty of ***reclusion*** *perpetua* to **death**[23] shall be imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances:

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

2. Whenever the pirates have abandoned their victims without means of saving themselves; or

3. Whenever the crime is accompanied by murder, homicide, physical injuries, or rape. *(As amended by* ***R.A.*** *No. 7659)*

"Upon those who commit any of the crimes referred to in the preceding article."

The word "crimes" in the quoted phrase in the opening sentence of Art. 123, refers to piracy and mutiny on the high seas.

Piracy or mutiny is, therefore, qualified if any of the following circumstances is present:

(a) Whenever the offenders have *seized the vessel by boarding* or *firing* upon the same;

(b) Whenever the pirates have *abandoned their victims without means of saving themselves;*

(c) Whenever the crime is accompanied by *murder, homicide, physical injuries, or rape.*

Paragraph 2 of Art. 123 specifically mentions "pirates" thereby excluding mutineers from said paragraph. It would seem, however, that it should be in paragraph 1 where the word "pirates" should be specifically mentioned and not in paragraph 2, because in paragraph 1, the mutineers,

[22]The Indeterminate Sentence Law is not applicable.
[23]See Appendix "A," Table of Penalties, No. 8.

being already in the vessel, cannot seize the vessel by boarding or firing upon the same.

It is qualified piracy when the crime was accompanied by rape and the offenders abandoned their victims without means of saving themselves.

A boat, in which there were eleven men, women and children, arrived between the islands of Buang and Bukid in the Dutch East Indies. There the boat was surrounded by six *vintas* manned by twenty-four Moros all armed. The Moros first asked for food, but once on the boat, took for themselves all of the cargo, attacked some of the men, and brutally violated two of the women by methods too horrible to be described. All of the persons on the boat, with the exception of the two young women, were again placed on it and holes were made on it, with the idea that it would submerge, but after eleven days of hardship and privation they were succored. Two of the Moro marauders were Lol-lo and Saaraw who later returned to their home in Sulu, Philippines. There they were arrested and were charged in the Court of First Instance of Sulu with the crime of piracy.

Held: It cannot be contended with any degree of force that the Court of First Instance of Sulu was without jurisdiction on the case. Piracy is a crime not against any particular state but against all mankind. It may be punished in the competent tribunal of any country where the offender may be found or into which he may be carried. Nor does it matter that the crime was committed within the jurisdictional 3-mile limit of a foreign state.

The crime of piracy was accompanied by (1) rape, and (2) the abandonment of persons without means of saving themselves.

Lol-lo who raped one of the women was sentenced to death, there being the aggravating circumstance of cruelty, abuse of superior strength, and ignominy, without any mitigating circumstance. (People vs. Lol-lo and Saraw, 43 Phil. 19)

Before Art. 122 was amended by R.A. No. 7659, only piracy and *mutiny on high seas* was covered by the RPC. The commission of the acts described in Arts. 122 and/or 123 *in Philippine waters* was punished as piracy under P.D. No. 532.

Under P.D. No. 532, any attack upon or seizure of any vessel, or the taking away of the whole or part thereof or its cargo, equipment, or the personal belongings of its complement or passengers, irrespective of the value thereof, by means of violence against or intimidation of persons or force upon things, committed by any person, including a passenger or member of the complement of said vessel, in Philippine waters, shall be

considered as piracy. The offenders shall be considered as pirates and punished by the penalty of *reclusion temporal* in its medium and maximum periods. If physical injuries or other crimes are committed as a result or on the occasion thereof, the penalty of *reclusion perpetua* shall be imposed. If rape, murder, or homicide is committed as a result or on the occasion of piracy or when the offender abandoned the victims without means of saving themselves, or when the seizure is accomplished by firing upon or boarding a vessel, the mandatory penalty of death shall be imposed.

Note: Republic Act 9346 prohibited the imposition of the death penalty. Thus, instead of the mandatory penalty of death under PD 532, *reclusion perpetua* without eligibility for parole shall be imposed.

P.D. 532 covers any person while Art. 122 as amended covers only persons who are not passengers or members of its complement.

To summarize, Article 122 of the Revised Penal Code, before its amendment, provided that piracy must be committed on the high seas by any person not a member of its complement nor a passenger thereof. Upon its amendment by Republic Act No. 7659, the coverage of the pertinent provision was widened to include offenses committed "in Philippine waters." On the other hand, under Presidential Decree No. 532 (issued in 1974), the coverage of the law on piracy embraces any person including "a passenger or member of the complement of said vessel in Philippine waters." Hence, passenger or not, a member of the complement or not, any person is covered by the law.

Republic Act No. 7659 neither superseded nor amended the provisions on piracy under Presidential Decree No. 532. There is no contradiction between the two laws. There is likewise no ambiguity and hence, there is no need to construe or interpret the law. All the presidential decree did was to widen the coverage of the law, in keeping with the intent to protect the citizenry as well as neighboring states from crimes against the law of nations. As expressed in one of the "whereas" clauses of Presidential Decree No. 532, piracy is "among the highest forms of lawlessness condemned by the penal statutes of all countries." For this reason, piracy under the Article 122, as amended, and piracy under Presidential Decree No. 532 exist harmoniously as separate laws. (People vs. Tulin, G.R. No. 111709, August 30, 2001)

Piracy under PD 532, when considered as Terrorism.

Under Republic Act No. 9372, otherwise known as the Human Security Act of 2007, approved on March 6, 2007, a person who commits an act punishable under Presidential Decree No. 532 (Anti-Piracy and Anti-

Highway Robbery Law of 1974), thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism. (Sec. 3)

Qualified piracy is a special complex crime punishable by *reclusion perpetua* to death, regardless of the number of victims.

The number of persons killed on the occasion of piracy is not material. P.D. No. 532 considers qualified piracy, *i.e.*, rape, murder, or homicide is committed as a result or on the occasion of piracy, as a special complex crime punishable by death, regardless of the number of victims. (People vs. Siyoh, 141 SCRA 356)

Note: **Qualified piracy is now punishable by *reclusion perpetua* to death.**

Philippine waters and vessel, defined.

Philippine Waters. **— It shall refer to all bodies of water, such as but not limited to, seas, gulfs, bays around, between and connecting each of the Islands of the Philippine Archipelago, irrespective of its depth, breadth, length or dimension, and all other waters belonging to the Philippines by historic or legal title, including territorial sea, the sea-bed, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction.**

Vessel. **— Any vessel or watercraft used for transport of passengers and cargo from one place to another through Philippine waters. It shall include all kinds and types of vessels or boats used in fishing.**

Any person who aids or protects pirates or abets the commission of piracy shall be considered as an accomplice.

Any person who knowingly and in any manner aids or protects pirates, such as giving them information about the movement of police or other peace officers of the government, or acquires or receives property taken by such pirates or in any manner derives any benefit therefrom; or any person who directly or indirectly abets the commission of piracy, 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 these acts has performed them knowingly, unless the contrary is proven.

Acts inimical to civil aviation is punished by Republic Act No 6235.

EXCERPTS FROM REPUBLIC ACT NO. 6235

An Act Prohibiting Certain Acts Inimical to Civil Aviation

SECTION 1. It shall be unlawful for any person to compel a change in the course or destination of an aircraft of Philippine registry, or to seize or usurp the control thereof, while it is in flight. An aircraft is in flight from the moment all its external doors are closed following embarkation until any of such doors is opened for disembarkation.

It shall likewise be unlawful for any person to compel an aircraft of foreign registry to land in Philippine territory or to seize or usurp the control thereof while it is within the said territory.

SEC. 2. Any person violating any provision of the foregoing section shall be punished by an imprisonment of not less than twelve years but not more than twenty years, or by a fine of not less than twenty thousand pesos but not more than forty thousand pesos.

The penalty of imprisonment of fifteen years to death, or a fine not less than twenty-five thousand pesos but not more than fifty thousand pesos shall be imposed upon any person committing such violation under any of the following circumstances:

1. **Whenever he has fired upon the pilot, member of the crew or passenger of the aircraft;**
2. **Whenever he has exploded or attempted to explode any bomb or explosive to destroy the aircraft; or**
3. **Whenever the crime is accompanied by murder, homicide, serious physical injuries or rape.**

SEC. 3. It shall be unlawful for any person, natural or juridical, to ship, load or carry in any passenger aircraft operating as a public utility within the Philippines, any explosive, flammable, corrosive or poisonous substance or material.

SEC. 4. The shipping, loading or carrying of any substance or material mentioned in the preceding section in any cargo aircraft operating as a public utility within the Philippines shall be in accordance with regulations issued by the Civil Aeronautics Administration.

SEC. 5. (Meaning of "explosive," "flammable," "corrosive" and "poisonous")

SEC. 6. Any violation of Section three hereof shall be punishable by an imprisonment of at least five years but not more than ten years or

by a fine of not less than ten thousand pesos but not more than twenty thousand pesos: *Provided,* That if the violation is committed by a juridical person, the penalty shall be imposed upon the manager, representative, director, agent or employee who violated, or caused, directed, cooperated or participated in the violation thereof: *Provided, further,* That in case the violation is committed in the interest of a foreign corporation legally doing business in the Philippines, the penalty shall be imposed upon its resident agent, manager, representative or director responsible for such violation and in addition thereto, the license of said corporation to do business in the Philippines shall be revoked.

Any violation of Section four hereof shall be an offense punishable with the minimum of the penalty provided in the next preceding paragraph.

SEC. 7. For any death or injury to persons or damage to property resulting from a violation of Sections three and four hereof, the person responsible therefor may be held liable in accordance with the applicable provisions of the Revised Penal Code.

x x x.

(Approved on June 19, 1971)

The act of the accused in *People vs. Ang Cho Kio,* 95 Phil. 475, who compelled the pilot to change the course of the airplane from Laoag to Amoy instead of directing it to Aparri and, in not complying with such illegal requirement, the accused discharged various revolver shots, killing him, could have been punished under Section 2 of Republic Act No. 6235, had this law been already in effect.

Title Two

CRIMES AGAINST THE FUNDAMENTAL LAWS OF THE STATE

Chapter One

ARBITRARY DETENTION OR EXPULSION, VIOLATION OF DWELLING, PROHIBITION, INTERRUPTION, AND DISSOLUTION OF PEACEFUL MEETINGS AND CRIMES AGAINST RELIGIOUS WORSHIP

What are the crimes against the fundamental laws of the State?

They are:

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

They are called crimes against the fundamental laws of the State, because they violate certain provisions of the Bill of Rights (Article III) of the 1987 Constitution.

1. Section 1, Article III of the 1987 Constitution, provides that "no person shall be deprived of x x x, liberty, x x x without due process of law, x x x."

> Arts. 124, 125 and 126 of the Code punish any public officer or employee in those cases where an individual is unlawfully deprived of liberty.

2. Section 6, Article III of the 1987 Constitution provides that "the liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law."

> Art. 127 of the Code punishes any public officer or employee who shall unlawfully expel a person from the Philippines or compel a person to change his residence.

3. Section 2, Article III of the 1987 Constitution provides that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purposes shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

> Arts. 128, 129 and 130 of the Code punish any public officer or employee who violates such rights.

4. Section 4, Article III of the 1987 Constitution, provides that "no law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances."

> Art. 131 of the Code punishes any public officer or employee who violates the right peaceably to assemble and petition the Government for redress of grievances.

5. Section 5, Article III of the 1987 Constitution, provides that "no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

Arts. 132 and 133 punish violations of the right to free exercise and enjoyment of religious profession and worship.

Section One. — Arbitrary detention and expulsion

Classes of arbitrary detention:

(1) Arbitrary detention by detaining a person without legal ground. (Art. 124)

(2) Delay in the delivery of detained persons to the proper judicial authorities. (Art. 125)

(3) Delaying release. (Art. 126)

The penalties for the three classes of arbitrary detention are the same, as provided in Article 124. Articles 125 and 126 do not provide penalties for their violation. They make reference to the penalties provided for in Article 124.

Art. 124. ***Arbitrary detention.*** **— Any public officer or employee who, without legal grounds, detains a person, shall suffer:**

1. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period,[1] if the detention has not exceeded three days;

2. The penalty of *prision correccional* in its medium and maximum periods,[2] if the detention has continued more than three but not more than fifteen days;

3. The penalty of *prision mayor*,[3] if the detention has continued for more than fifteen days but not more than six months; and

4. That of *reclusion temporal*,[4] if the detention shall have exceeded six months.

[1] See Appendix "A," Scale of Penalties.
[2] See Appendix "A," Table of Penalties, No. 15.
[3] See Appendix "A," Table of Penalties, No. 19.
[4] See Appendix "A," Table of Penalties, No. 28.

The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person.

Elements:

1. That the offender if a public *officer* or *employee.*
2. That he *detains a person.*
3. That the detention is *without legal grounds.* (U.S. vs. Braganza, *et al.*, 10 Phil. 79; Milo vs. Salonga, 152 SCRA 113; Astorga vs. People, G.R. No. 154130, October 1, 2003)

The offender in arbitrary detention is a public officer or employee.

The public officers liable for arbitrary detention must be vested with authority to detain or order the detention of persons accused of a crime, but when they detain a person they have no legal grounds therefor.

Such public officers are the policemen and other agents of the law, the judges or mayors. A barangay captain and a municipal councilor are public officers.

If the detention is perpetrated by other public officers, the crime committed may be illegal detention, because they are acting in their private capacity.

If the offender is a private individual, the act of detaining another is illegal detention under Article 267 or Article 268.

But private individuals who conspired with public officers in detaining certain policemen are guilty of arbitrary detention. (People vs. Camerino, CA-G.R. No. 14207-R, Dec. 14, 1956)

When is there a detention?

Detention is defined as the actual confinement of a person in an enclosure, or in any manner detaining and depriving him of his liberty. (People vs. Gungon, G.R. No. 119574, March 19 1998, citing People vs. Domasian, G.R. No. 95322, March 1, 1993; People vs. Flores, G.R. No. 116488, May 31, 2001) A person is detained when he is placed in *confinement* or there is a restraint on his person. (U.S. vs. Cabanag, 8 Phil. 64)

Even if the persons detained could move freely in and out of their prison cell and could take their meals outside the prison, nevertheless, if

they were under the surveillance of the guards and they could not escape for fear of being apprehended again, there would still be arbitrary detention. (People vs. Camerino, *supra)*

Restraint resulting from fear.

Where the accused-mayor refused to allow a DENR team to go home despite their pleas, and the refusal was quickly followed by the call for and arrival of almost a dozen "reinforcements," all armed with military-issue rifles, who proceeded to encircle the team, weapons pointed at the complainants and the witnesses, and the team was instead brought to a house where after dinner, some of the members were allowed to go down from the house but not to leave the *barangay* and the rest just sat in the house until 2:00 a.m. when they were finally allowed to leave, it was held that the restraint resulting from fear is evident. It was not just the presence of the armed men, but also the evident effect these gunmen had on the actions of the team which proves that fear was indeed instilled in the minds of the team members, to the extent that they felt compelled to stay in the barangay. The intent to prevent the departure of the complainants and witnesses against their will is clear. (Astorga vs. People, G.R. No. 154130, October 1, 2003)

"Without legal grounds."

The detention of a person is without legal ground: (1) when he has not committed any crime or, at least, there is no reasonable ground for suspicion that he has committed a crime, or (2) when he is *not suffering from violent insanity or any other ailment* requiring compulsory confinement in a hospital.

Thus, in the following cases, the detention was without legal ground:

1. A barrio lieutenant, seeing his servant quarreling with his daughter, seized the servant and an hour later sent him to the Justice of the Peace. The servant was kept in detention from 5 p.m. to 9 a.m. the next day when he was released by the Justice of the Peace.

Held: The barrio lieutenant was guilty of arbitrary detention, because he detained the offended party *without any reason therefor,* such as the commission of the crime, and without having the authority to do so. (U.S. vs. Gellaga, 15 Phil. 120)

Note: Merely quarreling is not a crime,

2. A Manila detective sergeant arrested Aquilino Taruc because of the suspicion that he might be implicated in the plot to

assassinate the President and that he was related to Luis Taruc, a *Huh Supremo.*

Held: Mere suspicion of his connection with any murderous plot is no ground recognized by law for restraining the freedom of any individual. Lawlessness from above can only lead to chaos and anarchy. (Taruc vs. Carlos, 78 Phil. 876)

3. In overtaking another vehicle, complainant-driver was not committing or had not actually committed a crime in the presence of respondent-judge. Such being the case, the warrantless arrest and subsequent detention of complainant were illegal. (Cayao vs. del Mundo, A.M. No. MTJ-93-813, September 15, 1993)

Legal grounds for the detention of any person.

The following are legal grounds for the detention of any person:

(a) The commission of a crime;

(b) *Violent* insanity or any other ailment requiring the *compulsory* confinement of the patient in a hospital. (Art. 124, par. 2)

Arrest without warrant is the usual cause of arbitrary detention.

A peace officer must have a warrant of arrest properly issued by the court in order to justify an arrest. If there is no such warrant of arrest, the arrest of a person by a public officer may constitute arbitrary detention.

Arrest without warrant — When lawful.

A peace officer or a private person may, *without a warrant,* arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Sec. 5, Rule 113, Revised Rules of Criminal Procedure)

Paragraphs (a) and (b) refer to cases when a suspect is caught in *flagrante delicto* or immediately thereafter, while paragraph (c) refers to escaping prisoners. (Ilagan vs. Enrile, 139 SCRA 349)

"In his presence".

The phrase "In his presence" in paragraph (a), construed - When the officer sees the offense being committed, although at a distance, or hears the disturbance created thereby and proceeds at once to the scene thereof, or when the offense is continuing or has not been consummated at the time the arrest is made, the offense is said to be committed in his presence. (U.S. vs. Samonte, 16 Phil. 516)

It has been established that petitioner's vehicle figured in a hit and run — an offense committed in the "presence" of Manarang, a private person, who then sought to arrest petitioner. It must be stressed at this point that "presence" does not only require that the arresting person sees the offense, but also when he "hears the disturbance created thereby and proceeds at once to the scene." (U.S. vs. Samonte, 16 Phil. 516, 519, citing 3 Cyc, 886; Ramsey v. State, 17 S. E., 613; Dilger v. Com., 11 S. W., 651; State v. McAfee, 12 S. E., 435; State v. Williams, 15 S. E., 554; and Hawkins v. Lutton, 70 N. W., 483) As testified to by Manarang, he heard the screeching of tires followed by a thud, saw the sideswiped victim (balut vendor), reported the incident to the police and thereafter gave chase to the erring Pajero vehicle using his motorcycle in order to apprehend its driver After having sent a radio report to the PNP for assistance, Manarang proceeded to the Abacan bridge where he found responding policemen SP02 Borja and SP02 Miranda already positioned near the bridge who effected the actual arrest of petitioner. (Padilla vs. Court of Appeals, G.R. No. 12197, March 12, 1997)

Personal knowledge is required.

Under Sec. 5, Rule 113 of the Revised Rules of Criminal Procedure, an officer arresting a person who has just committed an offense must have probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it.

"Personal knowledge of facts" in arrests without a warrant must be based upon probable cause, which means an actual belief or reasonable grounds of suspicion. (U.S. vs. Santos, 36 Phil. 851.)

The court indicated in the case of People vs. Bati (G.R. No. 87429, August 27, 1990) that police officers have personal knowledge of the actual commission of the crime when it had earlier conducted surveillance activities of the accused. Thus, it stated:

"When Luciano and Caraan reached the place where the alleged transaction would take place and while positioned at a street corner, they saw appellant Regalado Bati and Warner Marquez by the side of the street about forty to fifty meters away from them (the public officers). They saw Marquez giving something to Bati, who, thereafter handed a wrapped object to Marquez who then inserted the object inside the front of his pants infront of his abdomen while Bati, on his part, placed the thing given to him inside his pocket. (p. 2)

XXX XXX XXX

. . . Both Patrolman Luciano and Caraan actually witnessed the same and their testimonies were based on their actual and personal knowledge of the events that took place leading to appellant's arrest. They may not have been within hearing distance, specially since conversation would expectedly be carried on hushed tones, but they were certainly near enough to observe the movements of the appellant and the buyer. (People vs. Bati, *supra,* citing People vs. Agapito, G.R. No. 73786, October 12, 1987)

Probable cause.

Probable cause can be defined as such facts and circumstances which could lead a reasonable discreet and prudent man to believe that an offense has been committed and that the object sought in connection with the offense are in the place sought to be searched. (Pendon vs. Court of Appeals, 191 SCRA 429 [1990]; Quintero vs. NBI, 162 SCRA 467 [1988]; Burgos vs. Chief of Staff, 133 SCRA 815 [1984]. It must be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay. (Prudente vs. Judge Dayrit, 180 SCRA 69 [1989]; Quintero vs. NBI, *supra)*

Probable cause was found to be present in the following instances:

(a) where the distinctive odor of marijuana emanated from the plastic bag carried by the accused (People vs. Claudio, 160 SCRA 646; 1988)

(b) where an informer positively identified the accused who was observed to be acting suspiciously (People vs. Tangliben, 184 SCRA 220; 1990)

(c) where the accused who were riding a jeepney were stopped and searched by policemen who had earlier received confidential reports that said accused would transport a quantity of marijuana (People vs. Maspil, Jr., 188 SCRA 751; 1990).

A crime must in fact or actually have been committed first.

In arrests without a warrant under Sec. 6(b), however, it is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime. A crime must in fact or actually have been committed first. That a crime has actually been committed is an essential precondition. The fact of the commission of the offense must be undisputed. x x x (People vs. Burgos, 144 SCRA 1)

When the person to be arrested is attempting to commit an offense.

Illustration:

A policeman, acting under orders of his chief who desired to put a stop to pilfering in a certain locality, patrolled his district, and about midnight, seeing two persons in front of an uninhabited house who afterward entered an uninhabited *camarin*, arrested them without warrant, although no crime had been committed. The policeman took them to the municipal *presidencia* where they were detained in jail for six or seven hours before they were released.

Held: Prevention of crime is just as commendatory as the capture of criminals. Surely the officer must not be forced to await the commission of robbery or other felony. The rule is supported by the necessities of life. The applicable principles rest upon the same foundation of reason and common sense. (U.S. vs. Santos, 36 Phil. 853)

When an offense has in fact just been committed, and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it.

Illustration:

A Constabulary officer was engaged to marry a girl, but later the engagement was broken. Thereafter, while the officer was passing in front of the girl's house, he was assaulted by the girl's two brothers, after the girl had approached him in a friendly manner, which she never did before. He suspected the girl had conspired with his assailants and so he ordered her arrest and detention. The officer filed a complaint against her and her brothers. For the arrest and detention of the girl, he was charged with arbitrary detention.

Held: The Constabulary officer was not guilty of arbitrary detention. (People vs. Ancheta, 68 Phil. 415)

Note: The Constabulary officer, in ordering the arrest and detention of the girl, had probable cause to believe that the girl participated in the assault as one of the conspirators.

In arbitrary detention, the legality of the detention does not depend upon the juridical and much less the judicial fact of a crime (the elements of the felony are present and they were so found by the court), which at the time of the commission, is not and can not definitely be determined for lack of necessary data and of jurisdiction, but upon the nature of the deed. It is sufficient that the agent or person in authority making the arrest has reasonably sufficient grounds to believe the existence of an act having the characteristics of a crime and that the same grounds exist for him to believe that the person sought to be detained participated therein. The obligation to make an arrest by reason of crime, does not presuppose as a necessary requisite for the fulfillment thereof, the indubitable existence of a crime. (People vs. Ancheta, 68 Phil. 415)

Under Sec. 5, Rule 113 of the Revised Rules of Criminal Procedure, the actual commission of a crime by the person detained is not necessary to justify his detention.

The legality of the detention of a person does not depend upon the actual commission of a crime by him, but upon the *nature of his deed* when its characterization as a crime may reasonably be inferred by the officer to whom the law *at the moment* leaves the decision for the urgent purpose of suspending the liberty of that person. (U.S. vs. Sanchez, 27 Phil. 442)

Illustration:

Two Bureau of Internal Revenue secret service agents, strangers in the municipality, were seen acting suspiciously near the market place. The accused, two policemen, called upon them to give an account of themselves and explain their suspicious conduct, and at the same time demanded that they produce their *cedulas,* which the agents were unable to do. Believing that their conduct and inability to satisfactorily account for themselves justified the suspicion that they were in some way connected with the recent robberies in the place, or that they were about to commit theft or robbery, the accused placed the two men under arrest and took them forthwith to the house of the justice of the peace, accused Battalones, informing the latter of the arrest of the two men with them and asking him to decide what was proper to do. The justice of the peace, without verifying the truth of the claims of the agents that they were of the Bureau of Internal Revenue, ordered them taken to the municipal jail to be detained until further orders.

Held: No charge of arbitrary detention can be maintained against the two policemen. In the light of after events, the suspicion directed against

the secret service agents was not well founded, but viewing the facts as they must have presented themselves to the policemen at the time of the arrest, they must be held to have had reasonable grounds upon which to base their suspicions as to the arrested men.

But the justice of the peace who *arbitrarily* and *without investigation directed the detention* of the agents was held guilty of the crime *of "detention arbitraria"* through negligence. The justice of the peace was not actuated by any special malice or ill-will toward the prisoners, but he was willfully negligent of their rights. (U.S. vs. Battalones, *et al.*, 23 Phil. 46)

No reasonable ground if officer only wants to know the commission of crime.

In a case where the accused was arrested and prosecuted for illegal possession of opium, the witness testified that the only reason why he ordered the arrest of the accused was that he was acting suspiciously. He did not say in what way the accused was acting suspiciously or what was the particular act or circumstance which aroused his suspicion. He caused the arrest because, as he said, "I wanted to see if he had committed a crime." It was held that it was not a legal reason for making an arrest. (U.S. vs. Hachaw, 21 Phil. 514)

Note: There is no reasonable ground of suspicion that the accused committed an offense.

That a police officer can make an arrest on mere complaint of the offended party is a debatable question.

U.S. vs. Sanchez
(27 Phil. 442)

Facts: The municipal president and the acting chief of police of Caloocan, Rizal, had information that two nights earlier, a robbery had occurred in a boat on the river. Another robbery occurred in a billiard room. The acting chief of police acquired the information that Benigno Aranzanso had been in that billiard room that night of the robbery. The acting chief of police directed policeman Sanchez to look for Benigno Aranzanso in order that he might be identified by the boatmen in connection with the robbery committed in the boat. The description given of the person who had been in the billiard room fitted Aranzanso. Policeman Sanchez proceeded to arrest him in the cockpit on the next morning, took him to the town hall, and detained him in the municipal jail until before nightfall of the same day, when he was set at liberty by order of the municipal president. No warrant was previously issued for his detention.

Held: **The arrest and detention of Benigno Aranzanso** *for the purpose of identifying his person,* **were justified, since according to the acting chief of police reasonable grounds existed for believing in the existence of a crime and suspicion pointed to that individual.**

It is, therefore, beyond dispute that defendant Sanchez did not commit the crime charged against him.

Sayo vs. Chief of Police
(80 Phil. 859)

Facts: **Upon complaint of one Bernardo Malinao, charging the petitioners with having committed the crime of robbery, policeman Benjamin Dumlao arrested the petitioners. When the petition for** *habeas corpus* **was heard, the petitioners were still detained and the fiscal had not yet released them or filed against them an information with the proper courts of justice.**

Held: **A police officer has no authority to arrest and detain a person charged with an offense upon complaint of the offended party even though, after investigation, he becomes convinced that the accused is guilty of the offense charged.**

What the complainant may do in such case is to file a complaint with the city fiscal or directly with the justice of the peace court.

The theory that police officers may arrest any person just for questioning or investigation, without any warrant of arrest, represents an ideology incompatible with human dignity. Reason revolts against it.

Dissenting opinion of Justice Tuason in the case of Sayo *vs. Chief of Police.*

Section 6 of Rule 109 of the Rules of Court and Section 2463 of the Revised Administrative Code, as well as the authorities I have quoted, show the fallacy of the idea that the arresting officer knows, or should know, all the facts about the offense for the perpetration, or supposed perpetration, of which he has made the arrest.

A police officer can seldom make arrest with personal knowledge of the offense and of the identity of the person arrested sufficient in itself to convict. To require him to make an arrest only when the evidence he himself can furnish proves beyond reasonable doubt the guilt of the accused, would "endanger the safety of society." It would cripple the forces of the law to the point of enabling criminals, against whom there is only moral conviction or *prima facie* **proof of guilt, to escape.**

He gave two examples:

1. A murder with robbery is reported to the police. An alarm is broadcasted giving a description of the murderer. Later, a police officer is told that the wanted man is in a store. He proceeds to the store and besides believing in the good faith of his informant, detects in the man's physical appearance some resemblance to the description given in the alarm. Should the officer refrain from making an arrest because he is not certain beyond reasonable doubt of the identity of the suspected murderer?

2. A police officer is attracted by screams from a house where a robbery has been committed. The officer rushes to the place, finds a man slain, is told that the murderers have fled. The officer runs in the direction indicated and finds men with arms who, from appearances, seem to be the perpetrators of the crime. The people who saw the criminals run off are not sure those were the men they saw as the night was dark.

The officer does not, under these circumstances, have to seek an arrest warrant or wait for one before detaining the suspected persons. To prevent their escape, he can arrest and bring them to the police station.

When the person to be arrested is a prisoner who has escaped.

In a petition for *habeas corpus*, it was alleged that Nicasio Salonga was arrested without a warrant of arrest and that he was not accused of any crime. It appears that Salonga was committed to prison under judgment of the Court of First Instance of Manila for the crime of illegal discharge of firearm. He was confined in Muntinlupa prison and upon being transferred to Camp Nichols under custody, he effected an escape. It was held that being a prisoner who escaped, he can be arrested without a warrant of arrest not only by the authorities but also by any private person. (Salonga vs. Holland, *et al.*, 76 Phil. 412, citing the Rules of Court)

Under Section 5(c), Rule 113, one of the instances when a person may be validly arrested without warrant is where he has escaped from confinement. Undoubtedly, this right of arrest without a warrant of arrest, is founded on the principle that at the time of the arrest, the escapee is in the continuous act of committing a crime — evading the serving of his sentence. (Paraluman vs. Director of Prisons, 22 SCRA 638)

Arbitrary detention thru imprudence.

The crime of arbitrary detention can be committed through imprudence.

The chief of police rearrested a woman who had been released by means of a verbal order of the justice of the peace. The accused acted without

malice, but he should have verified the order of release before proceeding to make the re-arrest. The crime committed by the chief of police is *arbitrary detention through simple imprudence* provided for and punished under Article 365, paragraph 2, of the Revised Penal Code, in connection with Article 124, par. 1, of the same Code. (People vs. Misa, C.A., 36 O.G. 3496)

Periods of detention penalized.

(a) If the detention has not exceeded 3 days.

(b) If the detention has continued more than 3 days but not more than 15 days.

(c) If the detention has continued more than 15 days but not more than 6 months.

(d) If the detention has exceeded 6 months.

(Art. 124, Nos. 1 to 4)

The law does not fix any minimum period of detention.

In the case of *U.S. vs. Braganza,* 10 Phil. 79, a councilor and a barrio lieutenant were convicted of arbitrary detention, even if the offended party was detained for *less than half an hour;* and in the case *of U.S. vs. Agravante,* 10 Phil. 46, the detention was only for *one hour.*

Art. 125. ***Delay in the delivery of detained persons to the proper judicial authorities.*** **— The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.**

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel. ***(As amended by Exec. Order No. 272)***

Elements:

1. That the offender is a *public officer* or *employee.*
2. That he has *detained* a person for *some legal ground.*
3. That he *fails to deliver* such person to the *proper* judicial authorities within:
   a. *twelve* (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; or
   b. *eighteen* (18) hours, for crimes or offenses punishable by *correctional penalties,* or their equivalent; or
   c. *thirty-six* (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

If the offender is a private person, the crime is illegal detention.

A private individual who makes a lawful arrest must also comply with the requirements prescribed in Art. 125. If he fails to do so, he shall be guilty of illegal detention (Art. 267 or Art. 268), not arbitrary detention.

The periods of time in Art. 125 were applied to the arrests made by a private person. (People vs. Sali, *et al.*, C.A., 50 O.G. 5676)

"Shall detain any person for some legal ground."

Under Art. 125, the public officer or employee has detained the offended party for some legal ground. The detention is legal in the beginning, because the person detained was arrested *under any of the circumstances where arrest without warrant is authorized by law.* The detention becomes illegal after a certain period of time, because the offended party is not delivered to the proper judicial authority, within the period specified by Art. 125.

If the detention of a person is not for some legal ground, it will be a case under Art. 124, not under Art. 125.

Lino vs. Fuguso
(77 Phil. 937-939)

Facts: Pascual Montaniel was arrested without warrant by the police officers of Manila on November 8, 1946, for inciting to sedition, and Pacifico Deoduco, on November 7, 1946, for resisting arrest and disobedience to police orders. On November 11 when this petition for *habeas corpus* was filed, these two petitioners were still under arrest. They were thus held in confinement for three and four days, respectively, without warrants and without charges formally filed in court. The papers of their cases were not transmitted to the City Fiscal's Office until late in the afternoon of November.

Upon investigation by that office, no sufficient evidence was found to warrant the prosecution of Pascual Montaniel for inciting to sedition and of Pacifico Deoduco for resisting arrest, but both remained under custody because of informations filed with the municipal court charging Montaniel with unjust vexation and Deoduco with disobedience to an agent of a person in authority. And so far, no warrants of arrest or orders of commitment are shown to have been issued by the municipal court pursuant to the informations thus filed.

Held: Under these facts, the detention of Pacifico Deoduco and Pascual Montaniel is illegal. Even assuming that they were legally arrested without warrant on November 7 and 8, 1946, respectively, *their continued detention became illegal upon the expiration of six hours without their having been delivered to the corresponding judicial authorities.*

Note: Before E.O. No. 272, the detention of a person legally arrested without a warrant becomes illegal upon the expiration of:

a) six (6) hours, for crimes or offenses punishable by light penalties, or their equivalent; or

b) nine (9) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; or

c) eighteen (18) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

Art. 125 does not apply when the arrest is by virtue of a warrant of arrest.

Art. 125 applies only when the arrest is made without warrant of arrest. But the arrest must be lawful.

If the arrest is made with a warrant of arrest, the person arrested can be detained *indefinitely* until his case is decided by the court or he posts a bail for his temporary release.

The reason for this is that there is already a complaint or information filed against him with the court which issued the order or warrant of arrest and it is not necessary to deliver the person thus arrested to that court.

Disposition of person arrested without a warrant.

In cases falling under paragraphs (a) and (b) of Section 5, Article 113, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7. (Sec. 5, Rule 113, Revised Rules of Criminal Procedure)

Section 7, Rule 112 of the Revised Rules of Criminal Procedure states that:

"When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing Rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person."

"Shall fail to deliver such person to the proper judicial authorities."

It will be noted that what constitutes a violation of Article 125 is the *failure to deliver* the person arrested to the proper judicial authority within the period specified therein.

The delivery to the judicial authority of a person arrested without warrant by a peace officer, does not consist in a physical delivery, but in making an accusation or charge or filing of an information against the person arrested with the corresponding *court* or *judge,* whereby the latter acquires jurisdiction to issue an order of release or of commitment of the prisoner, because the arresting officer can not transfer to the judge and the latter does not assume the physical custody of the person arrested. (Sayo vs. Chief of Police of Manila, 80 Phil. 859)

Duty of detaining officer is deemed complied with upon the filing of the complaint with the judicial authority.

People vs. Acosta
(C.A., 54 O.G. 4742)

Facts: Pointed to as among those who laid hands on the two policemen, were Hipolito Mamuric, Tiburcio Portacio, Perfecto Garcia, Ursulo Diego and Feliciano Cruz. They were arrested and confined in the municipal jail that night. On the following morning, a complaint for assault upon agents of persons in authority was filed against them with the justice of the peace. After the filing of the complaint at 8 o'clock that morning, no action for the preliminary investigation, as required by law, was taken and Mamuric, Portacio, Diego and Cruz remained in jail for 6 days without the benefit thereof.

The entry in the police blotter showed that Mayor Acosta ordered their arrest and detention.

Did Mayor Acosta commit an infraction of Art. 125?

Held: **The answer is positively in the negative. Mamuric and others who were jailed with him on the evening of June 17, 1958, were delivered to the judicial authority upon the filing of the complaint for assault against them at 8 o'clock in the morning of the following day.**

As the duty of the detaining officer is deemed complied with upon the filing of the complaint, further action rests upon the judicial authority. It is for the judicial authority to determine

" x x x whether there is reasonable ground to believe that an offense has been committed and the defendant is probably guilty thereof, so as to issue a warrant of arrest and to hold him for trial." (Sec. 1, Rule 8, Rules of Court)

Justice of the Peace Abaya said that after receiving the complaint in this case, he advised the complainant, Chief of Police, to release the defendants but Mayor Acosta objected because it would be hard to locate them later if they go into hiding. Judge Abaya was mistaken. He need not give any advice at all. It was perfectly within his power, as justice of the peace with whom the complaint was filed, to release, or issue warrant of arrest against, the persons complained of after conducting the investigation as required by the rule.

"Proper judicial authorities."

The term "judicial authorities", as used in Art. 125, means the courts of justice or judges of said courts vested with judicial power to order the temporary detention or confinement of a person charged with having committed a public offense, that is, the "Supreme Court and such inferior courts as may be established by law." (Section 1, Article VIII of the 1987 Constitution)

The judicial authorities mentioned in Section 125 of the Revised Penal Code cannot be considered to include the fiscal of the City of Manila or any other city, because they cannot issue a warrant of arrest or of commitment for temporary confinement of a person surrendered to legalize the detention of the person arrested without warrant. (Sayo vs. Chief of Police, *supra)*

Detained person should be released when a judge is not available.

Where a judge is not available, the arresting officer is duty-bound to release a detained person, if the maximum hours for detention provided under Article 125 of the Revised Penal Code has already expired. Failure to cause the release may result in an offense under Art. 125. (Albior vs. Auguis, A.M. No. P-01-1472, June 26, 2003)

Waiver of the provisions of Art. 125.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception. (Sec. 7, par. 2, Rule 112, Revised Rules of Criminal Procedure)

Circumstances considered in determining liability of officer detaining a person beyond legal period.

For the purpose of determining the criminal liability of an officer detaining a person for more than the time prescribed by the Revised Penal Code, (1) *the means of communication* as well as (2) *the hour of arrest* and (3) *other circumstances* such as the time of surrender and the material possibility for the fiscal to make the investigation and file in time the necessary information, must be taken into consideration. (Sayo vs. Chief of Police of Manila, 80 Phil. 861)

Thus, when the accused were arrested for direct assault, punishable by a correctional penalty, on the evening of June 17, 1953, the complaint could not normally been filed earlier than 8 o'clock in the morning of June 18, because government offices open for business usually at 8 o'clock in the morning and close at 5 o'clock in the afternoon. (People vs. Acosta, C.A., 54 O.G. 4742)

Violation of Art. 125 does not affect legality of confinement under process issued by a court.

A was arrested and detained for theft. The arresting officer filed the complaint with the City Fiscal only after 24 hours. An information for theft against A was filed with the court on the same day by the fiscal. Warrant of arrest was issued by the court.

Held: The failure of the arresting officer to deliver the person arrested to the judicial authority within the time specified in Article 125, does not affect the legality of the confinement of the petitioner who is detained because of the warrant subsequently issued by a competent court when an information was filed therein. (Lino vs. Fuguso, *et al.*,77 Phil. 933; Gunabe, *et al.* vs. Director of Prisons, 77 Phil. 993)

As a matter of fact, a violation of Art. 125 is not considered as one of the grounds on which one can predicate a motion to quash the information under Rule 113, Sec. 2 of the Rules of Court (Sec. 3, Rule 117 of the 1985 Rules on Criminal Procedure). (People vs. Mabong, 100 Phil. 1069)

The illegality of detention is not cured by the filing of the information in court.

The detaining officer is liable under Art. 125, even if an information was filed with the court, because a violation had already been committed before the information was filed.

Fiscal not liable, unless he ordered detention.

If the city fiscal does not file the information within the period of six hours prescribed by law and the arresting officer continues holding the prisoner beyond the six-hour (nine-hour, or eighteen-hour) period, the fiscal will not be responsible for violation of said Article 125, because he is not the one who has arrested and illegally detained the person arrested, *unless* he has *ordered* or *induced* the arresting officer to hold and not release the prisoner after the expiration of said period. (Sayo vs. Chief of Police of Manila, 80 Phil. 863)

If no charge is filed by the fiscal in court within the period fixed in Art. 125, the arresting officer must release the detainee; otherwise, he will be guilty under Art. 125.

Remedy where warrant improperly issued.

If the accused was illegally detained because he was arrested without a preliminary examination, what should have been done was to set aside the warrant of arrest and order the discharge of the accused, but without enjoining the municipal judge from conducting a preliminary examination and afterwards properly issuing a warrant of arrest. (Alimpoos vs. Court of Appeals, 106 SCRA 159)

Rights of the person detained:

1. **He shall be informed of the cause of his detention; and**
2. **He shall be allowed, upon his request, to communicate and confer at anytime with his attorney or counsel. (Art. 125, par. 2)**

Public officer or employee is liable for preventing the exercise of the right of attorneys to visit and confer with persons arrested.

Any public officer or employee who shall obstruct, prohibit, or otherwise prevent an attorney entitled to practice in the courts of the Philippines from visiting and conferring privately with a person arrested, at any hour of the day or, in urgent cases, of the night, said visit and conference being requested by the person arrested or by another acting in his behalf, shall be punished by *arresto mayor*. (Rep. Act No. 857)

Reason for the provisions of Article 125.

Article 125 of the Revised Penal Code is intended to prevent any abuse resulting from confining a person without informing him of his offense and without permitting him to go on bail. (Laurel vs. Misa, 76 Phil. 372)

Art. 125 distinguished from Art. 124

In arbitrary detention under Art. 124, the detention is illegal from the beginning; in arbitrary detention under Art. 125, the detention is legal in the beginning but the illegality of the detention starts from the expiration of any of the periods of time specified in Art. 125, without the detained prisoner detained having been delivered to the proper judicial authority.

DETENTION UNDER REPUBLIC ACT No. 9372.

Time for delivery of detained persons prescribed in Art. 125 does not apply to suspected terrorists who are detained under Republic Act 9372.

A person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall be delivered to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel, without the police or law enforcement personnel having said person in custody incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authority. However, the arrest of the suspects must result from the surveillance under Sec. 7 and examination of bank deposits under Sec. 27. (See Sec. 18, R.A. 9372)

Under Republic Act 9372, a judge must be notified before a suspected terrorist is detained.

Before detaining the person suspected of the crime of terrorism, the police or law enforcement personnel concerned must present him or her before *any judge* at the latter's residence or office nearest the place where the arrest took place at any time of the day or night.

It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person/s they have arrested and presented before him/her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral and psychological torture by whom and why. The judge

shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person arrested. The report shall be submitted within three (3) calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: *Provided,* That where the arrest is made during Saturdays, Sundays, holidays, or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of 10 years and 1 day to 12 years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify the judge as provided in the preceding paragraph. (Sec. 18)

Period of Detention in the Event of an Actual or Imminent Terrorist Attack.

In the event of an actual or imminent terrorist attack, suspects may not be detained for more than 3 days without the written approval of a municipal, city, provincial or regional official of a Human Rights Commission or judge of the municipal, regional trial court, the Sandiganbayan or a Justice of the Court of Appeals nearest the place of the arrest. If the arrest is made during Saturdays, Sundays, holidays, or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within 5 days after the date of detention of the persons concerned: *Provided,* however, That within 3 days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately. (Sec. 19)

Penalty for Failure to Deliver Suspect to the Proper Judicial Authority within Three Days.

The penalty of 10 years and 1 day to 12 years imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken into custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of 3 days. (Sec. 20)

Art. 126. *Delaying release.*— The penalties provided for in Article 124 shall be imposed upon any public officer or employee who delays for the period of time specified therein the performance of any judicial or executive order for the release of a prisoner or detention prisoner, or unduly delays the service of the notice of such order to said prisoner or the proceedings upon any petition for the liberation of such person.

Three acts are punishable under Art. 126.

1. By delaying the *performance* of a judicial or executive order for the release of a prisoner.
2. By unduly delaying the *service* of the notice of such order to said prisoner.
3. By unduly delaying the *proceedings* upon any petition for the liberation of such person.

Elements:

a. That the offender is a *public officer or employee;*

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

c. That the offender *without good reason delays:* (1) the service of the notice of such order to the prisoner, or (2) the performance of such judicial or executive order for the release of the prisoner, or (3) the proceedings upon a petition for the release of such person.

Example of delaying release.

For failure to prosecute, because the witness of the prosecution did not appear, the case was dismissed and the justice of the peace gave an order to release the accused. The jailer refused to release the accused, notwithstanding that order of release, until after several days.

Wardens and jailers are the public officers most likely to violate Art. 126.

The public officers who are most likely to commit the offense penalized in Art. 126 are the wardens and peace officers temporarily in charge of the custody of prisoners or detained persons.

Art. 127. *Expulsion.* — **The penalty of** *prision correccional*[5] **shall be imposed upon any public officer or employee who, not being thereunto authorized by law, shall expel any person from the Philippine Islands or shall compel such person to change his residence.**

Two acts are punishable under Art. 127:

1. By *expelling* a person from the Philippines.
2. By *compelling* a person to *change his residence.*

Elements:

a. That the offender is a public *officer or employee.*

b. That he *expels* any person from the Philippines, or *compels* a person to *change* his residence.

c. That the offender is *not authorized* to do so by law.

"Not being thereunto authorized by law."

Only the court by a final judgment can order a person to change his residence. This is illustrated in ejectment proceedings, expropriation proceedings and in the penalty of *destierro.*

Hence, the Mayor and the Chief of Police of Manila cannot force the prostitutes residing in that City to go to and live in Davao against their will, there being no law that authorizes them to do so. These women, despite their being in a sense, lepers of society, are nevertheless not chattels, but Philippine citizens, protected by the same constitutional guarantees as are other citizens. (Villavicencio, *et al.* vs. Lukban, *et al.*, 39 Phil. 778)

Section Two. — Violation of domicile

What are the crimes known as violation of domicile?

They are:

1. Violation of domicile by entering a dwelling *against the will* of the owner thereof or making search without previous consent of the owner. (Art. 128)

[5]See Appendix "A," Table of Penalties, No. 10.

2. Search warrants *maliciously obtained* and *abuse in the service* of those legally obtained. (Art. 129)

3. Searching domicile *without witnesses.* (Art. 130)

Art. 128. *Violation of domicile.*— The penalty of *prision correccional* in its minimum period[6] shall be imposed upon any public officer or employee who, not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects found therein without the previous consent of such owner, or, having surreptitiously entered said dwelling, and being required to leave the premises, shall refuse to do so.

If the offense be committed in the nighttime, or if any papers or effects not constituting evidence of a crime be not returned immediately after the search made by the offender, the penalty shall be *prision correccional* in its medium and maximum periods.[7]

Acts punishable under Art. 128.

1. By entering any dwelling *against the will* of the owner thereof; or

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

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

Elements common to three acts:

a. That the offender is a *public officer* or *employee.*

b. That he is *not authorized* by judicial order to enter the dwelling and/or to make a search therein for papers or other effects.

The offender must be a public officer or employee.

If the offender who enters the dwelling against the will of the owner

[6]See Appendix "A," Table of Penalties, No. 11.
[7]See Appendix "A," Table of Penalties, No. 15.

thereof is a private individual, the crime committed is trespass to dwelling. (Art. 280)

"Not being authorized by judicial order."

A public officer or employee is authorized by judicial order when he is armed with a search warrant duly issued by the court. Hence, he is not being authorized by judicial order, when the public officer has no search warrant.

"Against the will of owner."

It will be noted that to constitute a violation of domicile, the entrance by the public officer or employee must be against the will of the owner of the dwelling, which presupposes *opposition or prohibition* by said owner, whether *express or implied.* If the entrance by the public officer or employee is only without the consent of the owner of the dwelling, the crime is not committed. Neither is the crime committed if the owner of the dwelling consented to such entrance. (People vs. Luis Sane, C.A., 40 O.G., Supp. 5, 113)

Right of officer to break into building or enclosure.

An officer, in order to make an arrest either by virtue of a warrant, or without a warrant as provided in section 5, may break into any building or enclosure where the person to be arrested is or is reasonably believed to be, if he is refused admittance thereto, after announcing his authority and purpose. (Sec. 11, Rule 113, Revised Rules of Criminal Procedure)

The reason for this provision is that "while it may be true in general that 'a man's house is his castle,' it is equally true that he may not use that castle as a citadel for aggression against his neighbors, nor can he, within its walls, create such disorder as to affect their peace." (U.S. vs. Vallejo, 11 Phil. 193)

A peace officer without search warrant cannot lawfully enter the dwelling against the will of the owner, even if he knew that someone in the dwelling is having unlawful possession of opium.

But the mere fact that a visitor of the house of another *is suspected* of having unlawful possession of opium, is no excuse for entry into the house by a peace officer for the purpose of search *against the will of its owner* and without search warrant. (U.S. vs. De los Reyes, 20 Phil. 467)

Suppose that the opium found, after search without the previous consent of the owner of the house, belonged to said owner, and the peace

officer had no search warrant, is the peace officer liable for violation of domicile?

Yes, the peace officer is liable for violation of domicile. No amount of incriminating evidence, whatever its source, will supply the place of search warrant. (McLurg vs. Brenton, 123 Iowa, 368, cited in dissenting opinion in Moncado vs. People, 80 Phil. 25)

"Search papers, etc. without previous consent of such owner."

When the detectives secured the previous consent of the owner of the house to the search without warrant, they are not liable. (People vs. Sane, C.A., 40 O.G., Supp. 5, 113)

When one voluntarily submits to a search or consents to have it made upon his person or premises, he is precluded from later complaining thereof. The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly. (People vs. Malasugui, 63 Phil. 221; Rodriguez vs. Villamiel, 65 Phil. 231)

Silence of the owner of the dwelling before and during the search, without search warrant, by a public officer, may show implied waiver.

Meaning of "search" as used in this article.

Two policemen were charged with violation of domicile. What they did was to enter the house of the complainant and look for the pen knife which the latter carried when they followed him. Nobody prohibited or prevented their entrance to said house whose doors were open, and the alleged search was *limited to looking at what was in the sala and the kitchen.* It was held that the fact of looking at what was in the sala and the kitchen of the house to see if the pen knife was there, cannot be strictly considered as the search of papers and other effects punished by Art. 128. (People vs. Ella, *et al.*, *C.A.*, 49 O.G. 1891)

But when the owner of the house had objected to the intended entrance of and search by a barrio lieutenant who entered and proceeded to search the house, *inspecting* some jars and baskets therein found, there was a violation of domicile. (U.S. vs. Macaspac, 9 Phil. 207)

"Papers or other effects found therein."

Art. 128 is not applicable when a public officer searched a person *outside his dwelling* without search warrant and such person is not legally arrested for an offense, because the papers or other *effects* mentioned in Art. 128 *must be found in the dwelling.*

In such case, the crime committed by the public officer is grave coercion, if violence or intimidation is used (Art. 286), or unjust vexation, if there is no violence or intimidation. (Art. 287)

"Having surreptitiously entered said dwelling."

This is probably an instance where a public officer or employee may commit violation of domicile even if the entrance is only without the consent of its owner; that is, the offender *surreptitiously* entered the dwelling. But in this case, what constitutes the crime is the *refusal* of the offender to *leave* the premises when required to do so — not the entrance into the dwelling.

Circumstances qualifying the offense:

(1) If the offense is committed at nighttime; or

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

Art. 129. ***Search warrants maliciously obtained, and abuse in the service of those legally obtained.*** **— In addition to the liability attaching to the offender for the commission of any other offense, the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period[8] and a fine not exceeding 1,000 pesos shall be imposed upon any public officer or employee who shall procure a search warrant without just cause, or, having legally procured the same, shall exceed his authority or use unnecessary severity in executing the same.**

Acts punishable in connection with search warrants.

1. By procuring a search warrant *without just cause.*

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

[8]See Appendix "A," Table of Penalties, No. 8.

Elements of procuring a search warrant without just cause:

a. That the offender is a *public officer* or *employee.*

b. That he *procures* a search warrant.

c. That there is *no just cause.*

Search warrant defined.

A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court. (Sec. 1, Rule 126, Revised Rules of Criminal Procedure)

Personal property to be seized.

A search warrant may be issued for the search and seizure of the following personal property:

(a) Subject of the offense;

(b) Stolen or embezzled and other proceeds or fruits of the offense; or

(c) Used or intended to be used as the means of committing an offense. (Sec. 3, Rule 126, Revised Rules of Criminal Procedure)

Requisites for issuing search warrant.

A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. (Sec. 4, Rule 126, Revised Rules of Criminal Procedure)

Examination of complainant.

The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted. (Sec. 5, Rule 126, Revised Rules of Criminal Procedure)

Right to break door or window to effect search.

The officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein. (Sec. 7, Rule 126, Revised Rules of Criminal Procedure)

Search of house, room or premise to be made in presence of two witnesses.

No search of a house, room or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, in the presence of two witnesses of sufficient age and discretion residing in the same locality. (Sec. 8, Rule 126, Revised Rules of Criminal Procedure)

Validity of search warrant.

A search warrant shall be valid for ten (10) days from its date. Thereafter, it shall be void. (Sec. 10, Rule 126, Revised Rules of Criminal Procedure)

A receipt for the property seized.

The officer seizing property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in which he found the seized property. (Sec. 11, Rule 126, Revised Rules of Criminal Procedure)

Probable cause, defined.

It is such reasons, supported by facts and circumstances, as will warrant a cautious man in the belief that his action, and the means taken in prosecuting it, are legally just and proper. (U.S. vs. Addison, 28 Phil. 580; Corro vs. Lising, 137 SCRA 541)

Probable cause for a search is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the object sought in connection with the offense are in the place sought to be searched. (Burgos vs. Chief of Staff, 133 SCRA 800)

When is a search warrant said to have been procured without just cause?

A search warrant is said to have been procured without just cause when it appears on the face of the affidavits filed in support of the application therefor, or through other evidence, that the applicant had every reason to believe that the search warrant sought for was unjustified.

Example: ***A*** **peace officer wanted to verify a report that some corpse was unlawfully buried in a monastery. Instead of stating to that effect, he alleged in an affidavit that opium was hidden in the premises. If no opium was found, the officer is guilty under this article. (Guevara)**

Test of lack of just cause.

The true test of lack of just cause is whether the affidavit filed in support of the application for search warrant has been drawn in such a manner that *perjury* could be charged thereon and affiant be held liable for damages caused. The oath required must refer to the truth of the facts *within* the *personal* knowledge of the applicant for search warrant or his witnesses, not of the facts "reported to me by a person whom I consider to be reliable." (Alvarez vs. Court, *et al.*, 64 Phil. 33)

The fact that the search warrant was obtained for the purpose of extorting money from the owner of the premises to be searched, is circumstantial evidence of illegal procurement of search warrant. (People vs. De la Peña, *et al.*, 97 Phil. 669)

"In addition to the liability attaching to the offender for the commission of any other offense."

The public officers procuring a search warrant without just cause may also be held liable for perjury if they made a willful and deliberate assertion of falsehood in the affidavits filed in support of the application for search warrant.

It will be noted that in view of the phrase quoted, even if the crime of perjury was a necessary means for committing the crime of search warrant maliciously obtained, they cannot form a complex crime. They are separate and distinct crimes, to be punished with their respective penalties.

Evidence obtained in violation of Sections 2 and 3 (formerly Sections 3 and 4) of Article III (formerly Article IV) of the 1987 Constitution is not admissible for any purpose in any proceeding.

Thus, when papers or effects are obtained during unreasonable searches and seizures, or under a search warrant issued without probable

cause and not in accordance with the procedure prescribed, or in violation of the privacy of communication and correspondence, the papers or effects thus obtained are not admissible if presented as evidence.

It follows that as the search of the petitioners' premises was violative of the Constitution, all the firearms and ammunition taken from the raided compound are inadmissible in evidence in any of the proceedings against the petitioners. These articles are "fruits of the poisonous tree." As Judge Learned Hand observed, "Only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will the wrong be repressed." Pending determination of the legality of such articles, however, they shall remain in *custodia legis*, subject to such appropriate disposition as the corresponding courts may decide. (Alih vs. Castro, 151 SCRA 279)

The *Moncado* ruling (80 Phil. 1) that illegally seized documents, papers and things are admissible in evidence, must be abandoned. The exclusion of such evidence is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures. The non-exclusionary rule is contrary to the letter and spirit of the prohibition against unreasonable searches and seizures. If there is competent evidence to establish probable cause of the commission of a given crime by the party against whom the warrant is intended, then there is no reason why the applicant should not comply with the constitutional requirements. If he has no such evidence, then it is not possible for the judge to find that there is a probable cause; hence, no justification for the issuance of the warrant. The only possible explanation for the issuance in that case is the necessity of fishing for evidence of the commission of a crime. Such a fishing expedition is indicative of the absence of evidence to establish a probable cause. (Stonehill vs. Diokno, 20 SCRA 383)

Search and seizure without warrant as an incident to lawful arrest is legal.

Sec. 12, Rule 126, of the Revised Rules on Criminal Procedure provides that a person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.

A lawful arrest may be made without warrant in certain cases and in any of those cases a search may lawfully be made to find and seize things connected with the crime as its fruits or as the means by which it was committed. (Alvero vs. Dizon, 76 Phil. 637)

Peace officers may enter the house of an offender who committed an offense in their presence.

Peace officers are authorized to make arrests without warrant for breaches of the peace committed in their presence, and may enter the house of an offender for such purpose, provided the unlawful conduct is such as to affect the public peace. (U.S. vs. Vallejo, *et al,* 11 Phil. 193)

Search and seizure of vessels without a search warrant legal.

Search and seizure without search warrant of vessels and aircraft for violations of the customs laws have been the traditional exception to the constitutional requirement of a search warrant, because the vessel can be quickly moved out of the locality or jurisdiction in which the search warrant must be sought before such warrant could be secured; hence, it is not practicable to require a search warrant before such search or seizure can be constitutionally effected. (Roldan, Jr., etc. and the Philippine Navy vs. Hon. Arca, etc., *et al.*,65 SCRA 336)

Elements of exceeding authority or using unnecessary severity in executing a search warrant legally procured:

a. That the offender is a *public officer* or *employee.*

b. That he has *legally procured* a search warrant.

c. That he *exceeds his authority* or *uses unnecessary severity* in executing the same.

Example of exceeding authority in executing search warrant.

If the public officer, in executing a search warrant for opium, seized books, personal letters, and other property having a remote or no connection with opium, even if he believed or suspected that they had some relation with opium, such public officer may be held liable under Art. 129. (Uy Kheytin, *et al.* vs. Villareal, *et al,* 42 Phil. 886)

But the possession of contraband articles, like firearm without license, is a flagrant violation of the law and the contraband can be seized without a writ. (Magoncia vs. Palacio, 80 Phil. 770)

Example of using unnecessary severity in executing search warrant.

If in searching a house, the public officer destroys furniture therein without any justification at all, he is guilty under Article 129, as having used unnecessary severity in executing the search warrant.

Art. 130. ***Searching domicile without witnesses.*** **— The penalty of arresto mayor in its medium and maximum periods[9] shall be imposed upon a public officer or employee who, in cases where a search is proper, shall search the domicile, papers, or other belongings of any person, in the absence of the latter, any member of his family, or in their default, without the presence of two witnesses residing in the same locality.**

Elements:

1. That the offender is *a public officer* or *employee.*
2. That he is armed with search warrant *legally procured.*
3. That he searches the domicile, papers or other belongings *of any person*.
4. That the *owner,* or *any member of his family,* or *two witnesses* residing *in the same* locality are not present.

"In cases where a search is proper."

This clause means that the public officer at the time of the search is armed with a search warrant legally procured.

In violation of domicile under Art. 128, the public officer has no authority to make a search; in searching domicile without witnesses (Art. 130), the public officer has a search warrant.

"Shall search the domicile, papers, or other belongings of any person."

The word "search" means "to go over or look through for the purpose of finding something; to examine." Note that the thing searched by the offender is the *"domicile,"* the *"papers"* or the *"other belongings"* of any person. The public officers may examine the papers for the purpose of finding in those papers something against their owner; or his other belongings for the same purpose. But as the crime defined in Art. 130 is one of the forms of violation of domicile, the papers or other belongings must be in the dwelling of their owner at the time the search is made.

[9] See Appendix "A," Table of Penalties, No. 6.

Art. 130 does not apply to searches of vehicles or other means of transportation, because the searches are not made in the dwelling.

Search without warrant under the Tariff and Customs Code does not include a dwelling house.

The Code authorizes persons having police authority under Section 2203 of the Tariff and Customs Code to enter, pass through or search any land, inclosure, warehouse, store or building, *not being a dwelling house;* and also to inspect, search and examine any vessel or aircraft and any trunk, package, box or envelope or any person on board, or stop and search and examine any vehicle, beast or person suspected of holding or conveying any dutiable or prohibited article introduced into the Philippines contrary to law, without mentioning the need of a search warrant in said cases. (Sections 2208, 2210 and 2211, Tariff and Customs Code) But in the search of a dwelling house, the Code provides that said "dwelling house may be entered and searched *only upon warrant* issued by a judge or justice of the peace." (Papa vs. Mago, 22 SCRA 857)

Section 8, Rule 126 of the Revised Rules of Criminal Procedure reiterates Article 131.

Section 8, Rule 126 of the Revised Rules of Criminal Procedure provides that —

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

This provision is consistent with the present Article. As previously worded, no search of a house shall be made except in the presence of at least one competent witness, a resident in the neighborhood. This particular amendment to the Rules was made to conform the provision to the present Article and was introduced to address the confusion brought about by differences in the law as found in the Rules of Court and the Revised Penal Code concerning witnesses to a search.

Section Three. — Prohibition, interruption, and dissolution of peaceful meetings

Art. 131. ***Prohibition, interruption, and dissolution of peaceful meetings.*** **— The penalty of** ***prision correccional*** **in**

its minimum period[10] shall be imposed upon any public officer or employee who, without legal ground, shall prohibit or interrupt the holding of a peaceful meeting, or shall dissolve the same.

The same penalty shall be imposed upon any public officer or employee who shall hinder any person from joining any lawful association or from attending any of its meetings.

The same penalty shall be imposed upon any public officer or employee who shall prohibit or hinder any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses or redress of grievances.

What are the acts punished in connection with peaceful meetings, associations, and petitions?

1. **By *prohibiting or by interrupting* without legal ground, the *holding* of a peaceful meeting, or by *dissolving* the same.**
2. **By *hindering* any person from joining any lawful association or from *attending* any of its meetings.**
3. **By *prohibiting* or *hindering* any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses or redress of grievances.**

Elements common to the three acts punishable:

1. **That the offender is a public officer or employee;**
2. **That he performs any of the acts mentioned above.**

A private individual cannot commit this crime.

Only a public officer or employee can commit this crime. If the offender is a private individual, the crime is disturbance of public order defined in Art. 153.

[10] See Appendix "A," Table of Penalties, No. 11.

To commit the crime defined in the first paragraph of Art. 131, the public officer must act without legal ground.

Note the phrase "without legal ground" and the word "peaceful" describing the meeting in the first paragraph of Art. 131.

Hence, to constitute a violation of the 1st paragraph of Art. 131, (1) the meeting must be peaceful, and (2) there is no legal ground for prohibiting, or interrupting or dissolving that meeting.

Right to peaceful meeting is not absolute.

The right to freedom of speech and to peacefully assemble, though guaranteed by our Constitution, is not absolute, for it may be regulated in order that it may not be "injurious to the equal enjoyment of others having equal rights, nor injurious to the right of the community or society," and this power may be exercised under the "police power" of the state, which is the power to prescribe regulations to promote the good order or safety and general welfare of the people.

Thus, the action taken by the respondent who refused to allow the use of the kiosk, part of the public plaza, by the members of the Watch Tower Bible and Tract Society, whose tenets and principles are derogatory to those professed by the Catholics, is not unconstitutional as an abridgment of the freedom of speech, assembly, and worship, considering that in view of the proximity of the kiosk to the Catholic church, such meeting, if allowed, might result in the happening of untoward incidents and disturbance of peace and order. (Ignacio, *et al.* vs. Ela, 99 Phil. 347)

When the meeting to be held is not peaceful, there is legal ground for prohibiting it.

Facts: Petitioner addressed a letter to the Mayor of Manila requesting permit to hold a public meeting. This meeting was to be held by the Communist Party. Previously, in public meetings held by the said Communist Party, seditious speeches were delivered urging the laboring class to unite in order to be able to overthrow the government. Petition was denied.

Is the denial of the petition a violation of this article?

Held: No. Inasmuch as the doctrine and principles advocated by the Communist Party were highly *seditious* in that they suggested and incited rebellious conspiracies and disturbed and obstructed the lawful authorities in their duties, the denial of the petition to hold a public meeting is legal. The mayor was justified in prohibiting the holding of such meeting by refusing to issue a permit for that purpose. (Evangelista vs. Earnshaw, 57 Phil. 255)

The right to peaceably assemble is not absolute and may be regulated.

Respondent Mayor possesses reasonable discretion to determine or specify the streets or public places to be used for the assembly in order to secure convenient use thereof by others and provide adequate and proper policing to minimize the risks of disorder and maintain public safety and order; Respondent Mayor has expressly stated his willingness to grant permits for peaceful assemblies at Plaza Miranda during Saturdays, Sundays and holidays when they would not cause unnecessarily great disruption of the normal activities of the community and has further offered Sunken Gardens as an alternative to Plaza Miranda as the site of the demonstration sought to be held. (Navarro vs. Villegas, 31 SCRA 371)

It is a settled principle growing out of the nature of well-ordered civil societies that the exercise of the rights to freedom of speech and to peaceably assemble and petition the government for redress of grievances is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights nor injurious to the rights of the community or society. The power to regulate the exercise of such other constitutional rights is termed the sovereign "police power," which is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and the general welfare of the people. (Gallego vs. People, 8 SCRA 813)

There is no legal ground to prohibit the holding of a meeting when the danger apprehended is not imminent and the evil to be prevented is not a serious one.

Thus, the fact "that there is a reasonable ground to believe, basing upon previous utterances and upon the fact that passions remain bitter and high, that similar speeches will be delivered tending to undermine the faith and confidence of the people in their government and in the duly constituted authorities, which might threaten breaches of the peace and disruption of public order," is not a legal ground for refusing the permit to hold a public meeting for the purpose of petitioning the government for redress of grievances by holding an "indignation rally." To justify suppression of free speech, there must be reasonable ground to believe that the danger apprehended is imminent and that the evil to be prevented is a serious one. (Primicias vs. Fugoso, 80 Phil. 71)

Interrupting and dissolving a meeting which is not peaceful.

When a parade was about to be held, Crisanto Evangelista spoke before the people, raising his fist and accusing the big ones of persecuting

and oppressing them. Then shouts were heard from the audience saying: "Let us fight them." Then Ramos shouted, "Let us fight them until death." Evangelista and Ramos were arrested. The Constabulary also dispersed the people by using a water pump. *Held:* The act of the Constabulary was proper, the meeting not being peaceful. (People vs. Evangelista, 57 Phil 372)

The offender must be a stranger, not a participant, in the peaceful meeting.

Thus, where during the meeting of municipal officials called by the mayor, the chief of police kept on talking although he had been asked by the mayor to sit down, and there was a heated exchange of words among the mayor, a councilor and the chief of police, and in the ensuing confusion, the crowd watching the proceeding dispersed and the meeting was eventually dissolved, the chief of police is not guilty under Art. 131, but under Art. 287, for unjust vexation. (People vs. Calera and Cantela, C.A., 45 O.G. 2576)

Interrupting and dissolving the meeting of municipal council by a public officer is a crime against a legislative body, not punished under Art. 131.

Nobody has the right to dissolve through violence, the meeting of a municipal council under the pretext of lack of notice to some members of the council, which was not apparent. Any stranger, even if he be the municipal president himself or the chief of police must respect that meeting. The disturbance or interruption and the consequent dissolution of the meeting of the municipal council is a violation of Sec. 1 of Act No. 1755, which is similar to Arts. 143 and 144 of the Revised Penal Code. (People vs. Alipit, *et al.*, 44 Phil. 910)

Note: The case of *People vs. Calera and Cantela, supra,* involves a meeting of municipal officials, not of the municipal council.

The person talking on prohibited subject at public meeting contrary to agreement that no speaker should touch on politics may be stopped.

Thus, where on the occasion of the celebration of the anniversary of the Commonwealth, a public meeting was held and the speakers in that meeting were enjoined beforehand not to talk about politics but when the offended party spoke, he attacked the mayor, saying that he should not be reelected, the mayor who ordered that the offended party should suspend his speech is not liable for interrupting a peaceful meeting, even if confusion

ensued among the persons in the audience and they left the meeting. (People vs. Yalung, CA-40 O.G., Supp. 11, 83)

But stopping the speaker who was attacking certain churches in public meeting is a violation of Art. 131.

The Chief of Police who ordered the speaker in a public meeting of the *Iglesia ni Cristo,* then attacking the Catholic and Aglipayan churches, to stop and fired two shots in the air which dispersed the crowd and stopped the meeting, is liable under Article 131. (People vs. Reyes, *et al.*, C.A.-G.R. No. 13633-R, July 27, 1955)

Section Four. — Crimes against religious worship

What are the crimes against religious worship?

They are:

1. Interruption of religious worship. (Art. 132)
2. Offending the religious feelings. (Art. 133)

Art. 132. *Interruption of religious worship.* — The penalty of prision correccional in its minimum period[11] shall be imposed upon any public officer or employee who shall prevent or disturb the ceremonies or manifestations of any religion.

If the crime shall have been committed with violence or threats, the penalty shall be prision correccional in its medium and maximum periods.[12]

Elements:

1. That the offender is a *public officer* or *employee.*
2. That *religious ceremonies* or *manifestations of any religion* are about to take place or are going on.
3. That the offender *prevents* or *disturbs* the same.

[11] See Appendix "A," Table of Penalties, No. 11.
[12] See Appendix "A," Table of Penalties, No. 15.

Circumstances qualifying the offense.

If the crime is committed with *violence* or *threats.*

Preventing a religious ceremony that is to take place.

In a barrio chapel, a priest was ready to say mass and a number of barrio folks were there to hear mass. The barrio lieutenant made an actual threat on the life of the priest should the latter persist in his intention to say the mass. As a result, the mass was not celebrated. *Held:* The barrio lieutenant was guilty of a violation of Art. 132. (See People vs. Mejica, CA-G.R. No. 12980-R, Dec. 29, 1955)

Reading of Bible and then attacking certain churches in a public plaza is not a ceremony or manifestation of a religion, but only a meeting of a religious sect.

Facts: The *Iglesia ni Cristo* held a *meeting* at a *public plaza* after securing a permit to do so from the mayor. The meeting started with some singing, after which the minister of the sect read from the Bible and then delivered a sermon, in the course of which he attacked the Catholic and Aglipayan churches. The Chief of Police ordered his policemen to stop the minister. When the minister refused, the Chief of Police fired two shots in the air which dispersed the crowd and stopped the meeting.

Held: The act of the Chief of Police is not a violation of Article 132, but of Article 131. (People vs. Reyes, *et al.*, CA-G.R. No. 13633-R, *supra)*

But the reading of some verses out of the Bible in a *private* house by a group of 10 to 20 persons, adherents of the Methodist Church, is a religious service. The reason for this ruling is that there is no provision of law which requires religious service to be conducted in approved orthodox style in order to merit its protection against interference and disturbance.

"Persons who meet for the purpose of religious worship, by any method which is not indecent and *unlawful,* have a right to do so without being molested or disturbed." (Hull vs. State, 120 Ind., 153, cited in U.S. vs. Balcorta, 25 Phil. 279)

Art. 133. ***Offending the religious feelings.*** **—The penalty of *arrestomayor* in its maximum period to *prision correccional* in its minimum period[13] shall be imposed upon anyone**

[13]See Appendix "A," Table of Penalties, No. 8.

who, in a place devoted to religious worship or during the celebration of any religious ceremony, shall perform acts notoriously offensive to the feelings of the faithful.

Elements:

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

"In a place devoted to religious worship."

It would seem that in the phrase "in a place devoted to religious worship," it is not necessary that there is a religious ceremony going on when the offender performs acts notoriously offensive to the feelings of the faithful. The phrase "during the celebration" is separated by the word "or" from the phrase "place devoted to religious worship," which indicates that the "religious ceremony" need not be celebrated in a place of worship.

Meaning of religious ceremonies.

Religious ceremonies are those religious acts performed outside of a church, such as processions and special prayers for burying dead persons. (Albert)

When the application of the Church of Christ was to hold the *meeting* at a public place and the permit expressly stated that the purpose was to hold a religious rally, what was held on that occasion was *not a religious ceremony,* even if a minister was then preaching ("that Jesus Christ was not God but only a man"). The rally was attended by persons who are not members of the sect. (People vs. Mandoriao, Jr., C.A., 51 O.G. 4619)

"Acts notoriously offensive to the feelings of the faithful."

The acts must be directed against *religious practice or dogma or* ritual for the purpose of *ridicule,* as mocking or scoffing at or *attempting to damage* an object of religious veneration. (Viada; People vs. Baes, 68 Phil. 203)

Examples:

1. Throwing stone at the minister of the Iglesia ni Cristo who was preaching or spreading his beliefs before a crowd notoriously offended

the religious feelings of the minister and of the members of the Iglesia ni Cristo who witnessed the incident. (People vs. Migallos, CA-G R No. 13619-R, Aug. 5, 1955)

2. Remarks that those who believed that Christ is God are anti-Christ, that all the members of the Roman Catholic Church are marked by the demon, and that the Pope is the Commander of Satan are notoriously offensive to the feelings of the faithful. (People vs. Mandorio, *supra)*

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

People vs. Gesulga
(C.A., 57 O.G. 8494-8496)

Facts: Between 5:30 and 6:00 in the afternoon of January 30, 1967, the Catholic elements in barrio Gacat, Libagon, Leyte, officiated or conducted inside the church or chapel, a "barangay," said to be a religious ceremony similar to the rosary, which they continued outside with a procession. The procession had to pass along the barrio road in the middle of which a Protestant meeting was being held. On account of said meeting, there being a table on the middle of the road, the procession could not pass through. So, some of those taking part in the procession took another road, while others passed under the nearby houses. While the procession was thus passing near the meeting place, the defendant-appellant placed a picture of the Pope on the wall of the house of one Vivencia Balaquit and shouted, "This criminal and devouring beast; these parents are fools for having taught their children the sign of the cross for that is the big devil himself, troublesome; here again are the fools of the devouring beast, the Pope," or words of similar import.

Held: In order to render defendant-appellant liable for the particular offense charged, it is indispensable that the said utterances were made when defendant-appellant was actually in the place devoted to religious worship or in a place where the religious ceremony was being celebrated. The facts in the present case show not only that the defendant-appellant was not in said place but in another place, but also that *it was the religious procession that approached the place where he was preaching or delivering a sermon on matters offensive to the feelings of the faithful Catholics.* There is no evidence that defendant-appellant had *purposely deviated from the topic of his preaching or sermon* or that if the procession had not approached his meeting place, *he would not have uttered the words* herein complained of, to evidence his intention deliberately to hurt the feelings of those actually engaged in the celebration of a religious procession or ceremony.

The accused is acquitted.

Not offensive to religious feelings.

The construction of a fence in front of the chapel, even though irritating and vexatious to those present in the "*pabasa*," is not "notoriously offensive to the feelings of the faithful." The crime committed is only unjust vexation defined and penalized in Art. 287. (People vs. Reyes, 60 Phil. 369)

The act of performing burial rites inside a Roman Catholic Cemetery, in accordance with the rules of practices of the sect called "Christ is the Answer," by reading passages from the Bible, chanting the "Alleluia," singing religious hymns and praying for the repose of the soul of the dead, is not notoriously offensive to the feelings of religious persons, provided there was no intent to mock, scoff at, or to desecrate any religious act or object venerated by people of a particular religion. Such act may have offended the Roman Catholic priest of the municipality and some Catholic adherents, but since there was a permit for the burial in question in the Roman Catholic Cemetery of that municipality, the religious rites of that sect, to which the members of the family of the deceased belong, and performed upon request of the bereaved husband, are not offensive to the feelings of everybody who professes the Christian religion. (People vs. Tengson, 14 C.A. Rep. 890)

While the congregation of the Assembly of God was having its afternoon services in its chapel, accused who was allegedly drunk entered with uplifted hands and attempted to grab the song leader who ran away from him. The other members of the sect also ran out of the church and the religious services were discontinued, even as one member held the accused and led him outside the church. *Held:* The accused is only guilty of unjust vexation penalized by the second paragraph of Article 287 of the Revised Penal Code. (People vs. Nanoy, C.A., 69 O.G. 8043)

Offense to feelings is judged from complainant's point of view.

A Catholic priest filed a complaint against three persons for causing the funeral of a member of "Church of Christ," being held in accordance with the rites of that sect, to pass through the churchyard fronting the parish church over the opposition of the Catholic priest.

***Held:* Said facts constitute the offense punished in Art. 133. Whether or not an act offends the feelings of the Catholics should be viewed or judged from the latter's point of view, and not from that of the offender. (People vs. Baes, 68 Phil. 203)**

Title Three
CRIMES AGAINST PUBLIC ORDER

What are the crimes against public order?

They are:

1. Rebellion or insurrection. (Art. 134)
2. *Coup d'etat.* (Art. 134-A)
3. Conspiracy and proposal to commit *coup d'etat,* rebellion or insurrection. (Art. 136)
4. Disloyalty of public officers or employees. (Art. 137)
5. Inciting to rebellion. (Art. 138)
6. Sedition. (Art. 139)
7. Conspiracy to commit sedition. (Art. 141)
8. Inciting to sedition. (Art. 142)
9. Acts tending to prevent the meeting of Congress and similar bodies. (Art. 143)
10. Disturbance of proceedings of Congress or similar bodies. (Art. 144)
11. Violation of parliamentary immunity. (Art. 145)
12. Illegal assemblies. (Art. 146)
13. Illegal associations. (Art. 147)
14. Direct assaults. (Art. 148)
15. Indirect assaults. (Art. 149)
16. Disobedience to summons issued by Congress, its committees, etc., by the constitutional commissions, its committees, etc. (Art. 150)
17. Resistance and disobedience to a person in authority or the agents of such person. (Art. 151)
18. Tumults and other disturbances of public order. (Art. 153)

CRIMES AGAINST PUBLIC ORDER

19. **Unlawful use of means of publication and unlawful utterances. (Art. 154)**
20. **Alarms and scandals. (Art. 155)**
21. **Delivering prisoners from jails. (Art. 156)**
22. **Evasion of service of sentence. (Art. 157)**
23. **Evasion on occasion of disorders. (Art. 158)**
24. **Violation of conditional pardon. (Art. 159)**
25. **Commission of another crime during service of penalty imposed for another previous offense. (Art. 160)**

Chapter One

REBELLION, *COUP D'ETAT*, SEDITION, AND DISLOYALTY

Art. 134. ***Rebellion or insurrection*** [1] **— How committed. — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, or any body of land, naval, or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.** ***(As amended by R.A. No. 6968, approved October 24, 1990)***

Elements:

1. That there be (a) public uprising, and (b) taking arms against the Government.
2. That the *purpose* of the uprising or movement is either —
   a. to remove from the allegiance to said Government or its laws:
      (1) the territory of the Philippines or any part thereof; or
      (2) any body of land, naval or other armed forces; or
   b. to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.

Rebellion and insurrection are not synonymous.

The term "rebellion" is more frequently used where the object of the movement is completely to overthrow and supersede the existing government; while the term "insurrection" is more commonly employed in reference to a movement which seeks merely to effect some change of minor

[1] The Indeterminate Sentence Law is not applicable.

importance, or to prevent the exercise of governmental authority with respect to particular matters or subjects. (30 Am. Jur. 1)

Nature of the crime of rebellion.

The crime of rebellion or of inciting it is by nature a crime of masses, of a *multitude.* It is a vast movement of men and a complex net of intrigues and plots. (People vs. Almazan, CA., 37 O.G. 1932)

The word "rebellion" evokes, not merely a challenge to the constituted authorities, but also *civil war* on a bigger or lesser scale. (People vs. Hernandez, 99 Phil. 515)

In rebellion or insurrection, the Revised Penal Code expressly declares that there must be a public uprising and the taking up of arms. (Cariño vs. People, 7 SCRA 900)

Example:

Four hundred (400) Sakdals after fighting the Constabulary soldiers took possession of the municipal building and proclaimed the independence of the Philippine Republic. The Constabulary forces suppressed the uprising. (People vs. Almazan, 37 O.G. 1932)

Note: There is public uprising and taking arms against the government when they fought the Constabulary soldiers. By proclaiming the Philippine Independence, they removed the locality under their control from the allegiance to the Government or its laws.

Actual clash of arms with the forces of the Government, not necessary to convict the accused who is in conspiracy with others actually taking arms against the Government.

Although the law provides that rebellion is committed by rising publicly and taking arms against the Government, an actual clash of arms with the forces of the Government is not absolutely necessary. Thus, the mere fact that the accused *knowingly* identified himself with the Huk organization that was openly fighting to overthrow the Government was enough to make him guilty of the crime of rebellion. (People vs. Cube, C.A., 46 O.G. 4412; People vs. Perez, C.A., G.R. No. 8186-R, June 30, 1954)

Note: Those merely acting as couriers or spies for the rebels are also guilty of rebellion.

Purpose of the uprising must be shown.

The mere fact that a band of forty men entered the town and, after attacking the policemen, kidnapped the municipal president, secretary and

others, *without evidence to indicate the motive or purpose* of the accused does not constitute rebellion. The crime committed was kidnapping. (U.S. vs. Constantino, *et al.*, 2 Phil. 693)

It is not necessary that the purpose of the rebellion be accomplished.

The crime of rebellion is complete the very moment a group of rebels rise publicly and take arms against the Government, for the purpose of overthrowing the same by force. It is not necessary, to consummate rebellion, that the rebels succeed in overthrowing the Government. *Rising publicly and taking arms against the Government is the normative element of the offense, while the intent or purpose* to overthrow the Government is the *subjective* element. (Guevara)

Rebellion distinguished from treason.

(a) The levying of war against the Government would constitute treason when performed to aid the enemy. It would also constitute an adherence to the enemy, giving him aid and comfort. (U.S. vs. Lagnason, 3 Phil. 472)

The levying of war against the Government during peace time for any of the purposes mentioned in Art. 134 is rebellion.

(b) Rebellion always involves taking up arms against the Government; treason may be committed by mere adherence to the enemy giving him aid or comfort.

Giving aid and comfort is not criminal in rebellion.

Appellant was not a member of the Hukbalahap organization which was engaged in rebellion. He did not take up arms against the Government, nor did he openly take part in the commission of the crime of rebellion or insurrection as defined in Article 134 of the Revised Penal Code. The only acts he was shown to have performed were the sending or furnishing of cigarettes and food supplies to a Huk leader, the changing of dollars into pesos for a top-level communist and the helping of Huks in opening accounts with the bank of which he was an official.

Held: Unlike in the crime of treason, the act of giving *comfort or moral aid* is not criminal in the case of rebellion or insurrection, where the Revised Penal Code expressly declares that there must be a public uprising and the taking up of arms. Appellant is, therefore, absolved from the charge. (Cariño vs. People, 7 SCRA 900, *supra)*

Rebellion distinguished from subversion.

Petitioners contend that rebellion is an element of the crime of subversion. That contention is not correct because subversion, like treason, is a crime against national security. Rebellion is a crime against public order.

The petitioners were accused of rebellion for having allegedly undertaken a public uprising to overthrow the government. In contrast, they were accused of subversion for allegedly being officers and ranking members of the Communist Party and similar subversive groups. (Buscayno vs. Military Commission Nos. 1, 2, 6 and 25, 109 SCRA 273)

Rebellion or Insurrection, when considered as Terrorism.

Under Republic Act No. 9372, otherwise known as the Human Security Act of 2007, approved on March 6, 2007, a person who commits an act punishable as rebellion or insurrection, thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism. (Sec. 3)

Republic Act No. 9372
Human Security Act of 2007
Approved on March 6, 2007

Acts Punishable as Terrorism under Rep. Act No. 9372.

Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

a. Article 122 (Piracy in general and Mutiny in the High Seas or in the Philippine Waters);

b. Article 134 (Rebellion of Insurrection);

c. Article 134-A (Coup d'Etat), including acts committed by private persons;

d. Article 248 (Murder);

e. Article 267 (Kidnapping and Serious Illegal Detention);

f. Article 324 (Crimes Involving Destruction), or under

(1) Presidential Decree No. 1613 (The Law on Arson);

(2) Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);

(3) Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968);

(4) Republic Act No. 6235 (Anti-Hijacking Law);

(5) Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and

(6) Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. (Sec. 3)

Terrorism is more severely punished than heinous crimes under Republic Act No. 7659.

Terrorism is punished by the penalty of forty (40) years of imprisonment, without the benefit of parole. (Sec. 3, RA 9372)

Some offenses considered as heinous crimes under Republic Act No. 7659 such as kidnapping for ransom and rape with homicide are punished by death. However, Republic Act No. 9346 prohibited the imposition of the penalty of death, and imposed the penalty of *reclusion perpetua* without eligibity for parole in lieu of the death penalty. Since the duration of *reclusion perpetua* is twenty years and one day to forty years (Sec. 27, RPC) and the crime of terrorism is punished by a fixed penalty of forty years, terrorism is now the most severely punished crime.

Conspiracy to Commit Terrorism.

Persons who conspire to commit the crime of terrorism shall suffer the penalty of forty (40) years of imprisonment.

There is conspiracy when two or more persons come to an agreement concerning the commission of the crime of terrorism as defined in Section 3 hereof and decide to commit the crime. (Sec. 4, R.A. 9372)

Conspiracy to Commit Terrorism as a crime.

Although the general rule is that conspiracy and proposal to commit a felony is not punishable (Art. 8), conspiracy to commit terrorism is

punishable under Sec. 4 of Republic Act No. 9372. Other crimes where mere conspiracy is punishable are conspiracy to commit treason (Art. 115), conspiracy to commit coup d'etat, rebellion or insurrection (Art. 136) and conspiracy to commit sedition (Art. 141).

The conspirators to commit terrorism should not actually commit terrorism. It is sufficient that two or more persons agree and decide to commit the crime of terrorism. If they actually commit the crime of terrorism, they will be held liable for terrorism and the conspiracy they had before committing terrorism in only a manner of incurring criminal liability. It is not a separate offense.

Penalty Imposed on an Accomplice in Terrorism.

Any person who, not being a principal under Article 17 of the Revised Penal Code or a conspirator as defined in Section 4 hereof, cooperates in the execution of either the crime of terrorism or conspiracy to commit terrorism by previous or simultaneous acts shall suffer the penalty of from seventeen (17) years, four months one day to twenty (20) years of imprisonment. (Sec. 5)

Penalty Imposed on an Accessory in Terrorism.

Any person who, having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism, and without having participated therein, either as principal or accomplice under Articles 17 and 18 of the Revised Penal Code, takes part subsequent to its commission in any of the following manner: (a) by profiting himself or assisting the offender to profit by the effects of the crime; (b) by concealing or destroying the body of the crime, or the effects, or instruments thereof, in order to prevent its discovery; (c) by harboring, concealing or assisting in the escape of the principal or conspirator of the crime, shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Notwithstanding the above paragraph, the penalties provided for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of subparagraph (a). (Sec. 6)

Proscription of Terrorist Organizations, Association on Group of Persons.

Any organization, association, or group of persons organized for the purpose of engaging in terrorism, or which, although not organized for

that purpose, actually uses the acts to terrorize mentioned in this Act or to sow and create a condition of widespread and extraordinary fear and panic among the populace in order to coerce the government to give in to an unlawful demand shall, upon application of the Department of Justice before a competent Regional Trial Court, with due notice and opportunity to be heard given to the organization, association, or group of persons concerned, be declared a terrorist and outlawed organization, association, or group of persons by the said Regional Trial Court. (Sec. 17)

Prosecution under Republic Act No. 9372 Shall be A Bar to Another Prosecution under the Revised Penal Code or any Special Penal Laws.

When a person has been prosecuted under a provision of this Act, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for any offense or felony which is necessarily included in the offense charged under this Act. (Sec. 49)

With or without civilian participation.

The crime of coup d'etat may be committed with or without civilian participation.

Art. 134-A. ***Coup d'etat*** **— *How committed.* — The crime of *coup d'etat* is a swift attack, accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications networks, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office or employment, with or without civilian support or participation, for the purpose of seizing or diminishing state power.** ***(As amended by Rep. Act No. 6968)***

Elements:

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

With or without civilian participation.

The crime of *coup d'etat* may be committed with or without civilian participation.

Coup d'etat, when considered as Terrorism.

Under Republic Act No. 9372, otherwise known as the "Human Security Act of 2007", approved on March 6, 2007, a person who commits an act punishable as coup d'etat under Article 134-A of the Revised Penal Code, including acts committed by private persons, thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism. (Sec. 3)

Art. 135. ***Penalty for rebellion, insurrection or coup d'etat.***[2]**— Any person who promotes, maintains, or heads a rebellion or insurrection shall suffer the penalty of** ***reclusion perpetua.***

Any person merely participating or executing the commands of others in rebellion or insurrection shall suffer the penalty of ***reclusion temporal.***[3]

Any person who leads or in any manner directs or commands others to undertake a ***coup d'etat*** **shall suffer the penalty of** ***reclusion perpetua.***

[2]The Indeterminate Sentence Law is not applicable.
[3]See Appendix "A," Table of Penalties, No. 28.

Any person in the government service who participates, or executes directions or commands of others in undertaking a *coup d'etat* shall suffer the penalty of *reclusion temporal* in its maximum period.[4]

Any person not in the government service who participates, or in any manner supports, finances, abets or aids in undertaking a *coup d'etat* shall suffer the penalty of *prision mayor* in its maximum period.[5]

When the rebellion, insurrection or *coup d'etat* shall be under the command of unknown leaders, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, or performed similar acts, on behalf of the rebels, shall be deemed a leader of such rebellion, insurrection or *coup d'etat. (As amended by Rep. Act No. 6968)*

Who are liable for rebellion, insurrection and/or coup d'etat?

The following are liable for rebellion, insurrection and/or *coup d'etat:*

A. The leaders —

i) Any person who (a) promotes, (b) maintains, or (c) heads a rebellion or insurrection; or

ii) Any person who (a) leads, (b) directs, or (c) commands others to undertake a *coup d'etat.*

B. The participants —

i) Any person who (a) participates, or (b) executes the commands of others in rebellion, or insurrection;

ii) Any person in the government service who (a) participates, or (b) executes directions or commands of others in undertaking a *coup d'etat;*

iii) Any person not in the government service who (a) participates, (b) supports, (c) finances, (d) abets, or (e) aids in undertaking a *coup d'etat*.

[4]See Appendix "A," Table of Penalties, No. 28.
[5]See Appendix "A," Table of Penalties, No. 28.

Public officer must take active part, to be liable; mere silence or omission not punishable in rebellion.

U.S. vs. Ravidas, et al.
(4 Phil. 273)

Facts: **The only fact disclosed by the evidence adduced in the case is that Alejo Ravidas knew that there were insurgents in a place called Manila, within the jurisdiction of the town of Agusan, of which he was municipal president, and his duty as such president required him to report this fact to the senior officer of the province, but he did not do so, nor did he take any steps to pursue or denounce the insurgents or to protect the people from their probable depredations.**

Held: **However reproachful the silence of the defendant may be, it does not in itself constitute the crime of insurrection. Act No. 292 (now Art. 134) defines and specifies the acts which shall be punished as insurrection, but among those acts, the silence of the defendant is not enumerated. This silence is not an act; it is, rather, an omission.**

Who shall be deemed the leader of the rebellion, insurrection or *coup d'etat* in case he is unknown?

When the rebellion, insurrection or *coup d'etat* shall be under the command of unknown leaders, any person who in fact *directed* the others, *spoke* for them, *signed* receipts and other documents issued in their name, or performed similar acts, on behalf of the rebels, shall be deemed a leader of such rebellion, insurrection or *coup d'etat.* (Art. 135, 6th par.)

Application of the penalty for rebellion.

The Hardie Farms in the municipality of Antipolo, province of Rizal, was raided by Huks, the armed force of the Communist Party of the Philippines, one of the aims of which is to overthrow by force of arms the Government of the Philippines. After ransacking the place and taking therefrom a typewriter and a radio set, as well as stationery, clothing, foodstuffs and various other articles, the raiders tied the hands of John D. Hardie and his foreman Donald Capuano and shot them to death, together with Mrs. Hardie.

Benito Cruz admitted having risen to the rank of Huk Commander and being known as Commander Saling, with 12 men under him.

Held: **Appellants herein are guilty of simple rebellion inasmuch as the information alleges, and the records show, that the acts imputed to them were performed as a means to commit the crime of rebellion and in**

furtherance thereof. Benito Cruz falls under the first paragraph of Article 135 of the Revised Penal Code, which prescribes the penalty of *prision mayor* (now *reclusion perpetua)* and a fine not exceeding P20,000, whereas appellant Paterno Cruz, who merely participated in the rebellion, comes under the second paragraph of said article, which prescribes the penalty of *prision mayor* in its minimum period *(now reclusion temporal).* (People vs. Cruz, *et al.*, 3 SCRA 217)

Being a mere assistant to a principal, guilty of the crime of rebellion, the accused is guilty only as a participant in the commission of the crime of rebellion under paragraph 2 of Article 135, Revised Penal Code. (People vs. Lava, 28 SCRA 72)

It is not a defense in rebellion that the accused never took the oath of allegiance to, or that they never recognized the Government.

Such a defense would be nothing less than a negation of the right of the Government to maintain its existence and authority against a certain class of the population. (U.S. vs. del Rosario, 2 Phil. 127)

Those who killed persons in pursuance of the movement to overthrow the government are liable for rebellion only.

The proper charge against persons who kill not because of any personal motive on their part but merely in pursuance of the movement to overthrow the duly constituted authorities, would be rebellion and not murder. (People vs. Aquino and Cortez, 108 Phil. 814)

Is there a complex crime of rebellion with murder and other common crimes?

The Supreme Court decided this question in the negative. The reason for the ruling is stated, as follows:

"One of the means by which rebellion may be committed, in the words of Art. 135, is by "engaging in war against the forces of the government" and "committing serious violence" in the prosecution of said "war." These expressions imply everything that war connotes, namely: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, x x x Being within the purview of "engaging in war" and "committing serious violence," said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offenses, but only *one* crime — that of rebellion plain and simple.

Inasmuch as the acts specified in Art. 135 constitute *one single* crime, it follows necessarily that said acts offer no occasion for the application of Art. 48, which requires therefor the commission of, at least, two crimes. A mere participant in the rebellion, who is not a public officer, should not be placed at a more disadvantageous position. (People vs. Hernandez, *et al.*,99 Phil. 515)

Any or all of the acts described in Art. 135, when committed as means to or in furtherance of the subversive ends described in Art. 134, become absorbed in the crime of rebellion and cannot be regarded or penalized as distinct crimes in themselves. They are part and parcel of the rebellion itself, and can not be considered as giving rise to separate crimes that, under Art. 48 of the Code, would constitute a complex one with that of rebellion. Thus, the act of the rebels in ambushing and firing upon an army patrol constitutes engaging in combat with loyal troops; taking funds and equipment from the Provincial Treasury of Laguna is diverting public funds from their legitimate purpose; and the killings of civilians are instances of committing serious violence. (People vs. Geronimo, 100 Phil. 90)

The Hernandez ruling applied.

Facts: **(1) Sen. Juan Ponce Enrile, the spouses Rebecco and Erlinda Panlilio and Gregorio Honasan were charged with the crime of rebellion with murder and multiple frustrated murder allegedly committed during the period of the failed *coup* attempt from 26 November to 10 December 1990. (2) The Solicitor General claimed that the petitioners' case does not fall within the Hernandez ruling because the information in Hernandez charged murders and other common crimes committed as a necessary means for the commission of rebellion, whereas, the information against petitioners charged murder and frustrated murder committed on the occasion, but not in the furtherance, of rebellion. Stated otherwise, the Solicitor General would distinguish between the complex crime arising from an offense being a necessary means for committing another, which is referred to as the second clause of Art. 8, Revised Penal Code, and is the subject of the Hernandez ruling, and the compound crime arising from a single act constituting two or more grave or less grave offenses referred to in the first clause of the same paragraph, in which Hernandez was not concerned and to which, therefore, it should not apply. (3) The parties' oral and written pleas presented the Court with the following options: (a) abandon the Hernandez doctrine and adopt the view that rebellion cannot absorb more serious crimes, and under Art. 48 of the R.P.C., rebellion may properly be complexed with common offenses; (b) hold Hernandez applicable only to offenses committed in furtherance, or as a necessary means for the commission of, rebellion, but not to acts committed in the course of a rebellion which also constitute "common" crimes of grave or less grave character; (c) maintain Hernandez as**

applying to make rebellion absorb all other offenses committed in its course, whether or not necessary to its commission or in furtherance thereof.

Held: On the first option, eleven (11) members of the court voted against abandoning Hernandez. Two (2) members felt that the doctrine should be re-examined. In the view of the majority, the ruling remains good law, its substantive and logical bases have withstood all subsequent challenges and no new ones are presented here persuasive enough to warrant a complete reversal. This view is reinforced by the fact that the incumbent President, exercising her powers under the 1986 Freedom Constitution, saw fit to repeal, among others, Presidential Decree No. 942 of the former regime which precisely sought to nullify or neutralize Hernandez, by enacting a new provision (Art. 142-A) into the Revised Penal Code to the effect that "when by reason, or on the occasion, of any of the crimes penalized in this Chapter (Chapter I of Title 3, which includes rebellion), which constitute offenses upon which graver penalties are imposed by law are committed, the penalty for the most serious offense in its maximum period shall be imposed upon the offender." (Executive Order No. 187, issued June 5, 1987) In thus acting, the President in effect by legislative fiat, reinstated Hernandez as binding doctrine with the effect of law. The Court can do no less than accord it the same recognition, absent any sufficiently powerful reason against so doing.

On the second option, the Court unanimously voted to reject the theory that Hernandez is, or should be, limited in its application to offenses committed as a necessary means to the commission of rebellion and that the ruling should be interpreted as prohibiting the complexing of rebellion with other common crimes on the occasion, but not in furtherance, thereof. While four Members of the Court felt that the proponents' arguments were not entirely devoid of merit, the consensus was that they were not sufficient to overcome what appears to be the real thrust of Hernandez to rule out the complexing of rebellion with any other offense committed in its course under either of the aforecited clauses of Article 48 x x x.

The rejection of both options shaped and determined the primary ruling of the Court, which is that Hernandez remains binding doctrine operating to prohibit the complexing of rebellion with any other offense committed on the occasion thereof, either as a means to its commission or as an unintended effect of an activity that constitutes rebellion.

Thus, based on the doctrine enunciated in People vs. Hernandez, the questioned Information filed against Senator Enrile and the Panlilio spouses must be read as charging simple rebellion only. (Enrile vs. Salazar, 186 SCRA 217)

Acts committed in furtherance of rebellion are absorbed in rebellion.

The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. Acts committed in furtherance

of rebellion though crimes in themselves are deemed absorbed in one single crime of rebellion. (Enrile vs. Amin, G.R. No. 93335, September 13, 1990) The act of killing a police officer, knowing only too well that the victim is a person in authority is a mere component or ingredient of rebellion or an act done in furtherance of the rebellion. It cannot be made a basis of a separate charge. (People vs. Dasig, *et al.*, G.R. No. 100231, April 28, 1993)

Membership in a rebel organization does not automatically qualify criminal acts as absorbed in rebellion.

"Membership of appellant in a rebel organization, by itself, does not automatically qualify his criminal acts as absorbed in the crime of rebellion which carries a lighter penalty under the law. The burden was on the appellant to demonstrate conclusively that his criminal acts were committed in furtherance of rebellion. (People vs. Lovedioro, 250 SCRA 389, 395 (1995); People vs. Continente, *et al.*, G.R. Nos. 100801-02, August 29, 2001)

Rebellion, and not murder, where killings are politically motivated.

The crime committed is not murder but a political offense which gives rise to the question as to whether the same falls under the Anti-Subversion Act or under Articles 134 and 135 of the Revised Penal Code. The appellant admits that he was a member of the NPA then operating in the Cagayan area with Ka Daniel as their leader. He asserts that the NPA is the military arm of the Communist Party of the Philippines. (Presidential Proclamation No. 1081 [1972]; People vs. Hon Simeon Ferrer, *et al.*, G.R. No. L-32613-14, December 29, 1972). There is no question likewise that the killing of Apolonio Ragual by the appellant and his companions who were also members of the NPA upon orders of Ka Daniel was politically motivated. They suspected Ragual as an informer of the PC. In fact, after he was killed, they left a letter and a drawing on the body of Ragual as a warning to others not to follow his example.

In the case of People vs. Agarin (109 Phil. 430), which was a prosecution for murder, like the present case, where the accused Huk member with his companions killed the victim because he was a PC informer, it was held that the crime committed is simple rebellion and not murder. (People vs. Manglallan, *et al.*, 160 SCRA 116 [1988])

Killing, robbing, etc. for private purposes or profit, without any political motivation, would be separately punished and would not be absorbed in the rebellion.

If the killing, robbing, etc., during the rebellion, were done for private purposes or profit, *without any political motivation,* the crimes would be separately punished. Thus, in People vs. Geronimo, *et al.*, 100 Phil. 90, accused was convicted of rebellion and murder, two separate offenses.

Political crimes and common crimes, distinguished.

Political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the Philippine Islands or any part thereof," then said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquired the political character of the latter. (People vs. Hernandez, *supra)*

Art. 136. ***Conspiracy and proposal to commit coup d'etat, rebellion or insurrection.*** **— The conspiracy and proposal to commit *coup d'etat* shall be punished by *prision mayor* in its minimum period and a fine which shall not exceed eight thousand pesos (P8,000.00).**

The conspiracy and proposal to commit rebellion or insurrection shall be punished, respectively, by *prision correccional* in its maximum period[6] and a fine which shall not exceed five thousand pesos (P5,000), and by *prision correccional* in its medium period,[7] and a fine not exceeding two thousand pesos (P2,000). ***(As amended by Rep. Act No. 6968)***

[6]See Appendix "A," Table of Penalties, No. 13.
[7]See Appendix "A," Table of Penalties, No. 12.

CONSPIRACY AND PROPOSAL TO COMMIT COUP D'ETAT, REBELLION OR INSURRECTION

Two crimes are defined and penalized in this article.

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

(1) Conspiracy to commit rebellion, and

(2) Proposal to commit rebellion.

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

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

Merely agreeing and deciding to rise publicly and take arms against the Government for the purposes of rebellion or merely proposing the commission of said acts is already subject to punishment.

Persons merely agreeing and deciding among themselves to rise publicly and take arms against the Government for the purposes mentioned in Art. 134, *without actually rising publicly and taking arms* against the Government, or those merely proposing the commission of said acts to other persons *without actually performing those overt acts* under Art. 134, are already subject to punishment. (People vs. Geronimo, 100 Phil. 90)

No conspiracy when there is no agreement and no decision to commit rebellion.

A witness, who testified for the prosecution in a charge of conspiracy to commit rebellion, stated that he heard the accused in their conversation saying: "What a life this is, full of misery, constantly increasing. When will our wretchedness end? When will the authorities remedy them? What shall we do?"

Is there conspiracy?

No, because (1) there was *no agreement* concerning the commission of rebellion, and (2) there was *no decision* to commit it. The facts do not suffice to sustain a conviction of the crime of conspiracy to overthrow the Government. (U.S. vs. Figueras, *et al.*, 2 Phil. 491)

Organizing a group of soldiers, soliciting membership in, and soliciting funds from the people for, the organization, show conspiracy to overthrow the Government.

When the object of the offenders in organizing Filipino soldiers, soliciting various persons to become members of the said organization which held several meetings, and soliciting funds from the people, is to overthrow the Government, there is conspiracy to commit rebellion. (U.S. vs. Vergara, *et al.*,3 Phil. 432)

There was no conspiracy to commit rebellion in the following cases.

The fact that some of the accused, like the appellants, had made and designed flags for the "Sakdalista Party" does not necessarily show that they did it with the intention of joining an uprising against the constituted government. (People vs. Bautista, *et al.*, CA-G.R. No. 1622-R, January 27, 1938)

The mere fact of giving and rendering speeches favoring Communism would not make the accused guilty of conspiracy, because there was no evidence that the hearers of his speeches of propaganda then and there agreed to rise up in arms for the purpose of obtaining the overthrow of the democratic government as envisaged by the principles of Communism. (People vs. Hernandez, 11 SCRA 223)

Art. 137. ***Disloyalty of public officers or employees.*** **— The penalty of *prision correccional* in its minimum period[8] shall be imposed upon public officers or employees who have failed to resist a rebellion by all the means in their power, or shall continue to discharge the duties of their offices under the control of the rebels or shall accept appointment to office under them.**

Offender must be a public officer or employee.

The offender must be a *public officer or employee.* Hence, if a private individual accepts an appointment to office under the rebels, he is not liable under this article.

[8]See Appendix "A," Table of Penalties, No. 11.

Acts of disloyalty which are punished:

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

The crime of disloyalty of public officers presupposes the existence of rebellion by other persons.

Thus, in the case of *U.S. us. Ravidas et al., supra,* the accused could not be held liable even for disloyalty, because there was no actual rebellion going on in the municipality. There must be rebellion to be resisted or, at least, the place is under the control of the rebels.

The offender under Art. 137 must not be in conspiracy with the rebels.

The public officer or employee who performs any of the acts of disloyalty should not be in conspiracy with the rebels; otherwise, he will be guilty of rebellion, not merely disloyalty, because in conspiracy, the act of one is the act of all.

Art. 138. ***Inciting to rebellion or insurrection.*** **— The penalty of *prision mayor* in its minimum period[9] shall be imposed upon any person who, without taking arms or being in open hostility against the Government, shall incite others to the execution of any of the acts specified in Article 134 of this Code, by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end.**

Elements:

1. That the offender *does not take arms* or *is not in open hostility* against the Government;
2. That he incites others to the execution of any of the acts of rebellion;

[9] See Appendix "A," Table of Penalties, No. 20.

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

"Shall incite others to the execution of any of the acts specified in Article 134 of this Code."

This clause means that the offender shall incite others to *rise publicly and take arms against the Government* for any of the purposes of rebellion.

Inciting to rebellion distinguished from proposal to commit rebellion.

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

Rebellion should not be committed.

In both *proposal* and *inciting* to commit rebellion, the crime of rebellion should not be actually committed by the persons to whom it is proposed or who are incited. If they commit the rebellion because of the proposal or the inciting, the proponent or the one inciting becomes a principal by inducement in the crime of rebellion, provided that the requisites of paragraph No. 2 of Art. 17 of the Revised Penal Code are present.

Art. 139. *Sedition — How committed.* — The crime of sedition is committed by persons who rise publicly and tumultuously in order to attain by force, intimidation, or by other means outside of legal methods, any of the following objects:

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

2. To prevent the National Government, or any provincial or municipal government, or any public officer thereof from freely exercising its or his functions, or prevent the execution of any administrative order;

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

4. To commit, for any political or social end, any act of hate or revenge against private persons or any social class; and

5. To despoil, for any political or social end, any person, municipality or province, or the National Government (or the Government of the United States) of all its property or any part thereof. ***(As amended by Com. Act No. 202)***

Elements:

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

Nature of the crime.

Sedition, in its general sense, is the raising of commotions or disturbances in the State. (People vs. Cabrera, 43 Phil. 64)

The ultimate object of sedition is a *violation of the public peace* or at least such a course of measures as evidently engenders it. (People vs. Perez, 45 Phil. 599)

What distinguishes sedition from rebellion is the object or purpose of the uprising.

The accused contended that the crime committed by him was only sedition, because the uprising took place only in a municipality, which was a small territory.

Held: **What distinguishes sedition from rebellion is not the extent of the territory covered by the uprising *but rather the object at which the uprising aims.* The purpose of the Sakdal uprising was to obtain the independence of certain portions of the territory from the government and withdrawing it from the authority of the central government. That is one of the purposes of the uprising in rebellion. It is not one of the objects of sedition as enumerated in Article 139. (See League vs. People, 73 Phil. 155)**

In both rebellion and sedition, there must be public uprising. While in rebellion there must be *taking up of arms against the Government;* in sedition, it is sufficient that the public uprising is tumultuous.

While in sedition, the purpose of the offenders may be political or social; in rebellion, it is always political.

If the purpose of the *uprising is not exactly against the Government* and not for the purpose of doing the things defined in Art. 134 of the Revised Penal Code, but merely to attain by force, intimidation, or by other means outside of legal methods, *one object,* to wit, to inflict an act of hate or revenge upon the person or property of a public official, like the town mayor, it is sedition.

People vs. Umali
(96 Phil. 185)

Facts: **On the eve of the election, at the house of Pasumbal's father, then being used as his electoral headquarters, Congressman Umali instructed Pasumbal to contact the Huks through Commander Abeng so that Punzalan would be killed. Pasumbal, complying with the order of his Chief (Umali), went to the mountains which were quite near the town and held a conference with Commander Abeng. It would seem that Umali and Pasumbal had a feeling that Punzalan was going to win in the election the next day, and that his death was the surest way to eliminate him from the electoral fight.**

In the evening of the same day, Pasumbal reported to Umali about his conference with Commander Abeng, saying that the latter was agreeable to the proposition and even outlined the manner of attack.

After waiting for sometime, Abeng and his troops numbering about fifty, armed with garands and carbines, arrived. Congressman Umali, holding a revolver, was seen in the company of Huk Commander Torio and about

30 armed men. Then shots were heard. Afterwards they saw Umali and his companions leave in the direction of Taguan, by way of the railroad tracks.

Held: We are convinced that the principal and main, though not necessarily the most serious, crime committed here was not rebellion but rather that of sedition. The purpose of the raid and the act of the raiders in rising publicly and taking up arms was not exactly against the Government and for the purpose of doing things defined in Article 134 of the Revised Penal Code. The raiders did not even attack the *Presidencia,* the seat of the local Government. Rather, the object was to attain by means of force, intimidation, etc., one object, to wit, to inflict an act of hate or revenge upon the person or property of a public official, namely, Punzalan who was then mayor of Tiaong.

Sedition distinguished from treason.

Treason, in its more general sense, is the "violation by a subject of his allegiance to his sovereign or liege, lord, or to the supreme authority of the State." (Century Dictionary) Sedition, in its more general sense, is "the raising of commotions or disturbances in the State." (U.S. vs. Abad, 1 Phil. 437)

Can sedition be committed by one person?

Note the clause in the opening sentence of Art. 189, which says: "The crime of sedition is committed by *persons* who rise publicly and *tumultuously.*" In Art. 163, the word "*tumultuous*" is given a definite meaning. It says that "the disturbance x x x shall be deemed to be *tumultuous* if caused by *more than* three persons who are armed or provided with means of violence."

Preventing public officers from freely exercising their functions.

People vs. Tahil and Tarson
(52 Phil. 318)

Facts: Commander Green, with a group of soldiers, stationed himself about 50 meters in front of the fort where he found a red flag flying and demanded the surrender of Datu Tahil, a warrant of arrest having been issued against him and his followers. He did not receive any reply to his intimation, and, in turn, a group of armed Moros appeared at the left flank of the Constabulary soldiers in the act of attacking them, but were repelled. It was again intimated that Datu Tahil surrender, but again no answer was received, and then a large group of Moros appeared in an aggressive attitude, being likewise repelled.

Held: Having resisted the judicial warrant of arrest *by means of force* and thereby *prevented* the officers, charged with the duty of arresting

them, from performing it, Datu Tahil and his men committed the crime of sedition.

Inflicting an act of hate or revenge upon public officers.

People vs. Cabrera, et al.
(53 Phil. 64)

Facts: A policeman posted on Calle Real had an encounter with some constabulary soldiers, resulting in the death of a constabulary private. This encounter engendered on the part of the constabulary soldiers a desire for revenge against the police force in Manila. They escaped from the barracks with their guns and made an attack upon the police force. They fired in the direction of the intersection of Calles Real and Cabildo, killing a policeman and a civilian. They also fired upon a passing street car, slaying one and wounding other innocent passengers. They attacked the Luneta Police Station and the office of the secret service.

Held: The crime committed is sedition. The object of the uprising was to inflict an act of hate or revenge upon the persons of the policemen who were public officers or employees.

The object of the uprising in the case of *People vs. Cabrera, et al.*, is that one stated in paragraph 3 of Article 139. Note also that in sedition, the offenders need not be private individuals.

"Against private persons or any social class."

U.S. vs. Lapus, et al.
(4 Phil. 148)

Facts: On the night of June 3, 1902, a band composed of about four hundred men, among whom were the accused, armed with guns, revolvers, talibones, bolos, and clubs, raided the town, firing shots, yelling and frightening the inhabitants thereof; that some of said band went to the house of the municipal president, while others raided several houses, taking captive sixty or seventy inhabitants thereof; and that they roamed about the streets of the town threatening and intimidating the people.

The reason for the uprising was that the rich people were loaning money at usurious terms to their farm laborers, and when the latter were unable to pay the loan they compelled their children to work for them as servants; and that since the wealthy landowners continued oppressing the poor, they had to disturb the town, because the law must be equally applied to the rich and the poor.

The association called "Santa Iglesia," to which the accused belonged, was organized for the purpose of performing acts of hatred and vengeance against the authorities and the wealthy people in the town in which were put in practice and execution acts tending to such political-social ends.

Held: The facts as stated constitute the crime of sedition.

Public uprising and an object of sedition must concur.

1. *No public uprising — no sedition.*

While the municipal council was in session, some 500 residents of the town assembled near the municipal building. A large number of them crowded into the council chamber and demanded the dismissal from office of the municipal treasurer, the secretary and the chief of police, and the substitution in their places of new officials, because those officials took sides in the religious differences between residents of the municipality. The persons who took part were wholly unarmed, except that a few carried canes. The crowd was fairly orderly and well-behaved. The council acceded to their wishes and drew up a formal document, which was signed by the councilors and by several leaders of the crowd.

They were prosecuted for sedition, allegedly for having prevented the municipal government from freely exercising its functions. The prosecution contended that by the very threat of their presence in the council chamber they imposed their will upon the municipal authorities. It was held that there was no sedition, because there was no public and tumultuous uprising. (U.S. vs. Apurado, *et al.*, 7 Phil. 422)

2. *No object of sedition — no sedition.*

Five persons, armed with carbine and Tommy gun, attacked a truck wherein eight policemen, the chief of police, and other passengers were riding. Two policemen, the truck operator and two children were killed and two policemen were wounded. The accused were charged with the crime of sedition with multiple murder and double frustrated murder.

It was held that there was no sedition because the purpose of the attack was not known. The accused were held liable for five murders and two frustrated murders. (People vs. Mendoza, *et al.*, G.R. No. L-2371, May 5, 1950)

Are common crimes absorbed in sedition?

In *People vs. Umali, et al.*, 96 Phil. 185, it was held that the crimes committed were those of sedition, multiple murder, arson, frustrated murder and physical injuries.

In the cases of *People vs. Cabrera, et al.*, 43 Phil. 64 and 82, the constabulary men who, to inflict an act of revenge upon the policeman, murdered six policemen and two private citizens and seriously wounded three civilians were found guilty of the separate crimes of sedition in one case, and multiple murder with grave injuries in the other case.

Art. 140. *Penalty for sedition.*[10]— The leader of a sedition shall suffer the penalty of *prision mayor* in its minimum period[11] and a fine not exceeding 10,000 pesos.

Other persons participating therein shall suffer the penalty of *prision correccional* in its maximum period[12] and a fine not exceeding 5,000 pesos.

Persons liable for sedition.

The persons liable for sedition are:

(1) The leader of the sedition, and

(2) Other persons participating in the sedition.

Art. 141. *Conspiracy to commit sedition.* — Persons conspiring to commit the crime of sedition shall be punished by *prision correccional* in its medium period[13] and a fine not exceeding 2,000 pesos.

There must be an agreement and a decision to rise publicly and tumultuously to attain any of the objects of sedition.

Thus, an agreement and a decision to attain an object of sedition without any agreement to rise publicly and tumultuously is not conspiracy to commit sedition. Such an agreement and decision may constitute a

[10]The Indeterminate Sentence Law is not applicable.
[11]See Appendix "A," Table of Penalties, No. 20.
[12]See Appendix "A," Table of Penalties, No. 13.
[13]See Appendix "A," Table of Penalties, No. 12.

conspiracy to commit direct assault of the first form (Art. 148), which is not a felony.

There is no proposal to commit sedition.

Art. 141 punishes only conspiracy to commit sedition. Hence, proposal to commit sedition is not punishable.

Art. 142. ***Inciting to sedition.*** **— The penalty of** ***prision correccional*** **in its maximum period[14] and a fine not exceeding 2,000 pesos shall be imposed upon any person who, without taking any direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending to the same end, or upon any person or persons who shall utter seditious words or speeches, write, publish, or circulate scurrilous libels against the Government (of the United States or the Government of the Commonwealth) of the Philippines, or any of the duly constituted authorities thereof, or which tend to disturb or obstruct any lawful officer in executing the functions of his office, or which tend to instigate others to cabal and meet together for unlawful purposes, or which suggest or incite rebellious conspiracies or riots, or which lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government, or who shall knowingly conceal such evil practices.** ***(As amended by Com. Act No. 202)***

Different acts of inciting to sedition.

1. *Inciting* others to the accomplishment of any of the acts which constitute sedition by means of speeches, proclamations, writings, emblems, etc.
2. *Uttering* seditious words or speeches *which tend to disturb* the public peace.

[14]See Appendix "A," Table of Penalties, No. 13.

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

When the words uttered or speeches delivered or scurrilous libels published have the tendency to disturb any lawful officer in executing the functions of office, etc., it is not necessary, to constitute a violation of Art. 142, that the purpose of the offender is to accomplish any of the objects of sedition. The second part of Art. 142, which defines the other modes of committing the crime of inciting to sedition, does not require it.

Inciting to sedition to accomplish any of its objects.

Elements:

1. That the offender *does not take direct part* in the crime of sedition.
2. That he incites others to the *accomplishment* of any of the acts which constitute sedition.
3. That the inciting is done by *means* of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending to the same end.

"Should incite others to the accomplishment of any of the acts which constitute sedition."

It is not inciting to sedition when it is *not proved* that the defendant incited the people to rise *publicly* and *tumultuously* in order to attain any of the ends mentioned in Art. 139. (sedition) (See People vs. Arrogante, 39 O.G. 1974)

Uttering seditious words or speeches.

1. *Uttering seditious words —*

Illustration:

The accused, municipal secretary, and another person, happened to meet in the municipal building of the town of Pilar, Sorsogon, and there they became engaged in a discussion regarding the administration of Governor General Wood, which resulted in the accused shouting a number of times: "The Filipinos, like myself, must use bolos for cutting off Wood's head for having recommended a bad thing for the Filipinos, for he has killed our independence."

Held: The accused uttered seditious words. His conviction must be sustained. (People vs. Perez, 45 Phil. 599)

2. *Uttering seditious speech* —

Illustration:

At a necrological service on the occasion of the death of a local communist leader, the accused delivered a speech, in the course of which he criticized the members of the Constabulary, using words substantially to the following effect: "They committed a real abuse in seizing the flag. The members of the Constabulary are bad because they shoot even innocent women, as it happened in Tayug. In view of this, we ought to be united to suppress that abuse. Overthrow the present government and establish our own government, the government of the poor. Use your whip so that there may be marks on their sides."

Held: The words used by the accused manifestly tended to induce the people to resist and use violence against the agents of the Constabulary and to instigate the poor to Cabal and meet together for unlawful purposes. They also suggested and incited rebellious conspiracies, thereby tending to stir up the people against the lawful authorities and to disturb the peace of the community and the order of the Government. *It is not necessary, in order to be seditious, that the words used should in fact result in a rising of the people against the constituted authorities. The law is not aimed merely at actual disturbance, as its purpose is also to punish utterances which may endanger public order.* (People vs. Nabong, 57 Phil. 455)

3. *Writing, publishing or circulating scurrilous libels against the Government or any of the duly constituted authorities thereof.*

Meaning of the word "scurrilous."

"Scurrilous" means low, vulgar, mean or foul.

Illustration of scurrilous libel:

The accused had his picture taken, making it to appear as if he were hanging lifeless at the end of a piece of rope suspended from a tree. He sent copies of the photograph to newspapers and weeklies of general circulation, with suicide note allegedly written by a fictitious suicide, Alberto Reveniera, and addressed to the latter's supposed wife. The note contained words that he committed suicide because he was not pleased with the administration of President Roxas; and that our government is infested with many Hitlers and Mussolinis for which reason he can not hold high brows to the world with this dirty government. He instructed his children to burn pictures of Roxas if and when they come across them.

Held: The letter is a scurrilous libel against the Government. Writings which tend to overthrow or undermine the security of the government or

to weaken the confidence of the people in the government are against the public peace, and are criminal not only because they tend to incite to a breach of the peace but because they are conducive to the destruction of the government itself. (Espuelas vs. People, 90 Phil. 524)

Uttering seditious words or speeches and writing, publishing or circulating scurrilous libels are punishable, when —

1. They *tend* to disturb or obstruct any lawful officer in executing the functions of his office; or
2. They *tend* to instigate others to cabal and meet together for unlawful purposes; or
3. They *suggest* or *incite* rebellious conspiracies or riots; or
4. They *lead* or *tend* to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government. (Article 142, 2nd part)

A theatrical play or drama where the words uttered or speeches delivered are seditious may be punished under Art. 142.

Thus, the defendant's play "Kahapon, Ngayon at Bukas," exhibited at *Teatro Libertad,* which tended to instigate others to cabal and meet together for unlawful purposes and to stir up the people against the lawful authorities and to disturb the peace of the community and the safety and order of the government, was held to be inciting to sedition. (U.S. vs. Tolentino, 5 Phil. 682)

Proposal to throw hand grenades in a public place, intended to cause commotion and disturbance, as an act of hate and revenge against the police force, is inciting to sedition.

The defendant, during the meeting of the special police under him, informed the members of the manhandling of some of them by the members of the police force of Bacolod City and proposed the throwing of hand grenades in certain places of the City, where no harm could be done to any person, for the purpose of teaching the police force of the City a lesson, which was accomplished as planned. The act was intended to cause commotion and disturbance against the preservation of peace and order. It was committed as an *act of hate and revenge* against the police force.

It was held that the defendant was guilty of inciting to sedition and illegal possession of hand grenades. (People vs. Quimpo, C.A., 46 O.G. 3784)

Knowingly concealing such evil practices.

This is one of the ways of violating Article 142.

"Knowingly concealing such evil practices" is ordinarily an act of the accessory after the fact, but under this provision, the act is treated and punished as that of the principal.

The use of words, emblems, etc., not performance of act, is punished in inciting to sedition.

Art. 142 punishes the use of words, emblems, banners, or other representations tending to disturb the public peace or to disturb or obstruct any public officer in executing the functions of his office.

Disturbance or disorder, not necessary in inciting to sedition.

It is not necessary, in order to be seditious, that the words used should in fact result in a rising of the people against the constituted authorities. The law is not aimed merely at actual disturbance, as its purpose is also to punish utterances which may endanger public order. (People vs. Nabong, 57 Phil. 455)

There are two rules relative to seditious words:

(a) *The clear and present danger rule.*

The words must be of such a nature that by uttering them there is a danger of a public uprising and that such *danger* should be *both clear* and *imminent.*

Under the clear and present danger rule, it is required that there must be reasonable ground to believe that the danger apprehended is *imminent* and that the evil to be prevented is a serious one. There must be the probability of *serious injury* to the State.

Present refers to the time element. It used to be identified with imminent and immediate danger. The danger must not only be probable but very likely inevitable.

The clear and present danger rule is applied in this case:

A political party applied for a permit to hold a public meeting in Manila. The Mayor refused to grant permit. The refusal of the Mayor to grant permit for the holding of a public meeting was predicated upon fear that in view of the bitterness of the speeches expected from the minority men who were fresh from a political defeat and were smarting with charges of fraud against those in power, there might be breach of the peace and of public order.

Held: The danger apprehended was not imminent and the evil to be prevented was not a serious one. (Primicias vs. Fugoso 80 Phil 71)

The Mayor was ordered by the Supreme Court in *mandamus* proceedings to issue a permit.

(b) *The dangerous tendency rule.*

If the words used *tend to create* a danger of public uprising, then those words could properly be the subject of a penal clause. (People vs. Perez, *supra)*

Under the dangerous tendency rule, there is inciting to sedition when the words uttered or published could easily produce disaffection among the people and a state of feeling in them incompatible with a disposition to remain loyal to the Government and obedient to the laws.

Reasons why seditious utterances are prohibited.

Manifestly, the legislature has authority to forbid the advocacy of a doctrine designed and intended to overthrow the Government without waiting until there is a present and immediate danger of the success of the plan advocated. If the State were compelled to wait until the apprehended danger became certain, then its right to protect itself would come into being simultaneously with the overthrow of the Government, when there would be neither prosecuting officers nor courts for the enforcement of the law. (Gitlow vs. New York, 268 U.S. 652)

Unlawful rumor-mongering and spreading false information.

It is committed by any person who shall *offer,* publish, distribute, circulate and *spread rumors, false news and information* and *gossip,* or cause the publication, distribution, circulation or spreading of the same, which cause or *tend to cause panic, divisive effects* among the people, discredit of or distrust for the duly constituted authorities, *undermine the stability* of the Government and the objectives of the New Society, *endanger the public order, or cause damage to the interest or credit* of the State.

The penalty is *prision correccional* or 6 months and 1 day to 6 years imprisonment.

If the offender is a government official or employee, the accessory penalty of absolute perpetual disqualification from holding any public office shall be imposed. (Presidential Decree No. 90, which took effect on January 6. 1973)

Chapter Two

CRIMES AGAINST POPULAR REPRESENTATION

What are the crimes against popular representation?

They are:

1. Acts tending to prevent the meeting of the National Assembly and similar bodies. (Art. 143)
2. Disturbance of proceedings. (Art. 144)
3. Violation on parliamentary immunity. (Art. 145)

Section One. — Crimes against legislative bodies and similar bodies

Art. 143. ***Acts tending to prevent the meeting of the Assembly and similar bodies.*** **— The penalty of *prision correccional*[1] or a fine ranging from 200 to 2,000 pesos, or both, shall be imposed upon any person who, by force or fraud, prevents the meeting of the National Assembly (Congress of the Philippines) or of any of its committees or sub-committees, constitutional commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board.** ***(As amended by Com. Act No. 264)***

Elements:

1. That *there be a projected or actual meeting* of the National Assembly or any of its committees or subcommittees, constitutional

[1] See Appendix "A," Table of Penalties, No. 10.

committees or divisions thereof, or of any provincial board or city or municipal council or board.

2. That the offender who may be any person *prevents* such meeting by *force or fraud.*

Chief of police and mayor who prevented the meeting of the municipal council are liable under Art. 143, when the defect of the meeting is not manifest and requires an investigation before its existence can be determined.

People vs. Alipit, et al.
(44 Phil. 910)

Facts: The election of the municipal president was contested on the ground of minority. He yielded the chair to the vice-president. The meeting of the municipal council presided over by the vice-president was stopped by the chief of police and the municipal president by arresting the vice-president and threatening the councilors with arrest if they would continue holding the meeting.

The councilors then dispersed, leaving the premises.

Held: Any stranger, even if he be the municipal president himself or the chief of the municipal police, must respect the meeting of the municipal council presided over by the vice-president and he has no right to dissolve it through violence under the pretext of lack of notice to some members of the council, which was not apparent, but required an investigation before it could be determined.

Art. 144. ***Disturbance of proceedings.*** **— The penalty of *arresto mayor*[2] or a fine from 200 to 1,000 pesos shall be imposed upon any person who disturbs the meetings of the National Assembly (Congress of the Philippines) or of any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board, or in the presence of any such bodies should behave in such manner as to interrupt its proceedings or to impair the respect due it.** ***(As amended by Com. Act No. 264)***

[2]See Appendix "A," Table of Penalties, No. 1.

Elements:

1. That there be a *meeting* of the National Assembly or any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board.
2. That the offender does any of the following acts:
   a. He *disturbs* any of such meetings.
   b. He *behaves* while in the presence of any such bodies in such a manner as to *interrupt* its proceedings or to *impair* the respect due it.

It must be a meeting of a legislative body or of provincial board or city or municipal council or board which is disturbed.

Thus, where during a meeting of municipal officials called by the mayor, the chief of police kept on talking although he had been asked by the mayor to sit down, and there was a heated exchange of words among the mayor, a councilor and the chief of police, the chief of police is not guilty of a violation of Art. 144, but only of unjust vexation under Art. 287. (People vs. Calera, *et al.*, C.A., 45 O.G. 2576)

The reason for this ruling is that it was not a meeting of a municipal council, the chief of police who was not a member of the council being a participant therein.

The complaint for disturbance of proceedings may be filed by a member of a legislative body.

The crime defined and penalized under Art. 144 of the Revised Penal Code is not among those which may not be prosecuted *de oficio*. Hence, it may be commenced upon the written complaint of a member of the Municipal Board the proceedings of which were disturbed or interrupted although such member was not authorized by the rules or a resolution of the Board. (People vs. Lapid, C.A., 59 O.G. 4059)

One who disturbs the proceedings of the National Assembly may also be punished for contempt by the Assembly.

The implied power to punish for contempt of the National Assembly is *coercive* in nature. The power to punish crime is *punitive* in character. Thus, the same act could be made the basis for contempt proceedings and for criminal prosecution. (Lopez vs. De los Reyes, 55 Phil. 170)

Section Two. — Violation of parliamentary immunity

Art. 145. ***Violation of parliamentary immunity.*** **— The penalty of *prision mayor*[3] shall be imposed upon any person who shall use force, intimidation, threats or fraud to prevent any member of the National Assembly (Congress of the Philippines) from attending the meetings of the Assembly (Congress) or of any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, from expressing his opinions or casting his vote; and the penalty of *prision correccional*[4] shall be imposed upon any public officer or employee who shall, while the Assembly (Congress) is in regular or special session, arrest or search any member thereof, except in case such member has committed a crime punishable under this Code by a penalty higher than *prision mayor. (As amended by Com. Act No. 264)***

Acts punishable under Art. 145:

1. **By using force, intimidation, threats, or frauds to prevent any member of the National Assembly from (1) attending the meetings of the Assembly or of any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or from (2) expressing his opinions, or (3) casting his vote.**

Elements:

(1) **That the offender uses *force, intimidation, threats or fraud.***

(2) **That the purpose of the offender is to prevent any member of the National Assembly *from* —**

(a) ***attending*** **the meetings of the Assembly or of any of its committees or constitutional commissions, etc.; or**

(b) ***expressing*** **his opinions; or**

(c) ***casting*** **his vote.**

[3] See Appendix "A," Table of Penalties, No. 19.
[4] See Appendix "A," Table of Penalties, No. 10.

Note: **The offender is any person.**

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

Elements:

(1) **That the offender is a public officer or employee;**

(2) **That he *arrests* or *searches* any member of the National Assembly;**

(3) **That the Assembly, at the time of arrest or search, is in *regular* or *special session*;**

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

"To prevent any member x x x from attending," etc.

It is not necessary that a member of the Assembly is actually prevented from attending the meeting of "the National Assembly," or from expressing his opinion or casting his vote. It is sufficient that the offender, in using force, intimidation, threats, or frauds, has the purpose to prevent a member of the National Assembly from exercising any of his such prerogatives.

Parliamentary immunity does not protect members of the National Assembly from responsibility before the legislative body itself.

Parliamentary immunity guarantees the legislator complete freedom of expression without fear of being made responsible in criminal or civil actions before the courts or any other forum *outside* of the Congressional Hall. But it does not protect him from responsibility before the legislative body itself whenever his words and conduct are considered by the latter disorderly or unbecoming of a member thereof.

For unparliamentary conduct, members of Parliament or of Congress have been, or could be censured, committed to prison, suspended, even expelled by the votes of their colleagues. (Osmeña, Jr. vs. Pendatun, *et al.*, 109 Phil. 863)

Under the 1987 Constitution.

The 1987 Constitution exempts member of Congress from arrest, while the Congress is in session, for all offenses punishable by a penalty less than *prision mayor.* It provides:

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

Under the 1987 Constitution, therefore, a public officer who arrests a member of Congress who has committed a crime punishable by *prision mayor* (6 yrs. and 1 day to 12 years) is not liable under Art. 145.

Note: To be consistent with the 1987 Constitution, the phrase "by a penalty higher than *prision mayor*" in Art. 145 should be amended to read: "by the penalty of *prision mayor* or higher."

Chapter Three

ILLEGAL ASSEMBLIES AND ASSOCIATIONS

Art. 146. ***Illegal assemblies.***— **The penalty of** ***prision correccional*** **in its maximum period**[1] **to** ***prision mayor*** **in its medium period shall be imposed upon the organizers or leaders of any meeting attended by armed persons for the purpose of committing any of the crimes punishable under this Code, or of any meeting in which the audience is incited to the commission of the crime of treason, rebellion or insurrection, sedition or assault upon a person in authority or his agents. Persons merely present at such meeting shall suffer the penalty of** ***arrestomayor,***[2] **unless they are armed, in which case the penalty shall be** *prision* ***correccional.***[3]

If any person present at the meeting carries an unlicensed firearm, it shall be presumed that the purpose of said meeting, insofar as he is concerned, is to commit acts punishable under this Code, and he shall be considered a leader or organizer of the meeting within the purview of the preceding paragraph.

As used in this article, the word "meeting" shall be understood to include a gathering or group, whether in a fixed place or moving. ***(As amended by Rep. Act No. 12)***

What are illegal assemblies?

They are:

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

[1] See Appendix "A," Table of Penalties, No. 18.
[2] See Appendix "A," Table of Penalties, No. 1.
[3] See Appendix "A," Table of Penalties, No. 10.

Requisites:

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

b. That the meeting is attended by armed persons;

c. That the purpose of the meeting is to commit any of the crimes punishable under the Code.

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

Requisites:

a. That there is a meeting, a gathering or group of persons, whether in a fixed place or moving.

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

The persons present at the meeting must be armed in the first form of illegal assembly.

What crime is committed by forty *unarmed* persons who gather together in a meeting for the purpose of committing theft of large cattle? They do not commit any crime. Note that the persons present at the meeting must be armed to constitute the first form of illegal assembly. If at all, they only conspire to commit qualified theft which is not punishable.

But not all the persons present at the meeting of the 1st form of illegal assembly must be armed.

Suppose seven of the *forty persons* are armed, the *rest are not,* and the purpose of the gathering is to commit robbery, must the meeting be considered an illegal assembly? Yes, because the law does not state how many of the persons attending the meeting must be armed. It is said that a good number, say, at least, four must be armed.

The unarmed person merely present at the meeting of the 1st form of illegal assembly is liable.

If the purpose of the armed persons attending the meeting is to commit any of the crimes punishable under the Revised Penal Code, does an unarmed person merely present incur criminal liability?

The last sentence of the 1st paragraph of Art. 146, says: "*Persons merely present as such meeting* shall suffer the penalty of *arresto mayor, unless they are armed,* in which case the penalty shall be *prision correccional.*" Hence, the penalty of *arresto mayor* is intended for persons present at the meeting who are not armed.

"Any meeting in which the audience is incited to the commission of the crime of rebellion, sedition, etc.

Suppose the purpose of the meeting was to incite a group of persons to commit rebellion or sedition, would it be an illegal assembly if before any actual inciting could take place the Constabulary soldiers stopped the meeting and dispersed the people?

Note that the law uses the phrases, "the audience is incited."

That the audience is *actually incited* to the commission of any of the crimes of sedition, rebellion, etc. seems to be a necessary element of the second form of illegal assembly.

When there is an actual inciting, the act would not be punishable only as inciting to rebellion or inciting to sedition, because in illegal assembly "in which the audience is incited to the commission of" rebellion or sedition, the persons liable are the organizers or leaders of, and persons merely present at, the meeting; whereas, in inciting to rebellion or to sedition, the person liable is only the one who "shall incite others" (Art. 138); or "should incite others." (Art. 142)

If in a meeting the audience is incited to the commission of rebellion or sedition, the crimes committed are (1) illegal assembly as regards: (a) the organizers or leaders, and (b) persons merely present; and (2) inciting to rebellion or sedition insofar as the one inciting them is concerned.

Persons liable for illegal assembly:

1. The organizers or leaders of the meeting.
2. Persons merely present at the meeting.

As illegal assembly is a felony, the persons merely present at the meeting must have a common *intent* to commit the felony of illegal assembly. The absence of such intent may exempt the person present from criminal liability.

Thus, if a person happens to be present at an illegal assembly out of curiosity, he is not liable.

Responsibility of persons merely present at the meeting:

1. If they are *not armed,* the penalty is *arresto mayor.*
2. If they carry arms, like *bolos* or knives, or *licensed firearms,* the penalty is *prision correccional.*

If any person present at the meeting carries an unlicensed firearm:

1. It is presumed that the *purpose* of the *meeting* insofar as he is concerned, is to commit acts punishable under the Code; and
2. He is considered a *leader or organizer* of the meeting.

The word "meeting" includes a gathering or group which is moving.

A gathering or group, whether in a *fixed* place or *moving,* is included in the word "meeting."

Art. 147. *Illegal associations.* — The penalty of *prision correccional* in its minimum and medium periods[4] and a fine not exceeding 1,000 pesos shall be imposed upon the founders, directors, and presidents of associations totally or partially organized for the purpose of committing any of the crimes punishable under this Code or for some purpose contrary to public morals. Mere members of said associations shall suffer the penalty of *arresto mayor.*[5]

What are illegal associations?

They are:

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

[4]See Appendix "A," Table of Penalties, No. 14.
[5]See Appendix "A," Table of Penalties, No. 1.

Persons liable for illegal association:

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

Example of illegal association:

The *LapiangSakdalista* was declared an illegal association, because it strived to stir up dissatisfaction among the laboring class, instigated them to break the laws and led them to bloody riots and inflamed them to rise up against the government. (People vs. Ramos, C.A., 40 O.G. 2305)

The *Lapiang Sakdalista* was declared an illegal association by the Court of Appeals, because it was organized for the purpose of overthrowing the government by force of arms, which is rebellion, a crime punishable under the Revised Penal Code.

Illegal association distinguished from illegal assembly.

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

(b) In illegal assembly, it is the *meeting* and *attendance* at such meeting that are punished; in illegal associations, it is *the act of forming or organizing* and *membership in* the association that are punished.

(c) In illegal assembly, the persons liable are: (1) the organizers or leaders of the meeting, and (2) the persons present at meeting. In illegal association, the persons liable are: (1) the founders, directors and president, and (2) the members.

Subversion.

The crime of subversion was first punished under Rep. Act No. 1700, otherwise known as the Anti-Subversion Act. P.D. No. 885 (Revised Anti-Subversion Law) superseded R.A. No. 1700.

Executive Order No. 167 revived Rep. Act No. 1700 and repealed P.D. No. 885. R.A. No. 1700 was later amended by Executive Order No. 276 (1987).

Rep. Act No. 7636 (1992) repealed Rep. Act No. 1700, as amended. There is currently no law which punishes subversion.

Acts punished under the Anti-Subversion Act (Rep. Act No. 1700):

1. Knowingly, willfully and by overt acts (a) affiliating oneself with, (b) becoming, or (c) remaining a member of the Communist Party of the Philippines and/or its successors or of any subversive association as defined in Sec. 2 of the Act;

2. Conspiring with any other person to overthrow the Government of the Republic of the Philippines or the government of any of its political subdivisions by force, violence, deceit, subversion or other illegal means, for the purpose of placing such government or political subdivision under the control and domination of any alien power; and

3. Taking up arms against the Government, the offender being a member of the Communist Party or of any subversive association as defined in Sec. 2 of the Act.

What organizations are declared illegal and outlawed under Sec. 2 of Rep. Act No. 1700?

The Communist Party, which is declared to be an organized conspiracy, any other organization and their successors having the purpose of overthrowing the Government of the Republic of the Philippines to establish in the Philippines a totalitarian regime and place the Government under the control and domination of an alien power are declared illegal and outlawed.

Violation of Anti-Subversion Act is distinct from that of rebellion.

Violation of Republic Act No. 1700, or subversion, as it is more commonly called, is a crime distinct from that of actual rebellion. The crime of rebellion is committed by rising publicly and taking up arms against the Government for any of the purposes specified in Article 134 of the Revised Penal Code; while the Anti-Subversion Act (Republic Act No. 1700) punishes affiliation or membership in a subversive organization as defined therein. In rebellion, there must be a public uprising and taking of arms against the Government; whereas, in subversion, mere membership in a subversive association is sufficient, and the taking up of arms by a member of a subversive organization against the Government is but a circumstance which raises the penalty to be imposed upon the offender. (People vs. Liwanag, 74 SCRA 473)

Acts punished under the Revised Anti-Subversion Law (P.D. No. 885):

1. **Knowingly, willfully and by overt act affiliating with, becoming or remaining a member of a subversive association or organization as defined in Sec. 2 thereof;**
2. **Taking up arms against the Government, the offender being a member of such subversive association or organization.**

What are subversive associations and organizations under Sec. 2 of P.D. No. 885?

Any association, organization, political party, or group of persons organized for the *purpose of Overthrowing* the Government of the Republic of the Philippines or for the *purpose of removing from the allegiance* to said government or its laws, the territory of the Philippines or any part thereof, *with the open or covert assistance or support of a foreign power* by force, violence, deceit or other illegal means.

Chapter Four

ASSAULT UPON, AND RESISTANCE AND DISOBEDIENCE TO, PERSONS IN AUTHORITY AND THEIR AGENTS

Art. 148. ***Direct assaults.*** **— Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of *prision correccional* in its medium and maximum periods[1] and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prision correccional* in its minimum period[2] and a fine not exceeding 500 pesos shall be imposed.**

Additional penalty for attacking ambassador or minister.

Any person who assaults, strikes, wounds or in any other manner offers violence to the person of an ambassador or a public minister, in violation of the law of nations, shall be imprisoned not more than three years and fined not exceeding two hundred pesos, in the discretion of the court, in addition to the penalties that may be imposed under the Revised Penal Code. (Sec. 6, Rep. Act No. 75)

[1]See Appendix "A," Table of Penalties, No. 15.
[2]See Appendix "A," Table of Penalties, No. 11.

Direct assaults are different from ordinary assault without intent to kill or physical injuries under Arts. 263 to 266.

Direct assaults are crimes against public order; ordinary assaults under Arts. 263 to 266 are crimes against persons.

Direct assaults are triable by the Court of First Instance (now, Regional Trial Court). (Villanueva vs. Ortiz, 108 Phil. 493; Salabsalo vs. Angcoy, 108 Phil. 649)

Two ways of committing the crime of direct assaults :

1. Without public uprising, by employing *force* or *intimidation* for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition.
2. Without public uprising, by *attacking,* by *employing force,* or by *seriously intimidating* or *seriously resisting* any person in authority or any of his agents, while engaged in the performance of official duties, or on the occasion of such performance.

Elements of the 1st form of direct assault:

1. That the offender employs *force* or *intimidation.*
2. That the *aim* of the offender is to *attain* any of the *purposes* of the crime of *rebellion* or any of the objects in the crime of *sedition.*
3. That there is *no* public uprising.

Examples of the 1st form of direct assault:

U.S. vs. Dirain
(4 Phil. 541)

Facts: The chief of police, accompanied by four policemen, all armed, went to the house of the municipal president and compelled him by force to go to the municipal building, where they kept him for four hours, because their salaries had been in arrears for some time and they had been unable to secure payment of them from the president. After the relatives of the president sent him money sufficient to pay the salaries, he was allowed to depart.

Held: That these facts constitute the commission of the crime charged in the complaint.

There is force in this case. But there is no public uprising. When the accused, compelled by force the municipal president to go with them to the municipal building and detained him there, they inflicted an act of hate or

revenge upon a public officer. This is one of the objects of sedition which the accused aimed to attain.

Direct assault to prevent popular election.

The act of the accused in preventing by *force* the holding of a popular election in certain precincts, *without* public uprising, is direct assault (of the first form). (See Clarin vs. Justice of the Peace, G.R. No. L-7661, April 30, 1955)

Is it necessary that the offended party in the first form of direct assault be a person in authority or his agent?

The first part of Article 148 does not seem to require it. If the aim of the offender is to attain an object of sedition, the offended party may be a private individual or person belonging to a social class. (See paragraph No. 4 of Art. 139)

Elements of the 2nd form of direct assault:

1. That the offender (a) makes an attack, (b) employs force, (c) makes a serious intimidation, or (d) makes a serious resistance.
2. That the person assaulted is a *person in authority* or *his agent.*
3. That at the time of the assault the person in authority or his agent (a) is *engaged in the actual* performance of official duties, or that he is assaulted, (b) by reason of the past performance of official duties.
4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties.
5. That there is no public uprising.

First element. — *(The offender makes an attack, employs force, etc.)*

"Shall attack."

The word "attack" includes any offensive or antagonistic movement or action of any kind.

"Employ force."

What degree of force is necessary in direct assault?

If the offended party is only an agent of *a person in authority,* the force employed must be of a *serious character* as to indicate determination to defy the law and its representative at all hazards.

Hitting a policeman in the breast with a fist is not direct assault.

U.S. vs. Tabiana
(37 Phil. 515)

Facts: **The accused, while being placed under arrest by three policemen, hit one of them in the breast with his fist. The policemen then seized the accused by the wrist, whereupon he ceased to resist.**

Held: **The words in Art. 148 relating to the employment of force appear to have reference to something more dangerous to civil society than a simple blow with the hands at the moment a party is taken into custody by a policeman.**

Pushing a policeman and giving him fist blows without hitting him is not direct assault.

Where the appellant had shouted to the offended party (a policeman) and accused him of knowing very little about investigation, and while the offended party was taking him to the desk sergeant, he pushed said offended party and gave him blows with his hands which, however, he was able to evade, the aggression should not be considered as an assault but merely as resistance to an agent of a person in authority. (People vs. Reyes, 40 O.G. Supp. 11, 24, cited in People vs. Bustamante, C.A., 52 O.G. 287)

Where the force employed on the agent of a person in authority is of a serious character, including determination to defy the law and its representative, the crime committed is direct assault.

Thus, where three American soldiers asked a policeman if he wanted to fight, and then, without waiting for a reply, seized the latter by the throat, threw him to the ground, and struck him several blows with the club which the accused, one of the three soldiers, wrested from the policeman, it was held that the accused was guilty of the crime of assaulting a police officer. (U.S. vs. Cox, 3 Phil. 140)

Where a police officer tried to arrest the accused for violation of the chicken dung ordinance, and the accused punched the police officer on his face, particularly on his lip, and then grappled with the police officer, there was direct assault. [Rivera vs. People, G.R. No. 138553, June 30, 2005]

The force employed need not be serious when the offended party is a person in authority.

U.S. vs. Gumban
(39 Phil. 76)

Facts: **The accused went to the municipal president and protested to him that the carabao of his brother was taken to the police station for having destroyed a planted area owned by Suliano. The police station happened to be within the zone affected by the quarantine. The municipal president promised to intervene in the matter and to find out whether the carabao could be withdrawn from the zone affected by the quarantine. Upon hearing this statement of the municipal president, the accused *gave him a slap on the face* striking his left ear. The municipal president was a person in authority then in the performance of his official duties, inspecting the quarantine of animals.**

Held: **Laying hands upon a person in authority while in the performance of his official duties constitutes direct assault.**

The reason for the difference in the rule as regards the degree of force employed when the offended party in direct assault is a person in authority, is that the penalty is even higher "when the offender lays hands upon a person in authority."

The intimidation or resistance must be serious whether the offended party is an agent only or he is a person in authority.

The other ways of committing direct assault of the 2nd form are (1) to seriously intimidate or (2) to seriously resist a person in authority or any of his agents. Note the word "seriously" describing the words *"intimidate"* and *"resist."*

The law, with regard to intimidation or resistance as other constitutive element of assault, expressly requires that they be *serious.* (U.S. vs. Gumban, 39 Phil. 76)

The resistance must be active.

The resistance may be active or passive. Passive, when the one who is placed under arrest throws himself on the ground and the resistance makes it necessary to raise him up or drag him along to jail.

But since the resistance here must be grave, it must be active resistance.

Example of serious resistance.

In the course of a quarrel between A and B, the latter called, "Police! Police!" and a policeman who went to the scene saw B getting up. When the policeman was about to arrest A, the latter said: "Don't come near, because I will take your life." As the policeman was approaching him, A struck him with a knife but was not hit. (U.S. vs. Samonte, 16 Phil. 516)

The intimidation must be serious.

When the constitutive element of direct assault is intimidation, it must be serious whether the offended party is an agent only or he is a person in authority.

Example of serious intimidation.

***Pointing a gun* at a military police captain who is in the performance of his duty constitutes assault upon an agent of person in authority, because there is serious intimidation. (People vs. Diama, C.A., 45 O.G. 838)**

It would seem that threatening to give a fist blow, made to a policeman who was arresting the accused, would not constitute direct assault by intimidating, because the intimidation is not serious.

The intimidation must produce its effects immediately.

The intimidation must produce its effect *immediately*, or if the threats be of some future evil, the act would not be an assault. (Albert)

Second element. — *(The person assaulted is a person in authority or his agent.)*

Art. 148, the second part, protects only public officers who are either persons *in authority or their agents.* Not every public officer is at the same time a person in authority or an agent of authority.

Thus, an attack on a *clerk* in the provincial auditor's office by holding his neck and inflicting upon him a fist blow, while the said clerk was in the performance of his duty, is not direct assault, because he is neither a person in authority nor an agent of a person in authority. (People vs. Carpizo, 80 Phil. 234)

Who is a person in authority?

Any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board, or commission, shall be deemed a person in authority. A barangay captain and

a barangay chairman shall also be deemed a person in authority. (Art. 152, as amended)

By "directly vested with jurisdiction" is meant *"the power or authority to govern and execute the laws."*

How to determine whether a certain public officer is a person in authority.

The powers and duties vested in him by law should be determined.

1. Division Superintendent of Schools.

Since under Sec. 917 of the Revised Administrative Code, a division superintendent of schools is given the power of general superintendence over schools and school interests in his division, with the right to appoint municipal school teachers and to fix their salaries, and further, since education is a state function and public policy demands an adequate protection of those engaged in the performance of this commission, a division superintendent of schools should be regarded as a person in authority. (People vs. Benitez, 73 Phil. 671)

2. President of Sanitary Division.

Under the law he is, in addition to other duties toward the protection and preservation of public health and sanitation, expressly vested with the power to enforce all sanitary laws and regulations applicable to his division and to cause all violations of the same to be duly prosecuted. He is, therefore, a person in authority or, at least, an agent of such person. (People vs. Quebral, *et al.*, 73 Phil. 640)

Teachers, etc., are persons in authority.

Teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities shall be deemed persons in authority, in applying the provisions of Arts. 148 and 151. (Com. Act No. 578, now part of Art. 152, as amended by Rep. Act No. 1978)

For other purposes, such as to increase the penalty by reason of the aggravating circumstances where a person in authority is involved, the teachers and professors are not persons in authority.

The status as a person in authority being a matter of law, ignorance thereof is no excuse.

Complainant was a teacher. She was in her classroom and engaged in the performance of her duties. The accused therefore knew that she was a

person in authority, as she was so by specific provision of law. Complainant's status as a person in authority being a matter of law and not of fact, ignorance thereof could not excuse the accused. (Article 3, Civil Code) This article applies to all kinds of domestic laws, whether civil or penal (De Luna vs. Linatoc, 74 Phil. 15), and whether substantive or remedial (Zulueta vs. Zulueta, 1 Phil. 254) for reason of expediency, policy and necessity. (People vs. Balbar, 21 SCRA 1119)

Attacking a teacher who had inflicted corporal punishment on a pupil is direct assault.

The corporal punishment (for instance, slightly slapping) inflicted by the offended party upon her pupil does not in any way strip the teacher of her being a person in authority. A teacher in public elementary school has authority to inflict corporal punishment on a pupil if no bodily harm is caused and the punishment inflicted is moderate, is not dictated by any bad motive, is such as is usual in the school, and such as the parent of the child might expect that the child would receive if he did wrong. Such authority which is inherent to the position of a teacher, especially in grade schools, is a complement of that old adage — "spare the rod and spoil the child." (People vs. Javier, CA-G.R. No. 6203, Oct. 28, 1940; People vs. Padua, C.A., 49 O.G. 156)

Reasons why teachers and professors are protected in Arts. 148 and 151.

The spirit and purpose behind Commonwealth Act No. 578 is to give teachers protection, dignity and respect while in the performance of their official duties. This protection extends not only against pupils or relatives of pupils, but against all persons who knowingly attack a teacher while engaged in the performance of his official duties. Respect for a teacher is required of all persons, whether pupils, parents, or otherwise, if we are to uphold and enhance the dignity of the teaching profession which the law similarly enjoins upon all persons for the sake of the pupils and the profession itself. (People vs. Ceprioso, C.A., 52 O.G. 2609)

Who is an agent of a person in authority?

An agent of a person in authority is one who, by *direct provision of law* or by *election* or by *appointment* by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as a barrio councilman and barrio policeman and barangay leader, and any person who comes to the aid of *persons in authority.* (Art. 152, as amended)

Examples of agents of person in authority.

The following are agents of persons in authority:

1. Policeman. (U.S. vs. Cox, 3 Phil. 140; U.S. vs. Tabiana, 37 Phil 515)
2. Municipal treasurer, because he is only a deputy *ex oficio* of the provincial treasurer, a person in authority *within the province where the latter exercises* his jurisdiction. (People vs. Ramos 57 Phil. 462)
3. Postmaster, because he is only an agent of the Director of Posts, a person in authority. (People vs. Acierto, 57 Phil. 614)
4. Rural policeman, even if he is not provided with a uniform and does not receive pay, because he is duly *appointed* by the mayor of the town and is provided with a badge. (People vs. Dosal, 92 Phil. 877)
5. Sheriff. (People vs. Hernandez, 59 Phil. 343)
6. Agents of the Bureau of Internal Revenue. (People vs. Reyes, *et al.*, C.A., 40 O.G., Supp. 11, 24)
7. Malacañang confidential agent. (People vs. Bustamante, C.A., G.R. No. 12950-R, Sept. 22, 1955)
8. Barangay Chief Tanod (People vs. Recto, G.R. No. 129069, October 17, 2001)

Attacking a special agent of the Manila Railroad Co. even while in the performance in his duty is not direct assault.

A special agent of the Manila Railroad Co. is not an agent of a person in authority, because his very appointment as special agent shows that his duties are limited to violations of law which affect the interests of the said company. Hence, giving a fist blow to such special agent while in the performance of his duty is only physical injuries. (People vs. Paras, C.A., 39 O.G. 1253)

Functions of the person in authority or his agent must be clearly shown in the information.

Even if it is possible that a particular public officer might be clothed with functions that bring him under the definition of an agent of a person in authority, still such functions must be clearly shown in the information. Merely to say that a clerk is an agent of authority is a conclusion of law. (People vs. Carpiso, 80 Phil. 234)

Third element. — (*In the performance of duty or by reason thereof.)*

The third requisite of the second form of direct assault requires that at the time such assault or intimidation or resistance is made, the person in authority or his agent (1) *is engaged* in the *actual performance* of his official duty, or (2) at least that the assault or intimidation is done *by reason of the past performance of said duty.*

While engaged in the performance of official duties.

Examples:

1. ***U.S. vs. Baluyot,* 40 Phil. 385, where the accused killed the provincial governor while engaged in the performance of his official duties. It is a complex crime of direct assault with murder.**

2. ***People vs. Tevez,* G.R. No. 41672, May 6, 1935, where the accused *elbowed* the provincial governor while the latter was going down the stairs of the municipal building for the purpose of inspecting the office of the chief of police, producing contusion on the right side of the body of the governor.**

3. ***People vs. Jalit,* C.A., 69 O.G. 3621, where a barrio captain, upon complaint of several ladies, reprimanded the accused for the ungentlemanly behaviour during a public dance held in front of the former's store, said barrio captain actually performed his duty of maintaining peace and order, although he was just clad in an undershirt and only stayed inside his store, the attack made on his person by the accused on the occasion of the performance of his official duty constitutes direct assault.**

But in the following cases, the person in authority was not *attacked while engaged* in the performance of official duties:

1. **A barrio lieutenant was shot in the head, when he tried to intervene in a case being investigated by the justice of the peace. It was held that the barrio lieutenant was not acting in the performance of his official duties at the time he was shot, because the justice of the peace was *already acting on the matter.* (U.S. vs. Marasigan, 11 Phil. 27)**

2. **During a political meeting held by a candidate supported by the municipal mayor, the accused created a disturbance. The mayor approached the accused and a personal encounter between the two ensued. The mayor was injured. It was held that the accused was not guilty of direct assault, because the mayor approached the accused, not *to maintain* order, but to prevent the meeting from becoming a failure. (People vs. Sorrano, C.A., 38 O.G. 2243)**

When a teacher is not in the performance of official duty.

A teacher who goes out of his classroom to talk to a person on matters not related to the school or his duties is not engaged in the performance of his official duties as a teacher, and if, on such occasion, he is assaulted by the person, the latter may not be held liable for the crime punished under Article 148 of the Revised Penal Code. (People vs. Gamo, CA-G.R. No. 5110-R, October 24, 1950)

A teacher who went out of his classroom to talk to his creditor about his unpaid accounts was not engaged in the performance of his official duties as a teacher. (People vs. Jingco, 63 O.G. 4443, May 22, 1967)

Extent of performance of official duties for purposes of direct assault.

A provincial fiscal was travelling to a certain municipality to investigate a witness in connection with a treason case upon the instruction of the Solicitor General. On the way, the accused, driving a service truck, refused to give way to the car in which the fiscal was riding and even zigzagged in front of the car to obstruct the way to prevent it from overtaking his truck. The fiscal signalled the truck to stop, which the accused did. The accused arrogantly refused to be investigated and to show his driver's license. He grabbed a rifle, cocked it and pointed the same to the fiscal.

Held: **The fiscal at the time he was seriously intimidated was in the act of discharging the functions of his office, and, therefore, in the performance of his official duties. (People vs. Francisco, C.A., 48 O.G. 4423)**

From the facts of the case, it would seem that the performance of the official duty of the fiscal includes his travelling to the place where he was going to conduct an investigation of a certain treason case.

It will be noted, however, that the accused, before the assault, had committed an offense, a violation of the traffic regulation, for which he could be investigated. When the fiscal investigated him and asked him to show his driver's license, the fiscal was in the performance of his official duty as a prosecuting officer.

A school teacher officially travelling from one place to another to deliver school reports and school properties in compliance with a directive of his superiors is considered engaged in the performance of official duty, and an assault committed against the teacher while on his way is direct assault upon a person in authority. The duties of teachers are not limited to the confines of the classroom because there are duties which are discharged by them outside the classrooms. (People vs. Baladhay, C.A., 67 O.G. 4213)

When the persons in authority or their agents descended to matters which are private in nature, an attack made by one against the other is not direct assault.

In a special session of the municipal council, while the accused councilor was making a speech, the offended party, another councilor, wanted to take the floor and the interruption caused by him was disliked by the accused who went to his place and pushed down his shoulder to make him sit. Thereafter, the accused threw upon him a flurry of blows which caused upon the offended party contusions and bruises on his face.

Held: **At the time the quarrel took place, the two councilors descended to matters which are of private nature, and at that very moment they were not performing their duties. While it is true that the incident took place in a session of the municipal council, the offended party tried to unreasonably interrupt the accused while the latter was speaking, thereby provoking the anger of the latter. The offended party then was not performing his duties as councilor when he was assaulted. The accused was guilty of less serious physical injuries only. (People vs. Yosoya, CA-G.R. No. 8522-R, May 26, 1955)**

When the agent of a person in authority agrees to fight.

When the accused challenged a district supervisor of the Bureau of Public Schools to a fight, for failure of the latter to accommodate the recommendee of the former for the position of teacher, even if the district supervisor accepted the challenge, the attack made by the accused constitutes direct assault, because the character of a person in authority or his agent is not assumed or laid off at will, but attaches to him until he ceases to be in office. (Justo vs. Court of Appeals, 99 Phil. 463)

When person in authority or his agent is considered not in the performance of official duties.

The scope of the respective powers of public officers and their agents is fixed. If they go beyond it and they violate any recognized rights of the citizens, then the latter may resist the invasion, especially when it is clear and manifest. The resistance must be coextensive with the excess, and should not be greater than what is necessary to repel the aggression. (3 Groizard, p. 456, cited in People vs. Chan Fook, 42 Phil. 230)

People vs. Tilos, et al.
(C.A., 36 O.G. 54)

Facts: **Upon instruction of the municipal president, the creditors having complained that the accused had not paid for their fishing net,**

the chief of police went to the beach where he found the accused in their own boat with the fishing net, and commanded them to take the net to the municipal building. Because the accused flatly refused, the chief of police become excited and chased them and came to blows with one of them as a result of which both suffered physical injuries.

Held: The chief of police was not exercising the proper functions of his office in attempting to seize the fishing net from the accused inasmuch as the municipal president, in instructing him to do so, exceeded his jurisdiction, not being clothed with judicial power with regard to the seizure of a disputed property.

In chasing and in attacking the accused, the chief of police became an unlawful aggressor and the accused in giving him fist blows merely defended himself against unlawful aggression coming from the chief of police. The accused was justified, as he acted in self-defense.

Self-defense in direct assault.

When a person in authority or his agent is the one who provokes and attacks another person, the latter is entitled to defend himself and cannot be held liable for assault or resistance nor for physical injuries, because he acts in legitimate defense. (People vs. Carado, CA-G.R. No. 12778-R, November 11, 1955)

In the following cases, the person in authority or his agent is considered not in the performance of official duties.

1. A person in authority or his agent who *exceeds his power* or acts *without authority,* is not in the exercise of the functions of his office. (People vs. Hernandez, 59 Phil. 343; People vs. Garcia, *et al.*, 38 O.G. 94; People vs. Tilos, *et al.*, *supra)*

When the agent of authority makes *unnecessary use of force or violence* to make him respected, he goes beyond the limits of his powers and from that moment, he acts as a *private person.* (People vs. Dumo, *et al.*, C.A., 40 O.G. Supp. 5, 58)

2. When the offender and the offended party, who are both persons in authority or their agents, *descend to matters* which are *private* in nature, the principle of authority is not violated. (People vs. Yosoya, *supra)*

In any of these instances, if the person in authority or his agent is attacked, the crime committed is only physical injuries or homicide, as the case may be.

Offender and offended party are both persons in authority or their agents.

An assault upon a person in authority may be committed by another person in authority as Art. 148 makes it an aggravating circumstance when the offender is a "public officer or employee."

However, there can be no assault upon or disobedience to one authority by another when they *both contend in the exercise of their respective duties.* When there is an actual conflict of jurisdiction, there is, properly speaking, no rebellion against the principle of authority, but an endeavor to enforce the authority which each of the disputants represent.

Illustration: The chief of police and the lieutenant of the Constabulary, with their respective men, simultaneously raided a gambling house. The chief of police contended that he alone should make the raid. The lieutenant of the Constabulary also claimed that he had the authority to make the raid. The chief of police attacked the lieutenant of the Constabulary and inflicted on him physical injuries while directing his men in the raid. The crime committed by the chief of police is only physical injuries.

Knowledge of the accused that the victim is a person in authority or his agent, essential.

The accused assaulting must have knowledge that the offended party was a person in authority or his agent in the exercise of his duties, because the accused must have the intention to offend, injure, or assault the offended party as a person in authority or agent of authority. (U.S. vs. Alvear, *et al.*, 35 Phil. 626; People vs. Rellin, 77 Phil. 1038; People vs. Villaseñor, 35 SCRA 460)

The information must allege such knowledge.

The information was deficient in that it did not allege an essential element of the crime of direct assault that the accused had knowledge of or knew the position of authority held by the person attacked. (People vs. Court of the First Instance of Quezon, Br. V, 68 SCRA 305)

Defendant must have the intention to defy the authorities.

The defendant had obviously, in the heat of the moment, because of what previously had happened, rushed upstairs and attempted to force his way into the sanctum of complainant's dwelling; and on the stairs when he was blocked by barrio lieutenant Donato Broca, he forthwith took hold and pulled the latter's hand causing him to fall to the ground. Nevertheless under the circumstances, he could not be presumed to have the *intention of*

defying the authorities - challenging, acting in such a way as to "constitute a danger to civil society" - in his automatic use of force in laying hands upon Broca and pulling him down. That Broca had fallen on the ground - which defendant might not have intended - is not of much consequence. The fact remains that, considering the state of mind in which defendant must have found himself at that moment, and the attendant circumstances, there would seem to be *no intent* on his part *to ignore, disregard,* much less defy the authority or its agent. Thus, in the absence of those qualifying circumstances, we choose to extend the benefit of the doubt in favor of defendant. He was found guilty of resistance, not of direct assault. (People vs. Baesa, C.A., 55 O.G. 10295-10296)

If a person, while holding a weapon and showing it to a policeman then in the performance of his duty, said, "If you were not a policeman, I would use this on you," such person is not liable for direct assault because he had no intention to defy the authority which the policeman represented.

Disregard of Respect Due to Offended Party on Account of Rank, Inherent in Direct Assault.

Direct assault is characterized by the spirit of aggression directed against the authorities or their agents, hence, the circumstance of "disregard of respect due the offended party on account of his rank" may be considered inherent therein. (*People vs. Manlapat,* CA, 51 O.G. 849) Thus, in the case of *People vs. Catacutan,* 64 Phil. 107 (1937), wherein the accused who killed a corporal, an agent of the authority who was then conducting a search by virtue of a search warrant, was found by the Court to have committed the complex crime of homicide and assault upon an agent of the authority, that circumstance was not considered aggravating nor was it taken into account in *People vs. Lojo, Jr.,* 52 Phil. 390 (1928) wherein the Court found the accused, who ran over a policeman who was signaling him to stop, guilty of two crimes, homicide and assault upon an agent of authority; nor in the case of *People vs. Hernandez,* 43 Phil. 104 (1922) wherein the court found the accused, who killed a policeman, guilty of the complex crime of homicide accompanied by assault upon an agent of authority, nor in the case of *People vs. Bangug,* 52 Phil. 87 91928) wherein the Court held that two crimes were committed by the accused in the killing of two constabulary soldiers, murder and assault against agents of authority. (People vs. Lanseta, G.R. No. L-30413, January 22, 1980)

By reason of the performance of duty.

Direct assault is also committed when the person in authority or his agent is attacked or seriously intimidated "on occasion of such performance" of official duty.

The phrase "on occasion of such performance" means that the impelling motive of the attack is the performance of official duty. The words "on occasion" signify "because" or "by reason" of the *past performance* of official duty, even if *at the very time* of the assault *no official duty was being discharged.* (Justo vs. Court of Appeals, 99 Phil. 453)

U.S. vs. Garcia
(20 Phil. 358)

Facts: The justice of the peace who read the decision he rendered in a civil suit heard the accused, who was not a party in the case, utter disrespectful and contemptuous remarks, whereupon he turned to him and said: "What have you to do with this case, when you are not a party to it? Please get out of here." The accused left but when he reached the stairway he turned back toward the justice of the peace and said in threatening manner, "We'll see," and went downstairs. When the justice of the peace started on his way home, the accused who was waiting for him nearby, followed him and when he turned to a corner accosted him and attacked him, striking him with a cane and slapping his face.

Held: The accused committed direct assault, the crime being aggravated by the fact that he laid hands upon a person in authority.

At the time the justice of the peace was attacked by the accused, the former was *not in the performance of his duty,* because he was on the street and on his way home. But the accused assaulted him by *reason of the performance of his duty,* that is, his sending out the accused to preserve the decorum in his court. Even if the motive of the assault was the fact that the accused did not agree with the decision of the justice of the peace, the assault was still by reason of the performance of his duty.

Hence, it is not necessary that the person in authority or his agent is in the actual performance of his official duty when attacked or seriously intimidated.

It is not necessary that the person in authority who was assaulted was actually performing official duties. The law employs the phrase "on occasion of such performance" and this has been interpreted to include cases like this one where the assault was made "by reason of" the performance of the duty of Judge Teodoro. The Supreme Court, citing with approval Groizard's Commentaries on the Penal Code of 1840 in the case of *U.S. vs. Sañiel,* said, "the authorities and their agents exercise duties by reason of the offices they fill. The acts they perform in their official capacity may seriously affect persons. Whenever those acts produce resentment in the latter and they, on this account, make any serious assault, intimidation, or resistance against such authorities, the crime in question is committed * * *. If the

motives that induced the guilty parties to commit the assaults are the acts performed by such person in authority or by his agents, whether such acts immediately preceded the assault or took place some time prior thereto the crime is committed on the occasion of the performance of public official duties and, consequently, the characteristic elements of *atentado* (assault) exist." (People vs. Torrecarion, C.A., 52 O.G. 7644, citing U.S. vs. Saniel 33 Phil. 646)

People vs. Hecto
135 SCRA 113

Facts: Sometime in January or February 1972, the brothers Jesus and Pedro Hecto slaughtered a carabao, without paying the corresponding slaughter fee. Upon learning of the brothers' non-payment, barangay captain Catalino Pedrosa asked Jesus to pay the fee. Jesus replied that they could not yet pay the fee as those who bought meat from them had not paid them yet. Later, when Pedrosa met the municipal treasurer, the latter told Pedrosa that he was informed by the Hecto brothers that they had already paid the fee to Pedrosa. On 27 February 1972, Pedrosa confronted the Hecto brothers about the false information they gave the municipal treasurer on their alleged payment of the slaughter fee to him. A heated discussion then ensued and the Hecto brothers tried to attack Pedrosa. Mrs. Pedrosa was able to pull her husband away and trouble was averted. On 24 March 1972, on his way home from a nephew's house, he was shot by Jesus and Pedro Hecto and thereafter, stabbed by Marcial Hecto and Roberto Silvano. The trial court convicted the accused of the complex crime of murder with assault upon a person in authority.

Held: The accused contends that the trial court erred in convicting them of the complex crime of murder with assault upon a person in authority. They pointed out that when the barangay captain was killed, he was not in actual performance of his official duties. Be that as it may, the fact is, the attack on the deceased was occasioned by the official duties done by him. As the barangay captain, it was his duty to enforce the laws and ordinances within the barangay. If in the enforcement thereof, he incurs the enmity of the people who thereafter treacherously slew him, the crime committed is murder with assault upon a person in authority.

When evidence of motive is important in direct assault.

Evidence of motive of the offender is important when the person in authority or his agent who is attacked or seriously intimidated *is not in the actual performance of his official duty.*

Thus, in the cases of *U.S. vs. Garcia* and *People vs. Torrecarion, supra,* the motive of the accused in assaulting the person in authority was the performance of the latter's official duties *done before the assault.*

Where injuries were inflicted on a person in authority who was not then in the actual performance of his official duties, the motive of the offender assumes importance because if the attack was by reason of the previous performance of official duties by the person in authority, the crime would be direct assault; otherwise, it would only be physical injuries. (People vs. Puno, G.R. No. 97471, February 17, 1993), citing People vs. Cadag, *et al.*, G.R. No. L-13830, May 31, 1961)

But when a person in authority or his agent is in *the actual performance of his official duty, the motive* of the offender is *immaterial.*

Thus, in a case where a teacher-nurse, who was about to pierce an earring hole on the earlobe of a pupil in the school clinic, was hit twice on the face by the accused, it was held that although the assault was sparked by the act of the teacher-nurse who had closed a pathway across her land through which the accused used to pass in going to and returning from the school and the motive for the offense was a dispute totally foreign to her educational labors, the crime committed was direct assault because she was attacked while engaged in the performance of her official duties. (Sarcepuedes vs. People, 90 Phil. 228)

"Without a public uprising."

This phrase, as used in Art. 148, refers to the two forms of direct assault. Hence, in direct assault of the second form, there should not be a public uprising.

If there is public and tumultuous uprising, the crime may be sedition. If the person in authority or his agent who was attacked was in the performance of his duty, the object of the uprising may be to prevent him from freely exercising his functions. If the uprising was by reason of the past performance of his official duty, the object may be to inflict an act of hate or revenge upon the person or property of the public officer.

Qualified assault.

There are two kinds of direct assault of the second form, namely:

(1) *simple* assault; and

(2) *qualified* assault.

Direct assault is qualified-

1. When the assault is committed *with a weapon;* or
2. When the offender is a *public officer or employee;* or
3. When the *offender lays hands* upon a *person in authority.*

When the assault is committed with a weapon.

Weapon includes not only firearms and sharp or cutting instruments but also stones, clubs, and any other object with which some physical injury may be inflicted. (1 Viada 203)

When the offender is a public officer or employee.

A teacher may be guilty of direct assault committed on another teacher (People vs. Monson, CA-G.R. No. 13855-R, May 20, 1958); a sanitary inspector was held guilty of direct assault committed on two policemen. (U.S. vs. Vallejo, 11 Phil. 193)

Complex crime of direct assault with homicide or murder, or with serious physical injuries.

When the person in authority or his agent is attacked and killed while in the performance of his duty or by reason thereof, the crime should be direct assault with homicide or murder, as the case may be in view of the provisions of Article 48 of the Code. (People vs. Gayrama, 60 Phil. 796; People vs. Manigbas, *et al*, G.R. Nos. L-10352-53, Sept. 30, 1960)

Where in the commission of direct assault, serious or less serious physical injuries are also inflicted, the offender is guilty of the complex crime of direct assault with serious or less serious physical injuries. (Art. 48)

The crime of slight physical injuries is absorbed in direct assault.

The slight physical injuries sustained by the policeman, then in the performance of his duty, is absorbed in the crime of direct assault, as the same is the necessary consequence of the force or violence inherent in all kinds of assault. (People vs. Acierto, 57 Phil. 614)

Art. 149. ***Indirect assaults.*** **— The penalty of *prision correccional* in its minimum and medium periods[3] and a fine not exceeding 500 pesos shall be imposed upon any person who shall make use of force or intimidation upon any person coming to the aid of the authorities or their agents on occasion of the commission of any of the crimes defined in the next preceding article.**

[3]See Appendix "A," Table of Penalties, No. 14.

Elements:

1. That a person in authority or his agent is the victim of any of the forms of direct assault defined in Art. 148.
2. That a person comes to the aid of such authority or his agent.
3. That the offender makes use of force or intimidation upon such person coming to the aid of the authority or his agent.

Indirect assault can be committed only when a direct assault is also committed.

Art. 149 says "on occasion of the commission of any of the crimes defined in the next preceding article." (Art. 148) Hence, indirect assault can be committed only when direct assault is also committed.

Is the crime indirect assault, if a private individual who is aiding a policeman in making a lawful arrest is attacked by the person to be arrested?

It cannot be indirect assault, because the policeman who is being aided is not a victim of direct assault. The policeman is in the performance of duty, making an arrest.

Is the crime direct assault?

While it is true that under Sec. 10, Rule of 113 of the Rules of Court, every person summoned by an officer making a lawful arrest shall aid him in the making of such arrest, yet the private individual in such case is not an agent of a person in authority, because he is not coming to the aid of a *person in authority* (a policeman being an *agent* of a person in authority under Art. 152, par. 2). Hence, the crime is not direct assault, the person attacked not being an agent of a person in authority.

The offended party in indirect assaults may be private person.

It will be noted that Art. 149 states that the use of force or intimidation must be made "upon any person coming to the aid of the authorities or their agents."

A private person who comes to the *rescue* of an authority or his agent enjoys the privileges of the latter, and any person who uses force or intimidation upon such person under the circumstances is guilty of *atentado* (assault) under Art. 149. (Guevara)

Art. 150. ***Disobedience to summons issued by the National Assembly, its committees or subcommittees, by the Constitutional Commissions, its committees, subcommittees or divisions.*** **— The penalty of** *arresto* ***mayor***[4] **or a fine ranging from two hundred to one thousand pesos, or both such fine and imprisonment, shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly, its special or standing committees and subcommittees, the Constitutional Commissions and its committees, subcommittees, or divisions, or before any commission or committee chairman or member authorized to summon witnesses, refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions. The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summons or refusal to be sworn by any such body or official.** ***(As amended by Com. Act No. 52)***

Acts punished as disobedience to the National Assembly or its committee or Constitutional commission.

1. **By** *refusing,* **without legal excuse,** *to obey summons* **of the National Assembly, its special or standing committees and subcommittees, the Constitutional commissions and its committees, subcommittees or divisions, or by any commission or committee chairman or member authorized to summon witnesses.**
2. **By** *refusing to be sworn* **or placed under affirmation while being before such legislative or constitutional body or official.**
3. **By** *refusing to answer any legal inquiry* **or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions.**

[4]**See Appendix "A," Table of Penalties, No. 1.**

4. By *restraining* another from *attending as a witness* in such legislative or constitutional body.
5. By *inducing disobedience* to a summons or refusal to be sworn by any such body or official.

Note: The National Assembly is now the Congress of the Philippines, consisting of the Senate and the House of Representatives.

"Refuses, WITHOUT LEGAL EXCUSE, to obey such summons, x x x or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession."

The phrase *"without legal excuse"* in this article indicates that only disobedience without legal excuse is punishable.

Hence, Art. 150 may not apply when the papers or documents may be used in evidence against the owner thereof, because it would be equivalent to compelling him to be witness against himself. (Uy Khaytin vs. Villareal, 42 Phil. 886)

"When required by them to do so in the exercise of their functions."

The testimony of the person summoned must be upon matters into which the National Assembly has jurisdiction to inquire.

Thus, the investigation of a crime with a view to prepare the way for a court action does not come under the province of any committee of the House or Senate (now National Assembly) for the power to investigate and prosecute a crime is vested by law in the prosecuting authorities of the government. But when the investigation is for the purpose of passing a legislative measure, such investigation comes under the province of the committee of the House or Senate. (Arnault vs. Nazareno, *et al.*, 87 Phil. 29)

Refusing "to answer any legal inquiry."

When Arnault refused to divulge the identity of the person to whom he gave an amount of P440,000, whose identity the Senate investigating committee believed him to know, the Senate pronounced him guilty of contempt and ordered his imprisonment until he would be willing to identify such person. (Arnault vs. Nazareno, *et al.*, 87 Phil. 29)

Hence, any of the acts punished by Art. 150 may also constitute contempt of the National Assembly.

The court may take any action not amounting to a release of a prisoner of the National Assembly.

Any action not amounting to a release of a prisoner committed by the Senate to prison, taken by the executive or judicial department with respect to such prisoner in the legitimate discharge of its functions, is not impairment of the doctrine of the distribution of governmental powers.

The fact that a person is a prisoner of the Senate or of the House does not exclude other departments during his incarceration from trying or investigating him in matters pertaining to their spheres, in much the same way that a prisoner by judgment of a court of justice is not placed beyond the reach of the legislature and the executive to summon for examination and to allow in relation to the investigation to go anywhere under guard to get such evidence as the investigator or the prisoner might deem important. (Arnault vs. Pecson, 87 Phil. 418)

Reasons for the provisions of Article 150 and the power of the National Assembly to punish for contempt.

The power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative functions.

Experience has shown that mere requests for certain information are often unavailing and also that information which is volunteered is not always accurate or complete; so, some means of compulsion is essential to obtain what is needed. (See Arnault vs. Nazareno, *et al., supra)*

Art. 151. ***Resistance and disobedience to a person in authority or the agents of such person.*** **— The penalty of** *arresto* ***mayor***[5] **and a fine not exceeding 500 pesos shall be imposed upon any person who not being included in the provisions of the preceding articles shall resist or seriously disobey any person in authority, or the agents of such person, while engaged in the performance of official duties.**

When the disobedience to an agent of a person in authority is not of a serious nature, the penalty of *arresto* ***menor*** **or a fine ranging from 10 to 100 pesos shall be imposed upon the offender.**

[5]See Appendix "A," Table of Penalties, No. 1.

Elements of resistance and serious disobedience (par. 1):

1. That *a person in authority* or *his agent* is engaged *in the performance* of official duty or gives a lawful order to the offender.
2. That the offender *resists or seriously* disobeys such person in authority or his agent.
3. That the act of the offender is not included in the provisions of Arts. 148, 149, and 150.

Concept of the offense of resistance and disobedience.

The juridical conception of the crime of resistance and disobedience to a person in authority or his agents consists in a failure to comply with *orders directly issued* by the authorities in the exercise of their official duties. Failure to comply with legal provisions of a general character or with judicial decisions merely declaratory of rights or obligations, or violations of prohibitory decisions do not constitute the crime of disobedience to the authorities. (U.S. vs Ramayrat, 22 Phil. 183)

"While engaged in the performance of official duties."

The phrase indicates the rule that in the crime of resistance and disobedience, the person in authority or the agent of such person must be in the *actual* performance of his official duties. This is so, because there can be no resistance or disobedience when there is nothing to resist or to disobey. But when a person in authority or his agent is in the *performance of his duty* or gives an order and the performance of duty is resisted or the order is disobeyed, then the crime is committed.

The disobedience contemplated consists in the failure or refusal to obey a direct order from the authority or his agent.

U.S. vs. Ramayrat
(22 Phil. 183)

Facts: In the writ of execution issued, the justice of the peace directed the sheriff to place the plaintiff in possession of the land involved in the complaint and to make return of the writ to the court.

The accused was not willing to deliver to the plaintiff the land as he was directed to do by the sheriff.

Was the accused guilty of disobedience?

Held: The accused who was in possession of the land may have been unwilling to deliver it, but such unwillingness does not constitute an act

of disobedience. The disobedience contemplated consists in the failure or refusal to obey a *direct order.* A writ of execution issued by the court directing the sheriff to place the plaintiff in possession of the property held by the defendant, is not an order addressed to the defendant — it is addressed to the sheriff. The duty of the sheriff in this case was to place the proper person in possession. Instead of doing so, the sheriff merely ordered the defendant to deliver the property to the plaintiff.

A person cannot be guilty of disobedience to an order which is not addressed to him.

The accused would have been guilty of the offense had he refused to surrender possession of the property to *the sheriff himself,* upon demand therefor, in order that the sheriff himself might give possession to the person entitled thereto as indicated in the writ. (Concurring opinion)

The reason for the concurring opinion is that if the sheriff himself gave the order to the defendant to vacate the premises to comply with the writ of execution, such order of the sheriff would be a direct order from him to the defendant.

The accused must have knowledge that the person arresting him is a peace officer.

Thus, in a case where the accused thought that the persons arresting him were bandits, since they did not identify themselves and state before hand their mission, it was held that his resistance did not constitute an offense. (U.S. vs. Bautista, 31 Phil. 308)

Justified resistance.

The action of the accused in laying his hands on the customs secret agent, who had no right to make the search, was an adequate defense to repel the aggression of the latter, who had seized him by the arm for the purpose of searching him.

The accused was not subject to search because when the customs authorities permitted him to land in Manila, he ceased to be a passenger liable to search. (People vs. Chan Fook, 42 Phil. 230)

Example of resistance and serious disobedience.

The case of *U.S. vs. Tabiana,* 37 Phil. 515, where the accused struck the policeman on the breast with a fist when the latter was arresting the said accused, is an example of *resistance* and *serious* disobedience.

The policeman was in the performance of his duty when he was arresting the accused. The violent refusal of the accused to be arrested made him liable under par. 1 of Art. 151.

Elements of simple disobedience (par. 2).

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

"When the disobedience to an agent of a person in authority."

In view of the phrase in the second paragraph of Art. 151, it is clear that in simple disobedience, the offended party must be only an agent of a person in authority.

The act of lying on the road and refusing, despite the order of the P.C. major, to get out therefrom constitute the crime of simple disobedience.

It is unquestionable that Major Emiliano Raquidan of the Philippine Constabulary, was an agent of a person in authority; that the order he issued for the strikers to clear the road so as to maintain free passage thereon pertained particularly to his duty as peace officer to maintain peace and order; and that for disobedience or resistance to said order committed in his presence he had the right to arrest or cause the arrest of the offenders.

The defendants-appellants having obstructed the free passage along the road from the national highway to the plant of the Coca-Cola in Carlatan, by lying on the road forming roadblocks, Major Raquidan had authority to order them to clear said road so as to allow free passage thereon; and defendants-appellants having refused to obey said order, their arrest was in order. It cannot be said that because they did nothing but lie on the road they had no criminal intent to violate the law, for it was the very act of lying on the road and refusing to get out therefrom as ordered by Major Raquidan so as not to obstruct the free passage on said road that constitute the crime of resistance and disobedience to agents of the authorities with which they are charged. (People vs. Macapuno, *et al.*, C.A., 58 O.G. 4985)

Note: Each defendant was sentenced to pay a fine of P25.

Picketing must be lawful.

Republic Act No. 3600, in its Section 2, provides:

"Section 2. It shall be unlawful for any commanding officer of troop in the Armed Forces of the Philippines or individual soldier or any member thereof or any peace officer and/or armed person to bring in, introduce or escort in any manner any person who seeks to replace

strikers, in entering and/or leaving the premises of a strike area or to work in place of the strikers.

x x x.

Nothing in the Act shall be interpreted to prevent any commanding officer of troops in the Armed Forces of the Philippines or any member thereof or any peace officer from taking any measure necessary to maintain peace and order and/or protect life and property."

In the Macapuno case, there was no peaceful picketing. Republic Act No. 3600 does not prevent any peace officer from taking any measure necessary to maintain peace and order and/or to protect life and property.

Picketing is a legitimate means of economic coercion if it is confined to persuasion, if it is free from molestation or threat of physical injury or annoyance, and if there exists some lawful justification for its existence. It is lawful if it does not have an immediate tendency to intimidation of the other party to the controversy or to obstruct free passage such as the streets afford, consistent with the rights of others to enjoy the same privilege. (31 Am. Jur. 944-945) However, picketing carried on with violence, intimidation, or coercion, or so conducted as to amount to a nuisance, is unlawful. Picketing may be considered a nuisance if it constitutes an obstruction to the free use of property so as substantially to interfere with the comfortable enjoyment of life or property, or if it constitutes an unlawful obstruction to the free passage or use, in the customary manner, of a street. (31 Am. Jur. 955; People vs. Macapuno, *et al.*, 1 C.A. Rep. 748)

The order must be lawful.

The order given must be lawful; otherwise, the resistance is justified. Thus, when a policeman was *absent* during the fight, he had no *right to arrest* the man who had wounded the other, because he might have wounded him in self-defense. The resistance put up by the man to the arrest was justified. The order of the policeman that the man should submit to the arrest was not lawful. (People vs. Dauz, C.A., 40 O.G., Supp. 11, 107)

One who lawfully resists the meddling by a policeman with one's private business affairs cannot be convicted of resistance against an agent of authority. (U.S. vs. Panaligan, 14 Phil. 46; People vs. Tilos, C.A., 36 O.G. 54)

The disobedience should not be of a serious nature.

If the disobedience to an agent of a person in authority is of a serious nature, the offender should be punished under the first paragraph of Art. 151.

Direct assault distinguished from resistance or serious disobedience.

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

(2) Direct assault (2nd form) is committed in four ways: (a) by attacking, (b) by employing force, (c) by seriously intimidating, and (d) by seriously resisting a person in authority or his agent; resistance or serious disobedience is committed only by resisting or seriously disobeying a person in authority or his agent.

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

The attack or employment of force which gives rise to the crime of direct assault must be *serious* and *deliberate;* otherwise, even a case of simple resistance to an arrest, which always requires the use of force of some kind, would constitute direct assault and the lesser offense of resistance or disobedience in Art. 151 would entirely disappear. (People vs. Cauan, CA-G.R. No. 540, Oct. 11, 1938)

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

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

"Shall resist or seriously disobey."

The word "seriously" in the phrase quoted is not used to describe resistance, because if the offender seriously resisted a person in authority or his agent, the crime is direct assault.

When the attack or employment of force is not deliberate, the crime is only resistance or disobedience.

This is so, because the offender has no intent to ignore, disregard or defy the authority or his agents.

Thus, in a case where the court issued a writ of injunction, ordering the accused not to enter the land in dispute, and the sheriff told him not to enter the land, but the accused, who claimed that he was the owner of the land, with his right hand on the handle of his bolo, advanced with rapid

strides towards the sheriff, and the chief of police then present intercepted the accused, grabbed his hands as he was about to unsheath his bolo and wrested the bolo from the accused who was resisting, it was held that the accused was guilty of simple disobedience and was sentenced to pay a fine of P25. (People vs. Bacani, C.A., 40 O.G. 981)

In the case of *People vs. Baesa*, C.A., 55 O.G. 10295, where the accused in the heat of the moment and under the impulse of obfuscation pulled the hand of a barrio lieutenant, causing him to fall to the ground, it was held that he was guilty of resistance and serious disobedience under Art. 151, not direct assault. The reason for this ruling is that the employment of force by the accused was not deliberate.

In the case of *People vs. Veloso*, 48 Phil. 182, where the accused bit a policeman on the right forearm and gave him a blow in another part of the body, which severely injured the policeman, and it required two policemen to subdue him, it was held that he was guilty of resistance and serious disobedience and was sentenced to imprisonment for two months and one day, plus P200 fine. In this case, the attack and employment of force were not deliberate.

Art. 152. ***Persons in Authority and Agents of Persons in Authority — Who shall be deemed as such.*** **— In applying the provisions of the preceding and other articles of this Code, any person directly vested with jurisdiction, whether as an individual or as a member of some court or government corporation, board, or commission, shall be deemed a person in authority. A barangay captain and a barangay chairman shall also be deemed a person in authority.**

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

In applying the provisions of articles 148 and 151 of this Code, teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities, and lawyers in the actual performance of their professional duties or on the occasion

of such performance shall be deemed persons in authority. ***(As amended by B.P. Blg. 873, approved June 12, 1985)***

A person in authority is one "directly vested with jurisdiction."

By *"directly vested with jurisdiction"* is meant the power and authority to govern and execute the laws.

The following are persons in authority:

1. **The municipal mayor. (U.S. vs. Gumban, 39 Phil. 761; People vs. Bondoc, *et al.*, 47 O.G. 412)**
2. **Division superintendent of schools. (People vs. Benitez, 73 Phil. 671)**
3. **Public and private school teachers. (Art. 152, as amended by Rep. Act No. 1978)**
4. **Teacher-nurse. (Sarcepuedes vs. People, 90 Phil. 228)**
5. **President of sanitary division. (People vs. Quebral, *et al.*, 73 Phil. 640)**
6. **Provincial fiscal. (People vs. Francisco, C.A., 48 O.G. 4423)**
7. **Justice of the Peace. (U.S. vs. Garcia, 20 Phil. 358)**
8. **Municipal councilor. (People vs. Yosoya, CA-G.R. No. 8522-R, May 26, 1955)**
9. **Barrio captain and barangay chairman. (Art. 152, as amended by Presidential Decree No. 299)**

To be an agent of a person in authority, one must be charged with (1) the maintenance of public order, and (2) the protection and security of life and property.

Thus, a policeman or a constabulary soldier is an agent of a person in authority, because he is charged with the maintenance of public order and the protection and security of life and property. The municipal treasurer is also such agent of a person in authority, because in addition to the fact that he is a deputy *ex oficio* of the provincial treasurer, a person in authority, he is charged with the protection and security of government property.

***Any person* who comes *to the aid of persons in authority* is an agent of a person in authority. (Art. 152, as amended, 2nd paragraph)**

Professors of private colleges and universities, etc. are persons in authority for the purpose of Articles 148 and 151.

Teachers, professors and persons charged with the supervision of *public* or duly recognized *private* schools, colleges and universities are deemed persons in authority in applying the provisions of Art. 148 and Art. 151.

Are teachers, professors, etc., persons in authority for purposes of Art. 149?

The third paragraph of Art. 152 states that "in applying the provisions of Articles 148 and 151 of this Code," they are persons in authority. But such statement is not exclusive of Art. 149 for it merely emphasizes the application of Arts. 148 and 151.

The offender need not be a pupil or the parent of a pupil.

The defense alleged that the appellant cannot be accused of direct assault upon a person in authority because he is neither a pupil nor the parent of a pupil in the school where the complainant was teaching at the time of the attack. *Held:* The spirit and purpose behind Commonwealth Act No. 578 is to give teachers protection, dignity and respect while in the performance of their official duties. This protection extends not only against pupils or relatives of pupils, but against all persons who knowingly attack a teacher while engaged in the performance of his official duties. Respect for a teacher is required of all persons, whether pupils, parents of pupils, or otherwise, if we are to uphold and enhance the dignity of the teaching profession which the law similarly enjoins upon all persons for the sake of the pupils and the profession itself. (People vs. Ceprioso, C.A., 52 O.G. 2609)

Chapter Five

PUBLIC DISORDERS

What are the crimes classified under public disorders?

They are:

1. Tumults and other disturbances of public order. (Art. 153)
2. Unlawful use of means of publication and unlawful utterances. (Art. 154)
3. Alarms and scandals. (Art. 155)
4. Delivering prisoners from jails. (Art. 156)

Art. 153. ***Tumults and other disturbances of public order — Tumultuous disturbance or interruption liable to cause disturbance.*** **— The penalty of** ***arresto mayor*** **in its medium period to** ***prision correccional*** **in its minimum period[1] and a fine not exceeding 1,000 pesos shall be imposed upon any person who shall cause any serious disturbance in a public place, office or establishment, or shall interrupt or disturb public performances, functions or gatherings, or peaceful meetings, if the act is not included in the provisions of Articles 131 and 132.**

The penalty next higher in degree[2] shall be imposed upon persons causing any disturbance or interruption of a tumultuous character.

The disturbance or interruption shall be deemed to be tumultuous if caused by more than three persons who are armed or provided with means of violence.

[1]See Appendix "A," Table of Penalties, No. 7.
[2]See Appendix "A," Table of Penalties, No. 16.

The penalty *of arresto mayor*[3] shall be imposed upon any person who in any meeting, association, or public place, shall make any outcry tending to incite rebellion or sedition or in such place shall display placards or emblems which provoke a disturbance of the public order.

The penalty of *arresto menor* and a fine not to exceed 200 pesos shall be imposed upon those persons who in violation of the provisions contained in the last clause of Article 85, shall bury with pomp the body of a person who has been legally executed.

What are tumults and other disturbances of public order?

They are:

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

"Serious disturbance" must be planned or intended.

Where on the evening of the day before the election, a party of 100 persons composed mostly of partisans of a candidate for the office of municipal president, marched down the street and stopped in front of a house where a public meeting of another candidate was being held and some words passed between the members of the crowd on the street and the people at the windows upstairs where the meeting was being held, but no attempt was made by the party outside to enter the house or to disturb the meeting inside by any concerted action, other than by standing in a large crowd about the doors of the house in such a way as to *disturb the attention*

[3] See Appendix "A," Table of Penalties, No. 1.

of those attending the meeting inside, it was held that there being only some slight disturbance and that partisan feeling was running very high at the time, the party outside the house did not plan a serious disturbance or intend that one should take place. The accused were found guilty only of alarm (now punished under Art. 155) and were fined P5.00 each. (U.S. vs. Domingo, 19 Phil. 69)

If the act of disturbing or interrupting a meeting or religious ceremony is not committed by public officers, or if committed by public officers they are participants therein, Article 153 should be applied.

Article 153 has reference to Arts. 131 and 132, which punish the same acts if committed by public officers who are not participants in the meeting or religious worship. Hence, if the act of disturbing or interrupting a meeting or religious worship is committed by a private individual, or even by a public officer but he is a participant in the meeting or religious worship which he disturbs or interrupts, Art. 153, not Art. 131 or Art. 132, is applicable.

Meaning of "outcry."

The word "outcry" in this article means to shout *subversive* or *provocative* words tending to stir up the people to obtain by means of force or violence any of the objects of rebellion or sedition.

Inciting to sedition or rebellion distinguished from public disorder.

Question: When may an outcry or displaying of emblems or placards be a crime of inciting to rebellion or a crime of inciting to sedition, and when may it be considered a simple public disorder under paragraph 4 of Art. 153?

Answer: For an outcry or the displaying of emblems or placards to constitute inciting to commit rebellion or sedition, it is necessary that the offender *should have done the act with the idea aforethought* of inducing his hearers or readers to commit the crime of rebellion or sedition.

But if the outcry is more or less *unconscious outburst* which, although rebellious or seditious in nature, *is not intentionally calculated to induce others* to commit rebellion or sedition, it is only public disorder.

Circumstance qualifying the disturbance or interruption.

The penalty next higher in degree shall be imposed upon persons causing any disturbance or interruption of a *tumultuous character.*

Definition of the term "tumultuous."

The disturbance or interruption shall be deemed to be tumultuous if caused by *more than three* persons who are *armed* or provided with *means of violence.*

One who fired a submachine gun to cause disturbance, but inflicted serious physical injuries on another, may be prosecuted for two crimes.

The one who fired the submachine gun committed two offenses (causing serious disturbance in a public place, the people present becoming panicky and terrified, and serious physical injuries through reckless imprudence), although they arose from the same act of the offender. (People vs. Bacolod, 89 Phil. 621)

Art. 154. *Unlawful use of means of publication and unlawful utterances.* — The penalty of *arresto mayor*[1] and a fine ranging from 200 to 1,000 pesos shall be imposed upon:

1. Any person who by means of printing, lithography, or any other means of publication shall publish or cause to be published as news any false news which may endanger the public order, or cause damage to the interest or credit of the State;

2. Any person who by the same means, or by words, utterances or speeches, shall encourage disobedience to the law or to the constituted authorities or praise, justify, or extol any act punished by law;

3. Any person who shall maliciously publish or cause to be published any official resolution or document without proper authority, or before they have been published officially; or

4. Any person who shall print, publish, or distribute or cause to be printed, published, or distributed books, pamphlets, periodicals, or leaflets which do not bear the real printer's name, or which are classified as anonymous. *(As amended by Com. Act No. 202.)*

[1]See Appendix "A," Table of Penalties, No. 1.

Acts punished as unlawful use of means of publication and unlawful utterances:

(1) By publishing or causing to be published, by means of printing, lithography or any other means of publication, as news any *false news* which *may endanger* the *public order,* or cause *damage* to the *interest* or *credit* of the State.

(2) By *encouraging disobedience* to the law or to the constituted authorities or by *praising, justifying* or *extolling* any act punished by law, by the same means or by *words,* utterances or speeches.

(3) By *maliciously* publishing or causing to be published any official resolution or document *without proper authority,* or before they have been published officially.

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

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

Note the phrase "which *may* endanger the public order, or cause damage to the interest or credit of the State."

It is not necessary that the publication of the false news actually caused public disorder or caused damage to the interest or credit of the State.

The mere possibility of causing such danger or damage is sufficient. (Albert)

The offender must know that the news is false.

If the offender does not know that the news is false, he is not liable under this article, there being no criminal intent on his part.

"Which may endanger the public order," etc.

If there is no possibility of danger to the public order or of causing damage to the interest or credit of the State by the publication of the false news, Art. 154 is not applicable.

Example of No. 2:

Defendant distributed *leaflets* urging the people to disobey and resist the execution of that portion of the National Defense Act requiring

compulsory military training. He was convicted of inciting to sedition by the trial court.

Held: The crime is not inciting to sedition. The acts charged which are subversive in nature fall under paragraph 2 of Art. 154. (People vs. Arrogante, C.A., 38 O.G. 2974)

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

"SEC. 1. The reprinting, reproduction or republication by any private person or entity of textbooks, manuals, courses of study, workbooks, tentative objectives, tests, forms, and other instructional aids prepared and published by the former Bureau of Education, or by the present Bureau of Public Schools, without the previous consent or permission of the Secretary of Education, is hereby prohibited.

XXX."

Art. 155. *Alarms and scandals.* — The penalty of *arresto menor* or a fine not exceeding 200 pesos shall be imposed upon:

1. Any person who within any town or public place, shall discharge any firearm, rocket, firecracker, or other explosive calculated to cause alarm or danger;

2. Any person who shall instigate or take an active part in any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility;

3. Any person who, while wandering about at night or while engaged in any other nocturnal amusements, shall disturb the public peace; or

4. Any person who, while intoxicated or otherwise, shall cause any disturbance or scandal in public places, provided that the circumstances of the case shall not make the provisions of Article 153 applicable.

Acts punished as alarms and scandals.

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

"Shall discharge any firearm."

Under paragraph No. 1, the discharge of the firearm should *not be aimed* at a person; otherwise, the offense would fall under Article 254, punishing discharge of firearm.

"Calculated to cause alarm or danger" should be "which produces alarm or danger."

The phrase "calculated to cause alarm or danger" in paragraph No. 1 is a wrong translation of the Spanish text which reads *"que produzca alarma o peligro."*

Hence, it is the result, not the intent, that counts. The act must produce alarm or danger as a consequence.

Art. 155 does not make any distinction as to the particular place in the town or public place where the discharge of firearm, rocket, etc. is effected.

The discharge of any firearm, rocket, etc., in one's garden or yard located in the town is punished under Art. 155, as long as it produced alarm or danger.

Is the discharge of firecrackers or rockets during fiestas or festive occasions covered by paragraph 1 of Article 155?

Viada opined that it is not covered by the provision. (3 Viada, Codigo Penal, 4th Ed., pp. 711-712)

"Charivari," defined.

The term "charivari" includes a medley of discordant voices, a mock serenade of discordant noises made on kettles, tins, horns, etc., designed to annoy and insult.

Note: The reason for punishing instigating or taking active part in charivari and other disorderly meeting is to prevent more serious disorders.

Disturbance of serious nature falls under Art. 153.

If the disturbance is of a *serious nature,* the case will fall under Art. 153, not under Par. 4 of this article.

The act of a person who hurled a general insult at everybody, there being 30 persons in the hall, and challenged the owner of the billiard hall to a fight, causing *commotion* and *disorder* so that the billiard game had to be stopped momentarily, constitutes merely a violation of Art. 155, par. 4, not of Art. 153. While the *billiard* hall is a public place there was no serious public disorder caused. (People vs. Gangay, C.A., 40 O.G., Supp. 12, 171)

Art. 156. ***Delivering prisoners from jail.*** **— The penalty of** ***arresto mayor*** **in its maximum period[5] to** ***prision correccional*** **in its minimum period shall be imposed upon any person who shall remove from any jail or penal establishment any person confined therein or shall help the escape of such person, by means of violence, intimidation or bribery. If other means are used, the penalty of** ***arresto mayor***[6] **shall be imposed.**

If the escape of the prisoner shall take place outside of said establishments by taking the guards by surprise, the same penalties shall be imposed in their minimum period.

Elements:

1. That there is a person confined in a jail or penal establishment.
2. That the offender *removes* therefrom such person, or *helps the escape* of such person.

[5]See Appendix "A," Table of Penalties, No. 8.
[6]See Appendix "A," Table of Penalties, No. 1.

Prisoner may be under detention only.

The person confined may be a mere detention prisoner. Of course, the prisoner may also be by final judgment.

Hospital or asylum considered extension of jail or prison.

This article applies even if the prisoner is in the hospital or asylum when he is removed or when the offender helps his escape, because it is considered as an extension of the penal institution. (Albert)

Offender is usually an outsider.

The offense under this article is usually committed by an *outsider* who removes from jail any person therein confined or helps him escape.

It would seem that Art. 156 may also apply to an employee of the penal establishment who helps the escape of a person confined therein, provided that he does not have the custody or charge of such person. Art. 156 may also apply to a prisoner who helps the escape of another prisoner. The offender under Art. 156 is *"any person."*

If the offender is a public officer who had the prisoner in his custody or charge, he is liable for infidelity in the custody of a prisoner. (Art. 223)

The guard of the jail, who is off duty, may be held liable for delivering prisoner from jail.

A policeman assigned to the city jail as a guard, who, *while he was off duty,* brought recently released prisoner inside the jail to substitute for a detention prisoner whom he later on brought out of jail, returning said prisoner inside the jail about 5 hours thereafter, may be held liable for the crime of *delivering prisoners from jail as* defined and penalized under Article 156 of the Revised Penal Code and not for *infidelity in the custody of prisoners* defined and penalized under Article 223. (People vs. Del Barrio, *et al.*, C.A., 60 O.G. 3908)

Violence, intimidation or bribery is not necessary.

If the accused removed from jail or penal establishment a person confined therein or helped the latter's escape by means of *violence, intimidation,* or *bribery,* the penalty is higher. Hence, it is not an element of the offense.

The bribery is not the offender's act of receiving a bribe.

It is true that the crime is qualified when the removal or delivery of the prisoner is done "by means of... bribery," as, for instance, when the offender bribes the prison guard in order to achieve his end; and it is obviously true that a qualifying circumstance is an integral element of the qualified crime. But it will be noted that what constitutes the qualifying circumstance in Article 156, is the offender's act of employing bribery *(inter alia)* as a "means" of removing or delivering the prisoner from jail, and not the offender's act of receiving or agreeing to receive a bribe as a consideration for committing the offense, which could serve only as a generic aggravating circumstance under Article 14(11) of the Revised Penal Code. (People vs. Del Barrio, *et al.*,C.A., 60 O.G. 3908)

Employment of deceit is not an element of the offense.

The employment of deceit is not an essential or integral element of the crime of delivery of prisoners from jail as defined in Article 156, such that when the same is not alleged in the information and duly proved in evidence, the accused cannot be convicted of said crime. Nowhere is the employment of deceit made an essential element of the crime defined in said article. (People vs. Del Barrio, *et al., supra)*

"By other means."

Is the person, who substituted for a prisoner by taking his place in jail, liable under Art. 156? Yes, because the removal of the prisoner from jail is by other means, that is, by deceit.

A person delivering a prisoner from jail may be held liable as accessory.

But if the crime committed by the prisoner for which he is confined or serving sentence is treason, murder, or parricide, the act of taking the place of the prisoner in the prison is that of an accessory and he may be held liable as such, because he assists in the escape of the principal. (Art. 19, par. 3)

Escape of prisoner outside of prison.

If the escape of the prisoner takes place outside of said establishments *by taking the guards by surprise,* the penalty is the minimum period of that prescribed. (Art. 156, par. 2)

Liability of the prisoner who escapes.

If the prisoner removed or whose escape is made possible by the commission of the crime of delivering prisoner from jail is a *detention prisoner,* such prisoner is *not* criminally *liable.* A prisoner is criminally liable for leaving the penal institution only when there is evasion of the service of his sentence, which can be committed only by a convict by *final judgment.*

Chapter Six

EVASION OF SERVICE OF SENTENCE

Three kinds of evasion of the service of the sentence.

They are:

1. Evasion of service of sentence by escaping during the term of his sentence. (Art. 157)
2. Evasion of service of sentence on the occasion of disorders. (Art. 158)
3. Other cases of evasion of service of sentence, by violating the conditions of conditional pardon. (Art. 159)

Art. 157. *Evasion of service of sentence.*[1]— The penalty of *prision correccional* in its medium and maximum periods[2] shall be imposed upon any convict who shall evade service of his sentence by escaping during the term of his imprisonment by reason of final judgment. However, if such evasion or escape shall have taken place by means of unlawful entry, by breaking doors, windows, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution, the penalty shall be *prision correccional* in its maximum period.[3]

Elements:

1. That the offender is a *convict by final judgment.*

[1]The Indeterminate Sentence Law is not applicable.
[2]See Appendix "A," Table of Penalties, No. 15.
[3]See Appendix "A," Table of Penalties, No. 13.

2. That he is serving his sentence which consists in *deprivation of liberty.*

3. That he evades the service of his sentence *by escaping* during the term of his sentence.

The sentence must be "by reason of final judgment."

The crime of evasion of service of sentence can be committed only by a convict by *final judgment.* Hence, if the convict escapes within 15 days from the promulgation or notice of the judgment, without commencing to serve the sentence or without expressly waiving in writing his right to appeal, he is not liable under Art. 157. Detention prisoners and minor delinquents who escape from confinement are not liable for evasion of service of sentence. Detention prisoners are not convicts by final judgment since they are only detained pending the investigation or the trial of the case against them. Minor delinquents confined in the reformatory institution are not convicts, because the sentence is suspended.

If the accused escaped while the sentence of conviction was under appeal, he is not liable under Art. 157, the judgment not having become final, and this is true even if his appeal was later dismissed because he had escaped. (Curiano vs. Court of First Instance, G.R. L-8104, April 15, 1955)

Petitioner was convicted of robbery by the Court of First Instance of Albay. He appealed from the decision, but, as he escaped during the pendency of the appeal, his appeal was dismissed. As a result, he was prosecuted for evasion of service of sentence and was sentenced to the corresponding penalty. While petitioner was serving his sentence in the robbery case, he again escaped from his place of confinement. He was again prosecuted for evasion of service of sentence, and pleaded guilty.

The Solicitor General agrees with the claim of petitioner that the sentence imposed for the first alleged evasion is null and void for the reason that when he escaped, the decision of the trial court in the robbery case has not yet become final. The petitioner was sustained. (Curiano vs. CFI, [Unrep.] 96 Phil. 982)

Not applicable to sentence executed by deportation.

The accused was found guilty of a violation of the Opium Law and was sentenced to be deported. The sentence was executed. After four months, the convict returned to the Philippines in violation of the terms of said sentence. Article 157 is not applicable, because the convict was not sentenced to imprisonment and thereafter broke jail.

In this case, the executive department has its remedy by enforcing the terms of the sentence again. (U.S. vs. Loo Hoe, 36 Phil. 867)

"By escaping during the term of his imprisonment."

The word "imprisonment" in the phrase quoted is not the correct translation. The Spanish text uses the phrase *"sufriendo privacion de libertad."* Hence, it should be "by escaping during the term of his sentence which consists in deprivation of liberty."

Meaning of the term "escape."

The three prisoners-accused, with neither escort nor guard, were seen "loitering in the premises of the courthouse" which was about 600 meters from the city jail.

Did the appellants escape?

The term "escape" has been defined as to "flee from; to avoid; to get out of the way, as to flee to avoid arrest." (Black's Law Dictionary, 4th ed., p. 640) As correctly pointed out by appellee in recommending the acquittal of these appellants, the established facts belie any escape or even mere intention to escape; indeed, if escape were the purpose of the appellants, they certainly would not have loitered in the premises of the courthouse — especially considering its proximity to the city jail — where they could easily be spotted and apprehended, as they in fact were. (People vs. Lauron, *et al.*, C.A., 60 O.G. 4983)

Article 157 is applicable to sentence of destierro.

Counsel for the accused contends that person like the accused evading a sentence of *destierro* is not criminally liable under the provisions of the Revised Penal Code, particularly Article 157 of the said Code for the reason that said Article 157 refers only to persons who are imprisoned in a penal institution and completely deprived of their liberty.

The Solicitor General in his brief says that had the original text of the Revised Penal Code been in the English language, then the theory of the appellant could be upheld. However, it is the Spanish text that is controlling in case of doubt. The Spanish text of Article 157 in part reads thus:

> *"Art. 157. Quebrantamiento de sentencia. — Sera castigado con prision correccional en sus grados medio y maximo el sentenciado que quebrantare su condena, fugandose mientras estuviere sufriendo privation de libertad por sentencia firme; * * *"*

Held: We agree with the Solicitor General that inasmuch as the Revised Penal Code was originally approved and enacted in Spanish, the Spanish text governs. (People vs. Manaba, 58 Phil. 665, 668) It is clear that the word "imprisonment" used in the English text is a wrong or erroneous translation of the phrase *"sufriendo privation de libertad"* used in the Spanish text.

Destierro is a deprivation of liberty, though partial, in the sense that as in the present case, the appellant, by his sentence *of destierro,* was deprived of the liberty to enter the City of Manila.

In conclusion, we find and hold that the appellant is guilty of evasion of service of sentence under Article 157 of the Revised Penal Code (Spanish text), in that during the period of his sentence of *destierro* by virtue of final judgment wherein he was prohibited from entering the City of Manila, he entered said City. (People vs. Abilong, 82 Phil. 174-175)

Compliance with the penalty of destierro should not be excused upon so flimsy a cause.

The mere fact that, on two occasions, the accused went to the City to get her pension check, while serving the sentence of *destierro* from said City, would not insulate her from criminal liability for deliberately and willfully evading service of the *destierro* sentence. The compelling necessity for funds cannot outweigh considerations of respect for a final judgment, and is not one of the cases enumerated in the statute books as basis for exemption from criminal liability. (People vs. Janson, C.A., 59 O.G. 4689)

Circumstances qualifying the offense.

If such evasion or escape takes place —

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

"Unlawful entry."

The Spanish text uses the word *"escalamiento."* Thus, the crime is qualified if committed by climbing or scaling the wall.

Art. 158. ***Evasion of service of sentence on the occasion of disorders,*** *conflagrations, earthquakes, or other* ***calamities.*** **— A convict, who shall evade the service of his sentence, by leaving the penal institution where he shall have been confined, on the occasion of disorder resulting from a**

conflagration, earthquake, explosion, or similar catastrophe, or during a mutiny in which he has not participated, shall suffer an increase of one-fifth of the time still remaining to be served under the original sentence, which in no case shall exceed six months, if he shall fail to give himself up to the authorities within forty-eight hours following the issuance of a proclamation by the Chief Executive announcing the passing away of such calamity.

Convicts who, under the circumstances mentioned in the preceding paragraph, shall give themselves up to the authorities within the above mentioned period of 48 hours, shall be entitled to the deduction provided in Article 98.

Elements:

1. That the offender is *a convict by final judgment,* who is confined in a penal institution.
2. That there is disorder, resulting from —
   a. conflagration,
   b. earthquake,
   c. explosion,
   d. similar catastrophe, or
   e. *mutiny* in which he has not *participated.*
3. That the offender *evades* the service of his sentence by leaving the penal institution where he is confined, on the occasion of such disorder or during the mutiny.
4. That the offender *fails to give himself up* to the authorities within 48 hours *following the issuance of a proclamation by the Chief Executive* announcing the passing away of such calamity.

The offender must be a convict by final judgment.

Although Art. 158 is silent, it is required that the convict must be one by final judgment, because only a convict by final judgment can "evade the service of his sentence."

The convict must leave the penal institution.

The lower court directed the release of certain prisoners on *habeas corpus* and in support of this action made these observations:

"* * * in the opinion of this court, those prisoners who, having all the chances to escape and did not escape but remained in their prison cell during the disorder caused by war have shown more convincingly their loyalty than those who escaped under the circumstances specifically enumerated in Article 158 and gave themselves up within 48 hours. After the executive proclamation for the latter, that is, the prisoners who escaped might have been persuaded to give themselves up merely because they could see but a slim chance to avoid capture inasmuch as the government then was functioning with all its normal efficiency. And if those who are loyal merely in times of conflagration, earthquake, explosion and other similar catastrophe are considered loyal and are for that reason given in their favor one-fifth reduction of their sentence, with more reason that those who stayed in their places of confinement during the war are loyal * * *."

These are considerations that more properly belong to the legislative department, should an amendment to the law be proposed. They are likewise equitable pleas, which the executive department could properly entertain in connection with petitions for parole or pardon of the prisoners. The special allowance for loyalty authorized by Articles 98 and 158 of the Revised Penal Code refers to those convicts who, *having evaded the service of their sentences* by leaving the penal institution, give themselves up within two days. As these petitioners are not in that class, because they have not escaped, they have no claim to that allowance. For one thing, there is no showing that they ever had the opportunity to escape, or that having such opportunity, they had the mettle to take advantage of it or to brave the perils in connection with a jailbreak. And there is no assurance that had they successfully run away and regained their precious liberty, they would have, nevertheless, voluntarily exchanged it later with the privations of prison life, impelled by that sense of right and loyalty to the Government, which is sought to be rewarded with the special allowance. (Artigas Losada vs. Acenas, 78 Phil. 228-229)

Note: This is the reason why the third element requires that the convict should have left the penal institution.

The prisoner *who did not escape* from his place of confinement during the war is not entitled to a special allowance of one-fifth deduction of the period of his sentence. (Fortuno vs. Director of Prisons, 80 Phil. 178)

What is punished is not the leaving of the penal institution, but the failure of the convict to give himself up to the authorities within 48 hours after the proclamation announcing the passing away of the calamity.

Note the fourth element of Article 158 which states the manner the offense is committed.

Although Art. 158 says, "a convict who shall evade the service of his sentence by leaving the penal institution," such clause is qualified by another clause, "if he shall fail to give himself up to the authorities within forty-eight hours * * *."

If the offender fails to give himself up, he gets an increased penalty.

The penalty is that the accused shall *suffer* an increase of 1/5 of the time still *remaining to be served* under the original sentence, not to exceed six (6) months.

If the offender gives himself up he is entitled to a deduction of 1/5 of his sentence.

If he gives himself up to the authorities within 48 hours, he shall be entitled to 1/5 *deduction* of the period of his *sentence.* (Art. 98)

"Mutiny" in this article implies an organized unlawful resistance to a superior officer; a sedition; a revolt.

Mutiny implies an organized unlawful resistance to a superior officer; a sedition; a revolt. (People vs. Padilla, C.A., 46 O.G. 2151)

Thus, there is no mutiny if the prisoners disarmed the guards and escaped, because the guards are not their superior officers. In such case, the prisoners who surrendered to a barrio lieutenant and then to the police authorities, after slipping away from the escapists, are not entitled to a reduction of 1/5 of their original sentence.

Such prisoners could be held liable under Art. 157 for evasion of service of sentence.

In the case of *People vs. Padilla, supra,* the accused was not held liable for evasion of service of sentence under Art. 157, because he acted under the influence of *uncontrollable fear* of an equal or greater injury, the escapists having threatened to shoot at whoever remained in the jail.

Art. 159. *Other cases of evasion of service of sentence.*[4] — The penalty of *prision correccional* in its minimum period[5]

[4]The Indeterminate Sentence Law is not applicable.
[5]See Appendix "A," Table of Penalties, No. 11.

shall be imposed upon the convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon. However, if the penalty remitted by the granting of such pardon be higher than six years, the convict shall then suffer the unexpired portion of his original sentence.

Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the members of Congress. (Sec. 19, Art. VII of the 1987 Constitution)

He has the specific power — "To grant to convicted persons reprieves or pardons, either plenary or partial, conditional, or unconditional; to suspend sentences without pardon, fines, and order the discharge of any convicted person upon parole, subject to such conditions as he may impose; and to authorize the arrest and reincarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions, of his pardon, parole, or suspension of sentence." (Sec. 64[i] of the Revised Administrative Code)

Nature of conditional pardon — it is a contract.

A conditional pardon is a contract between the Chief Executive, who grants the pardon, and the convict, who accepts it. Since it is a contract, the pardoned convict is bound to fulfill its conditions and accept all its consequences, not as he chooses, but according to its strict terms. (People vs. Pontillas, 65 Phil. 659)

Elements of the offense of violation of conditional pardon.

1. That the offender was a convict.
2. That he was granted a conditional pardon by the Chief Executive.
3. That he violated any of the conditions of such pardon.

Two penalties are provided for in this article.

a. *Prision correccional* in its minimum period — if the penalty remitted *does not exceed* 6 years.

b. The unexpired portion of his original sentence — if the penalty remitted is *higher* than 6 years.

"If the penalty remitted by the granting of such pardon."

Illustration:

The accused was sentenced to a penalty of 6 years and 1 day of *prision mayor.* He served 2 years, 5 months and 22 days of the sentence and was granted conditional pardon. The term *remitted* by the pardon is 3 years, 6 months and 8 days. The law applicable is the first part of Art. 159 which imposes a penalty *of prision correccional* in its minimum period. (People vs. Sanares, 62 Phil. 825)

Can the court require the convict to serve the unexpired portion of his original sentence if it does not exceed six years?

No, because Art. 159 does not provide that the accused shall serve the unexpired portion in addition to the penalty of *prision correccional* minimum. The remedy is left to the President who has the authority to recommit him to serve the unexpired portion of his original sentence.

Violation of conditional pardon is a distinct crime.

Violation of conditional pardon is a *distinct crime* so that although the crime of abduction, involved in the case in which the accused was granted conditional pardon, was committed in Cavite, he should be prosecuted in Rizal where he committed robbery in violation of the conditional pardon. (People vs. Martin, 68 Phil. 122)

The violation of conditional pardon is committed in the place where the subsequent offense is perpetrated, because by committing the subsequent offense, he thereby violates the condition that "he shall not again be found guilty of any crime punishable by the laws of the Philippines."

Is violation of conditional pardon a substantive offense?

Violation of conditional pardon is not a substantive offense, because the penalty imposed for such violation is the unexpired portion of the punishment in the original sentence.

Dissenting: The dictum of the majority that "violation of a conditional pardon is not a substantive offense or independent of the crime for the commission of which the punishment inflicted in the sentence was remitted by the pardon, because the penalty imposed for such violation is the unexpired portion of the punishment imposed by the original sentence," is,

I think, incorrect. That may have been so before the enactment of Article 159 of the Revised Penal Code; but since that enactment, it is a substantive offense because the penalty therefor is no longer necessarily the remitted portion of the sentence, for when the unexpired portion is less than six years, the convict who violates the conditions of the pardon shall suffer the penalty of *prision correccional* in its minimum period. (Concurring and dissenting opinion of Justice Ozaeta, People vs. Jose, 70 Phil. 623-624)

Condition extends to special laws.

The condition imposed upon the prisoner that he should not commit another crime, extends to offenses punished by special laws, like illegal voting under the Election Law. (People vs. Coral, 74 Phil. 357)

Offender must be found guilty of subsequent offense before he can be prosecuted under Art. 159.

The phrase in the condition that the offender "shall not again commit another crime" does not mean merely being charged with an offense. It is necessary that he be found *guilty* of the offense.

A convict granted conditional pardon, like the petitioner herein who is recommitted, must of course be convicted by final judgment of a court of the subsequent crime or crimes with which he was charged before the criminal penalty for such subsequent offense(s) can be imposed upon him. Again, since Article 159 of the Revised Penal Code defines a distinct, substantive, felony, the parolee or convict who is regarded as having violated the provisions thereof must be charged, prosecuted and convicted by final judgment before he can be made to suffer the penalty prescribed in Article 159. (Torres vs. Gonzales, 152 SCRA 272)

When the penalty remitted is destierro, is the penalty for violation of the conditional pardon also destierro?

Under Article 159, when the sentence remitted by the conditional pardon does not exceed 6 years, the penalty of the grantee who violates any of the conditions of such pardon is *prision correccional* in its minimum period. It is only when the penalty remitted by the pardon is higher than 6 years that the convict shall then suffer the unexpired portion of his original sentence. Since *destierro* has a duration of 6 months and 1 day to 6 years, under no circumstance may the penalty for violation of the conditional pardon be *destierro.*

The case of *People vs. Ponce de Leon,* 56 Phil. 386, is not applicable to a violation of Art. 159.

Offender can be arrested and reincarcerated without trial.

Under Sec. 64(i) of the Revised Administrative Code, the President has the specific power to authorize the arrest and reincarceration of any convicted person granted pardon or parole who, *in his judgment,* shall fail to comply with the condition or conditions of his pardon or parole. (Tesoro vs. Director of Prisons, 68 Phil. 154)

One who violates the condition of his pardon may be prosecuted and sentenced to suffer *prision correccional* in its minimum period under Article 159 of the Revised Penal Code, without prejudice to the authority conferred upon the President by Sec. 64(i) of the Revised Administrative Code to recommit him to serve the unexpired portion, unless it exceeds 6 years in which case no penalty shall be imposed, but to serve only the unexpired portion.

The Revised Penal Code does not repeal Sec. 64(i) of the Revised Administrative Code. Sec. 64(i) of said Code and Art. 159 of the Revised Penal Code can stand together and that the proceeding under one provision does not preclude action under the other. (Sales vs. Dir. of Prisons, 87 Phil. 492)

Period when convict was at liberty, not deducted in case he is recommitted.

The time during which the convict was out of prison cannot be deducted from the unexecuted portion of his sentence. (People vs. Tapel, 64 Phil. 112)

Duration of the conditions subsequent is limited to the remaining period of the sentence.

The duration of the conditions subsequent, annexed to a pardon, would be limited to the remaining period of the prisoner's sentence, *unless* an intention to extend it beyond that time was manifest from the nature of the condition or the language in which it was imposed. (Infante vs. Provincial Warden, 92 Phil. 310)

Illustration:

A was convicted of murder and sentenced to 17 years, 4 months and 1 day of *reclusion temporal.* On March 6, 1939, after serving 15 years, 7 months and 11 days, he was granted a conditional pardon, the condition being that "he shall not again violate any of the penal laws of the Philippines." On April 29, 1949, A was found guilty of driving without a license. When A violated a penal law, ten years elapsed from the time he was granted a conditional pardon. When he was granted a conditional pardon, only 1 year, 6 months and 20 days of his sentence remained to be served.

Held: **The condition of the pardon which A was charged with having breached was no longer operative when he committed a violation of the Motor Vehicle Law. A's pardon does not state the time within which the conditions thereof were to be observed. Hence, A had to observe the conditions of the pardon only within 1 year, 6 months and 20 days. (Infante vs. Provincial Warden,** ***supra)***

Violation of conditional pardon distinguished from evasion of service of sentence by escaping.

Violation of conditional pardon does not cause harm or injury to the right of other person nor does it disturb the public order; it is merely an infringement of the terms stipulated in the contract between the Chief Executive and the criminal.

Evasion of the service of the sentence is an attempt at least to evade the penalty inflicted by the courts upon criminals and thus defeat the purpose of the law of either reforming or punishing them for having disturbed the public order. (Alvarez vs. Director of Prisons, 80 Phil. 43)

Chapter Seven

COMMISSION OF ANOTHER CRIME DURING SERVICE OF PENALTY IMPOSED FOR ANOTHER PREVIOUS OFFENSE

Art. 160. ***Commission of another crime during service of penalty imposed for another previous offense — Penalty.*** **— Besides the provisions of Rule 5 of Article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony.**

Any convict of the class referred to in this article, who is not a habitual criminal, shall be pardoned at the age of seventy years if he shall have already served out his original sentence, or when he shall complete it after reaching said age, unless by reason of his conduct or other circumstances he shall not be worthy of such clemency.

Art. 160 provides for the so-called quasi-recidivism.

Quasi-recidivism **is a special aggravating circumstance where a person, after having been convicted by final judgment, shall commit a new felony before beginning to serve such sentence, or while serving the same. He shall be punished by the maximum period of the penalty prescribed by law for the new felony.**

Elements:

1. **That the offender was already convicted by final judgment of one offense.**
2. **That he committed a new felony before beginning to serve such sentence or *while* serving the same.**

"Before beginning to serve such sentence."

A convict by final judgment for one offense may commit a new felony before beginning to serve his sentence for the first offense, when the judgment of conviction of the lower court in the first offense having been affirmed by the appellate court, and his commitment having been ordered, he committed the new felony while being taken to the prison or jail.

"Or while serving the same."

The other case where Art. 160 applies is when a convict by final judgment shall commit a new felony while serving his sentence for the first offense.

Hence, if the offender committed a new felony *after* serving the sentence for the first offense, and both offenses are embraced in the same title of the Code, he is an ordinary recidivist under Art. 14, paragraph 9, of the Code, because he did not commit the new felony before or while serving the sentence for the first offense.

Second crime must be a felony.

Note the use of the word "felony" in this article. The second crime must be a felony.

Thus, if a prisoner serving sentence for one crime is found in possession of a firearm without license, this article does not seem to apply, because the law punishing illegal possession of firearm is a special law. Must Art. 10 be made to apply in this case? No, because Art. 160 speaks of "the maximum period" of the penalty prescribed by law for the new felony. The penalty prescribed by special law has no periods like the three periods of a divisible penalty prescribed by the Revised Penal Code.

But the first crime for which the offender is serving sentence need not be a felony.

It makes no difference, for purposes of the effect of quasi-recidivism under Article 160 of the Revised Penal Code, whether *the crime for which an accused is serving sentence,* at the time of the commission of the offense charged, falls under said Code or under a special law. (People vs. Peralta, *et al.*, 3 SCRA 213; People vs. Alicia, 95 SCRA 227)

The new offense need not be of different character from that of the former offense.

The word "another" in the head note of Article 160 does *not* mean that the new felony which is committed by a person already serving sentence is

different from the crime for which he is serving sentence. Hence, even if the new offense is murder and he is serving sentence for homicide, Article 160 applies. (People vs. Yabut, 58 Phil. 499)

Quasi-recidivism does not require that the two offenses are embraced in the same title of the Code.

But Art. 160 *does not* seem to require that the offense for which the convict is serving sentence and the new felony committed while serving sentence are embraced in the same title of the Code. While in recidivism, in paragraph No. 9 of Art. 14, both the first and the second offenses must be embraced in the same title of the Gode; in quasi-recidivism, it is not so required.

Quasi-recidivism, distinguished from reiteracion.

The aggravating circumstance of "reiteracion" requires that the offender against whom it is considered shall have *served out* his sentences for the prior offenses. Here, all the accused were yet serving their respective sentences at the time of the commission of the crime of murder. The special aggravating circumstance of quasi-recidivism (Art. 160, R.P.C.) was correctly considered against all the accused. (People vs. Layson, *et al.*, L-25177, Oct. 31, 1969, 30 SCRA 93)

Quasi-recidivism cannot be offset by ordinary mitigating circumstances.

The special aggravating circumstance of quasi-recidivism *cannot be offset by any ordinary* mitigating circumstance, because Art. 160 specifically provides that the offender "shall be punished by the maximum period of the penalty prescribed by law for the new felony."

Granting that not only plea of guilty but voluntary surrender as well, are present, these cannot alter the penalty of death, since even without evident premeditation, quasi-recidivism, as a special aggravating circumstance, raises the penalty to the maximum period of that prescribed by law for the new crime committed. (People vs. Perete, 58 O.G. 8628)

Illustration of the application of penalty in quasi-recidivism.

Suppose a convict serving sentence for serious physical injuries killed another prisoner with treachery and evident premeditation. Immediately, the convict surrendered to the guard and during the trial, he pleaded guilty to the charge of murder qualified by treachery. What penalty should be imposed upon such convict?

Death penalty. Reason: Because the maximum of the penalty for murder is death and the fact that there is one mitigating circumstance (plea of guilty) left, after offsetting evident premeditation with the other mitigating circumstance (voluntary surrender), is of no consequence. Quasi-recidivism cannot be offset by any ordinary mitigating circumstance. (See People vs. Bautista, *et al.*,65 SCRA 460)

Note: But if the convict serving sentence is a minor under 16 years old, the penalty can be lowered by at least one degree. Minority is a privileged mitigating circumstance.

A quasi-recidivist may be pardoned at the age of 70 years.

The second paragraph of Art. 160 provides that a quasi-recidivist shall be pardoned when he has reached the age of 70 years and has already *served out his original sentence,* or when he shall complete it after reaching said age, unless by reason of his conduct or other circumstances, he shall not be worthy of such clemency.

But only a convict "who is not a habitual criminal" shall be pardoned.

When he is a habitual criminal, a quasi-recidivist may not be pardoned even if he has reached the age of 70 years and already served out his original sentence.

Title Four
CRIMES AGAINST PUBLIC INTEREST

What are the crimes against public interest?

They are:

1. **Counterfeiting the great seal of the Government of the Philippines, forging the signature or stamp of the Chief Executive. (Art. 161)**
2. **Using forged signature or counterfeit seal or stamp. (Art. 162)**
3. **Making and importing and uttering false coins. (Art. 163)**
4. **Mutilation of coins, importation and uttering of mutilated coins. (Art. 164)**
5. **Selling of false or mutilated coins, without connivance. (Art. 165)**
6. **Forging treasury or bank notes or other documents payable to bearer, importing, and uttering of such false or forged notes and documents. (Art. 166)**
7. **Counterfeiting, importing and uttering instruments not payable to bearer. (Art. 167)**
8. **Illegal possession and use of forged treasury or bank notes and other instruments of credit. (Art. 168)**
9. **Falsification of legislative documents. (Art. 170)**
10. **Falsification by public officer, employee or notary. (Art. 171)**
11. **Falsification by private individuals and use of falsified documents. (Art. 172)**
12. **Falsification of wireless, cable, telegraph and telephone messages and use of said falsified messages. (Art. 173)**
13. **False medical certificates, false certificates of merit or service. (Art. 174)**
14. **Using false certificates. (Art. 175)**
15. **Manufacturing and possession of instruments or implements for falsification. (Art. 176)**
16. **Usurpation of authority or official functions. (Art. 177)**
17. **Using fictitious name and concealing true name. (Art. 178)**

CRIMES AGAINST PUBLIC INTEREST

18. Illegal use of uniform or insignia. (Art. 179)
19. False testimony against a defendant. (Art. 180)
20. False testimony favorable to the defendant. (Art. 181)
21. False testimony in civil cases. (Art. 182)
22. False testimony in other cases and perjury. (Art. 183)
23. Offering false testimony in evidence. (Art. 184)
24. Machinations in public auction. (Art. 185)
25. Monopolies and combinations in restraint of trade. (Art. 186)
26. Importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious metals or their alloys. (Art. 187)
27. Substituting and altering trade marks and trade names or service marks. (Art. 188)
28. Unfair competition and fraudulent registration of trade mark or trade name, or service mark; fraudulent designation of origin, and false description. (Art. 189)

Chapter One

FORGERIES

What are the crimes called forgeries?

They are:

1. Forging the seal of the Government, signature or stamp of the Chief Executive. (Art. 161)
2. Counterfeiting coins. (Art. 163)
3. Mutilation of coins. (Art. 164)
4. Forging treasury or bank notes or other documents payable to bearer. (Art. 166)
5. Counterfeiting instruments not payable to bearer. (Art. 167)
6. Falsification of legislative documents. (Art. 170)
7. Falsification by public officer, employee or notary or ecclesiastical minister. (Art. 171)
8. Falsification by private individuals. (Art. 172)
9. Falsification of wireless, cable, telegraph and telephone messages. (Art. 173)
10. Falsification of medical certificates, certificates of merit or service. (Art. 174)

Section One. — Forging the seal of the Government of the Philippine Islands, the signature or stamp of the Chief Executive.

Art. 161. *Counterfeiting the great seal of the Government of the Philippine Islands, forging the signature or stamp of the Chief Executive.* — The penalty of *reclusion temporal*[1] shall

[1] See Appendix "A," Table of Penalties, No. 28.

be imposed upon any person who shall forge the Great Seal of the Government of the Philippine Islands or the signature or stamp of the Chief Executive.

Acts punished:

1. **Forging the *Great Seal* of the Government of the Philippines.**
2. **Forging the *signature* of the President.**
3. **Forging the *stamp* of the President.**

The Great Seal of the Republic of the Philippines.

The Great Seal is circular in form, with arms consisting of paleways of two pieces, azure and gules; a chief argent studded with three golden stars equidistant from each other; in point of honor, ovoid argent over the sun rayonnant with eight minor and lesser rays; in sinister base gules, the Lion Rampant of Spain; in dexter base azure, the American eagle displayed proper; and surrounding the whole is a double marginal circle within which are the words "Republic of the Philippines." (Sec. 18 of the Revised Administrative Code, as amended by Com. Acts Nos. 602, 614, and 731)

Custody and use of the Great Seal.

The Great Seal shall be and remain in the custody of the President of the Philippines, and shall be affixed to or placed upon all commissions signed by him, and upon such other official documents and papers of the Republic of the Philippines as may by law be provided, or as may be required by custom and usage in the discretion of the President of the Philippines. (Sec. 19, Revised Administrative Code, as amended)

The offense is not falsification of public document.

When in a Government document the signature of the President is forged, it is not called falsification. Art. 161 supplied the specific provision to govern the case. The name of the crime is forging the signature of the Chief Executive.

The signature of the President must be formed.

The act punishable, among others, is counterfeiting or making an imitation of the signature of the Chief Executive on what is made to appear as an official document of the Republic of the Philippines.

It would seem that if the Chief Executive left with his secretary a signature in blank, and a document is written above it, the crime committed is not covered by Art. 161. The one applicable is Art. 171 or Art. 172.

Art. 162. *Using forged signature or counterfeit seal or stamp.* — The penalty of *prision mayor*[2] shall be imposed upon any person who shall knowingly make use of the counterfeit seal or forged signature or stamp mentioned in the preceding article.

Elements:

1. That the Great Seal of the Republic was *counterfeited* or the signature or stamp of the Chief Executive was *forged by another person.*
2. That the offender *knew* of the counterfeiting or forgery.
3. That he *used* the counterfeit seal or forged signature or stamp.

The offender under this article should not be the forger.

The offender should not be the one who forged the great seal or signature of the Chief Executive. Otherwise, he will be penalized under Art. 161.

The act is that of an accessory but the penalty is only one degree lower.

In using forged signature or stamp of the Chief Executive, or forged seal, the participation of the offender is in effect that of an accessory, and although the general rule is that he should be punished by a penalty two degrees lower, under Art. 162 he is punished by a penalty only one degree lower.

Section Two. — Counterfeiting coins

What are the crimes under counterfeiting coins?

They are:

1. Making and importing and uttering false coins (Art. 163

[2]See Appendix "A," Table of Penalties. No. 19.

2. Mutilation of coins — importation and utterance of mutilated coins (Art. 164); and
3. Selling of false or mutilated coin, without connivance. (Art. 165)

Art. 163. ***Making and importing and uttering false coins.*** **— Any person who makes, imports, or utters false coins, in connivance with counterfeiters or importers, shall suffer:**

1. ***Prision mayor*** **in its minimum and medium periods[3] and a fine not to exceed 10,000 pesos, if the counterfeited coin be silver coin of the Philippines or coin of the Central Bank of the Philippines of ten-centavo denomination or above.**

2. ***Prision correccional*** **in its minimum and medium periods[4] and a fine not to exceed 2,000 pesos if the counterfeited coins be any of the minor coinage of the Philippines or of the Central Bank of the Philippines below ten-centavo denomination.**

3. ***Prision correccional*** **in its minimum period[5] and a fine not to exceed 1,000 pesos, if the counterfeited coin be currency of a foreign country.** ***(As amended by Rep. Act No. 4202, approved on June 19, 1965)***

Elements:

1. That there be *false* or *counterfeited* coins.
2. That the offender either *made, imported* or *uttered* such coins.
3. That in *case of uttering* such false or counterfeited coins, he *connived* with the counterfeiters or importers.

Coin, defined.

Coin is a piece of metal stamped with certain marks and made current at a certain value. (Bouvier's Law Dictionary, 519)

[3] See Appendix "A," Table of Penalties, No. 23.
[4] See Appendix "A," Table of Penalties, No. 14.
[5] See Appendix "A," Table of Penalties, No. 19

When is a coin false or counterfeited?

A coin is false or counterfeited, if it is *forged* or if it is *not authorized by the Government as legal tender,* regardless of its intrinsic value.

Counterfeiting means the imitation of a legal or genuine coin. It may contain more silver than the ordinary coin.

There is counterfeiting when a spurious coin is made. There must be an imitation of the peculiar *design* of a genuine coin. (U.S. vs. Basco, 6 Phil. 110)

Thus, if a person gave a copper cent the appearance of a silver piece, it being silver plated, and attempted to pay with it a package of cigarettes which he bought at a store, such person is not liable for counterfeiting of coin, but for estafa under Art. 318. The coin in question is a genuine copper cent, bearing its original design and inscription.

"Import," its meaning.

To import fake coins means to bring them into port. The importation is complete *before* entry at the Customs House. (U.S. vs. Lyman, 26 Fed. Cas. 1024)

"Utter," its meaning.

To utter is to pass counterfeited coins. It includes their delivery or the act of giving them away. A counterfeited coin is uttered when it is paid, when the offender is caught counting the counterfeited coins preparatory to the act of delivering them, even though the utterer may not obtain the gain he intended. (Decisions of the Supreme Court of Spain of Jan. 11, 1913; Jan. 4, 1893; Nov. 12, 1888; and Dec. 24, 1885) Hence, damage to another is not necessary.

Kinds of coins the counterfeiting of which is punished:

a. Silver coin of the Philippines or coin of the Central Bank of the Philippines.

b. Coin of the minor coinage of the Philippines or of the Central Bank of the Philippines.

c. Coin of the currency of *a foreign country.*

What are the minor coins?

Under Art. 163, as amended, the minor coins of the Philippines are the coins below ten-centavo denomination.

Former coins withdrawn from circulation may be counterfeited under Article 163.

Thus, a goldsmith accused of counterfeiting for making five-dollar, ten-dollar, and twenty-dollar U.S. gold coins which had been withdrawn from circulation under the Gold Reserve Act of 1934, is liable under paragraph 3 of Article 163 of this Code.

The reason for punishing the fabrication of a coin withdrawn from circulation is not alone the harm that may be caused to the public in case it goes into circulation again, but the possibility that the counterfeiter may later apply his trade to the making of coins in actual circulation. (People vs. Kong Leon, C.A., 48 O.G. 664)

Article 163 of the Revised Penal Code penalizes the making, importing and uttering of false coins whether of the United States, of the Philippines or of a foreign country, because it is intended to protect not only the coins legally minted in said countries, but also the public in general. The legislator has taken into consideration the bad effect of the crime of counterfeiting of coins, its importing and uttering. (People vs. Tin Ching Ting [Unrep.], 90 Phil. 870)

Note: Paragraphs 1 and 2 of Art. 163 mention "coin," without any qualifying word, such as "current."

As regards paragraph 3, which says: "if the counterfeited coin be currency of a foreign country," the use of the word "currency" is *not correct,* because the Spanish text uses the word "moneda" which embraces not only those that are legal tender, but also those out of circulation.

Art. 164. *Mutilation of coins — Importation and utterance of mutilated coins.* — The penalty of *prision correccional* in its minimum period[6] and a fine not to exceed 2,000 pesos shall be imposed upon any person who shall mutilate coins of the legal currency of the (United States or of the) Philippine Islands or import or utter mutilated current coins, in connivance with the mutilator or importer.

Acts punished under Art. 164:

1. Mutilating coins of the legal currency, with the further requirement that there be *intent to damage* or to defraud another.

[6]See Appendix "A," Table of Penalties, No. 11.

2. Importing or uttering such mutilated coins, with the further requirement that there must be *connivance* with the mutilator or importer in case of uttering.

Meaning of mutilation.

"Mutilation" means to take off part of the metal either by filing it or substituting it for another metal of inferior quality.

Mutilation is to *diminish* by ingenuous means *the metal in the coin.* One who mutilates a coin does not do so for the sake of mutilating, but to take advantage of the metal abstracted; he appropriates a part of the metal of the coin. Hence, the coin diminishes in intrinsic value. One who utters said mutilated coin receives its legal value, much more than its intrinsic value. (People vs. Tin Ching Ting, G.R. No. L-4620, Jan. 30, 1952)

The coin must be of "legal tender" in mutilation.

A reading of the provisions under this chapter will reveal that only in this article does the law require "legal tender" as an element of the offense in the case of *mutilation.* Note the phrases "coins of the legal currency" and "current coins" used in the law.

It is indispensable that the mutilated coin be of legal tender. (People vs. Tin Ching Ting, *supra)*

Coins of foreign country not included.

The coin mutilated must be genuine and has not been withdrawn from circulation. The coin must be of the *legal currency or current coins* of the Philippines. Therefore, if the coin mutilated is legal tender of a foreign country, it is not a crime of mutilation under the Revised Penal Code.

Art. 165. ***Selling of false or mutilated coin, without connivance.*** **— Any person who knowingly, although without the connivance mentioned in the preceding articles, shall possess false or mutilated coin with intent to utter the same, or shall actually utter such coin, shall suffer a penalty lower by one degree than that prescribed in said articles.**

Acts punished under Art. 165:

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

   Elements:

   a. *Possession,*

   b. With intent to utter, and

   c. Knowledge.

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

   Elements:

   a. *Actually uttering,* and

   b. *Knowledge.*

Possession of or uttering false coin does not require that the counterfeited coin is legal tender.

Thus, a person in possession of, with intention to put into circulation, a *false* five-dollar gold coin, an imitation of the genuine five-dollar gold coin of the United States, is liable under Article 165, even if such gold coin is no longer legal tender in the United States, and much less in the Philippines. Art. 165 does not require that the coin be of legal tender. We should not add a condition not provided by the law. (People vs. Tin Ching Ting, G.R. No. L-4620, Jan. 30, 1952, unreported, 90 Phil. 870)

But if the coin being uttered or possessed with intent to utter is a *mutilated* coin, it must be legal tender coin, because of Article 164 to which Article 165 is related.

Constructive possession included.

The possession prohibited in Article 165 of the Revised Penal Code is possession in general, that is, not only actual, physical possession, but also constructive possession or the subjection of the thing to one's control (*in pari materia:* People vs. Umali, [CA] 46 O.G. 2648; People vs. Misa, CA-G.R. No. 00800-CR, Oct. 16, 1963; People vs. Coñosa, CA-G.R. No. 1074, Feb. 28, 1948; People vs. Lera, CA-G.R. No. 16990-R, Feb. 28, 1957), otherwise offenders could easily evade the law by the mere expedient of placing other persons in actual, physical possession of the thing although retaining constructive possession or actual control thereof. (People vs. Andrada, 11 C.A. Rep. 147)

Possession of counterfeiter or importer not punished as separate offense.

If the false or mutilated coins are found in the possession of the counterfeiters, or mutilators, or importers, such possession does not constitute a separate offense, but is identified with the counterfeiting or mutilation or importation. (Dec. Sup. Court of Spain, June 28, 1877)

The offense punished under this article is the mere holding of the false or mutilated coin with intent to utter.

"Although without the connivance mentioned in the preceding articles."

Actually uttering false or mutilated coin, knowing it to be false or mutilated, is a crime under Art. 165, even if the offender was not in connivance with the counterfeiter or mutilator.

The accused must have knowledge of the fact that the coin is false.

A Chinese merchant was paid by purchaser of goods in the former's store a false 50-centavo coin. He placed it in his drawer. During a search by some constabulary officers, the false coin was found in the drawer.

May the Chinaman be convicted of illegal possession of a false coin?

No, because Art. 165 requires three things as regards possession of false coins, namely: (1) possession; (2) intent to utter; and (3) knowledge that the coin is false.

The fact that the Chinaman received it in payment of his good and placed it in his drawer shows that he did not know that such coin was false. (People vs. Go Po, G.R. No. 42697, V L. J. 393, August, 1985)

Section Three. — Forging treasury or bank notes, obligations and securities; importing and uttering false or forged notes, obligations and securities

Art. 166. ***Forging treasury*** *or bank notes or other documents payable to bearer; importing, and uttering such false or forged notes and* ***documents.***— The forging or falsification of treasury or bank notes or certificates or other obligations and securities payable to bearer and the importation and uttering in connivance with forgers or importers of such

false or forged obligations or notes, shall be punished as follows:

1. By *reclusion temporal* in its minimum period[7] and a fine not to exceed 10,000 pesos, if the document which has been falsified, counterfeited, or altered is an obligation or security of the (United States or of the) Philippine Islands.

The words "obligation or security of the (United States or of the) Philippine Islands" shall be held to mean all bonds, certificates of indebtedness, national bank notes, coupons, (United States or) Philippine Islands notes, treasury notes, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the (United States or of the) Philippine Islands, and other representatives of value, of whatever denomination, which have been or may be issued under any Act of the Congress of the (United States or the) Philippine Legislature.

2. By *prision mayor* in its maximum period[8] and a fine not to exceed 5,000 pesos, if the falsified or altered document is a circulating note issued by any banking association duly authorized by law to issue the same.

3. By *prision mayor* in its medium period[9] and a fine not to exceed 5,000 pesos, if the falsified or counterfeited document was issued by a foreign government.

4. By *prision mayor* in its minimum period[10] and a fine not to exceed 2,000 pesos, when the forged or altered document is a circulating note or bill issued by a foreign bank duly authorized therefor.

Three acts penalized under Art. 166:

1. Forging or falsification of treasury or bank notes or other documents payable to bearer.
2. Importation of such false or forged obligations or notes.

[7]See Appendix "A," Table of Penalties, No. 29.
[8]See Appendix "A," Table of Penalties, No. 22.
[9]See Appendix "A," Table of Penalties, No. 21.
[10]See Appendix "A," Table of Penalties, No. 20.

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

How are "forging" and "falsification" committed.

Forging is committed by giving to a treasury or bank note or any instrument payable to bearer or to order the appearance of a true and genuine document; and falsification is committed by erasing, substituting, counterfeiting, or altering by any means, the figures, letters, words, or signs contained therein. (Art. 169)

To forge an instrument is to make false instrument intended to be passed for the genuine one.

Example of falsifying, counterfeiting or altering an obligation or security of the Philippines. *(par. 1 of Art. 166)*

The accused erased and changed the last digit 9 of Serial No. F-79692619 of a genuine treasury note so as to read 0. (Del Rosario vs. People, 113 Phil. 626)

Meaning of importation of false or forged obligations or notes.

Importation of false or forged obligations or notes means to bring them into the Philippines, which presupposes that the obligations or notes are forged or falsified in a foreign country.

Meaning of uttering false or forged obligations or notes.

It means offering obligations or notes knowing them to be false or forged, whether such offer is accepted or not, with a representation, by words or actions, that they are genuine and with an intent to defraud. (See 26 C.J. 924)

Uttering forged bill must be with connivance to constitute a violation of Art. 166.

By pleading guilty to the charge of having passed a P10 counterfeit bill in a store in violation of Art. 166, the accused admitted all the material allegations of the information, including that of connivance with the authors of the forgery, which characterizes the crime defined by Art. 166 of the Revised Penal Code. (People vs. Valencia, *et al.*, 59 Phil. 42)

Notes and other obligations and securities that may be forged or falsified under Art. 166.

They are:

1. Treasury or bank notes,
2. Certificates, and
3. Other obligations and securities, *payable to bearer.*

A bank note, certificate or obligation and security is payable to bearer when it can be negotiated by mere delivery.

A five-peso bill, etc., or a winning sweepstakes ticket is payable to bearer, because its ownership is transferred to another by mere delivery to him of such bill or ticket.

The instrument is payable to bearer —

(a) When it is expressed to be so payable; or

(b) When it is payable to a person named therein or bearer; or

(c) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or

(d) When the name of the payee does not purport to be the name of any person; or

(e) When the only or last indorsement is an indorsement in blank.

(Negotiable Instruments Law, Sec. 9)

Penalties depend on the kind of forged treasury or bank notes or other documents.

There are four penalties prescribed in Art. 166, and those penalties are respectively imposed if the document falsified, altered or counterfeited is any of the following:

a. *Obligation* or *security* issued by the Government of the Philippines.

b. *Circulating note* issued by any *banking association* duly authorized by law to issue the same.

c. Document issued by a *foreign government.*

d. Circulating note or bill issued by a *foreign bank* duly authorized to issue the same.

The Code punishes forging or falsification of bank notes and of documents of credit payable to bearer and issued by the State more severely than it does the counterfeiting of coins.

The reason for this is that the first tends to bring such documents into discredit and the offense produces a lack of confidence on the part of the holders of said documents to the prejudice of the interests of society and of the State. Moreover, it is easier to forge or falsify such certificates, notes and documents of credit than to make counterfeit coins, and the profit which is derived therefrom by the forger of such documents is greater and the incentive for the commission of such a crime more powerful. (U.S. vs. Gardner, 3 Phil. 403)

Example of forging obligation or security.

The accused-appellant was charged with having falsified a genuine 1/8 unit of the Philippine Charity Sweepstakes ticket for the June, 1947 draw by tearing off at its bottom in a crosswise direction, a portion, thereby removing the true and unidentified number of said ticket and substituting in writing in ink at the bottom on the left side the number 074000, thus making said ticket bear a prize-winning number. He was convicted of attempted estafa thru falsification of an obligation or security and sentenced to an indeterminate penalty of from 10 years and 1 day of *prision mayor* to 12 years and 1 day of *reclusion temporal,* and to pay a fine of P100 plus the costs. (People vs. Balmores, 85 Phil. 497)

Note: The accused was convicted of the complex crime of attempted estafa through falsification of an obligation or security of the Philippines, because he attempted to cash the ticket so altered as one with a prize-winning number.

"Obligation or security of the United States."

Now that the Philippines is independent of the United States, is the forging of the obligation or security of the United States punishable under paragraph No. 1 of Article 166?

The provisions of Art. 166 relative to U.S. obligations were repealed upon the grant of independence to the Philippines. (People vs. Loteyro, C.A., 50 O.G. 632)

In the case of *People vs. Santiago, et al.*, C.A., 48 O.G. 4401, it was held that *script money* (U.S. payment military certificate used as legal tender payable to bearer in place of the dollar currency within U.S. military installations in the Philippines) is expressly covered in the definition of "obligation or security of the United States" given in the second paragraph, No. 1 of Article 166 of the Code.

Note: With due respect to the ruling of the Court of Appeals, it is believed that the words "United States" in Article 166 were written there, because when the Revised Penal Code was enacted, the Philippines was yet a colony of the United States.

It would seem that the script money should be considered a document issued by a foreign government under paragraph No. 3 of Article 166. (See People vs. Esteban, CA-G.R. No. 11621-R, Aug. 22, 1955).

Meaning of "obligation or security" of the Philippines.

The words "obligation or security x x x of the Philippine Islands" shall be held to mean all —

(a) bonds,

(b) certificates of indebtedness,

(c) national bank notes,

(d) coupons,

(e) treasury notes,

(f) fractional notes,

(g) certificates of deposits,

(h) bills,

(i) checks,

0) drafts for money,

(k) and other representatives of value issued under any Act of Congress.

Money bills issued by the Central Bank are national bank notes.

The P5-bills, P10-bills, P20-bills etc., issued by the Central Bank of the Philippines are national bank notes.

Philippine National Bank checks are commercial documents, not covered by Art. 166.

The falsification of Philippine National Bank *checks* is not forgery under Art. 166 of the Revised Penal Code, but falsification of commercial documents under Art. 172 in connection with Art. 171 of the Code. (People vs. Samson, CA-G.R. Nos. 12011-12-R, Oct. 13, 1955; People vs. Cruz, CA-G.R. Nos. 12898-99-R, Oct. 13, 1955)

The falsification of a U.S. depository war damage check for the purpose of cashing the same constitutes estafa through falsification of an official and

commercial document. (Arts. 315 and 172) (See Furia vs. Court of Appeals 101 Phil. 623).

Art. 167. ***Counterfeiting, importing, and uttering instruments not payable to bearer.*** **— Any person who shall forge, import, or utter, in connivance with the forgers or importers, any instrument payable to order or other document of credit not payable to bearer, shall suffer the penalties of *prision correccional* in its medium and maximum periods[11] and a fine not exceeding 6,000 pesos.**

Elements:

1. That there be an instrument payable *to order* or other document of credit *not* payable to bearer.
2. That the offender either *forged, imported* or *uttered* such instrument.
3. That in case of uttering, he *connived* with the forger or importer.

Application of Art. 167 is limited to instruments payable to order.

The counterfeiting under Art. 167 must involve an instrument payable *to order* or other document of credit *not* payable to bearer.

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. (Negotiable Instruments Law, Sec. 8) It is negotiated by indorsement and delivery.

Does this article cover instruments or other documents of credit issued by a foreign government or bank?

It is believed that it includes such instruments or documents of credit, because the act punished includes that of importing, without specifying the country or government issuing them.

If the document is *payable to bearer,* there is no doubt that it may be issued by a foreign government or bank. Art. 166, pars. 3 and 4, cover such documents.

[11]See Appendix "A," Table of Penalties, No. 15.

Falsification of U.S. treasury warrants.

The falsification of U.S. treasury warrants not payable to bearer is punished under Art. 172, not under Art. 167. (People vs. Loteyro, C.A., 50 O.G. 632)

But in the case of *People vs. Esteban, et al.*, C.A., 55 O.G. 3510, the prosecution for uttering forged U.S. treasury warrants was made under Art. 166.

Reason for punishing forgery.

Forgery of currency is punished so as to maintain the integrity of the currency and thus insure the credit standing of the government and prevent the imposition on the public and the government of worthless notes or obligations. (People vs. Galano, C.A., 54 O.G. 5897)

Connivance is not required in uttering if the utterer is the forger.

The utterer should not be the forger. If the utterer was the one who forged the instrument payable to order, obviously connivance is not required, for he can be held liable as a forger of the instrument. (People vs. Orqueza, 14 C.A. Rep. 730)

Art. 168. ***Illegal possession and use of false treasury or bank notes and other instruments of credit.*** **— Unless the act be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession, with intent to use any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles.**

Elements:

1. That any treasury or bank note or certificate or other obligation and security *payable to bearer,* or any instrument *payable to order* or other document of credit *not payable to bearer* is forged or falsified *by another* person.
2. That the offender *knows* that any of those instruments is forged or falsified.

3. That he performs *any* of these acts —

   a. *using* any of such forged or falsified instruments; or

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

Intent to possess is not intent to use.

Possession of false treasury or bank notes alone is not a criminal offense. For it to constitute an offense under Article 168 of the Penal Code, the possession must be with intent to use said false treasury or bank notes. Hence, it follows that an information alleging possession of false treasury and bank notes without alleging intent to use the same but only "intent to possess" them, charges no offense. (People vs. Digoro, G.R. No. L-22032, March 4, 1966)

How to prove that a bank note is forged.

Evidence must be presented that the number which the questioned bank note bears does not check with the genuine one issued with the same number. (People vs. Barraquia, 76 Phil. 490)

The accused must have knowledge of the forged character of the note.

Thus, where the accused in aiding his brother to utter a counterfeit bank note was not aware of its counterfeit character, he was not guilty of illegal possession and use of false bank note. (U.S. vs. De Leon, *et al.*, 4 Phil. 496)

Conduct of the accused considered to establish knowledge of forgery.

1. Buying eggs worth P0.30 at one instance, and making a purchase of P0.50 at another instance, paying in each instance a false ten-peso bill, receiving on both occasions the proper amount of change in lawful money, and when arrested and asked by a policeman to explain the possession of the same, the offender *refused to* make any explanation, stating he would know what to say in court. In court, he failed to explain his possession of the forged bank bills. (People vs. Co Pao, 58 Phil. 545)

2. When somebody discovered that the P20-bill to be changed was forged, the owner snatched it from the one who was examining it and tore it to pieces. (People vs. Quinto, 60 Phil. 351)

3. The accused at *first denied* to the policeman who was conducting the search that he had counterfeit five-peso bills in his possession and although he knew that the policeman was after the forged bills as mentioned in the search warrant, he said he had only a revolver without license to mislead the policeman. When the policeman insisted in the further search, he delivered to him the package of counterfeit bills concealed in a straw hat. (People vs. Vacani, 61 Phil. 796)

Possession of counterfeit U.S. $20 bills is punished under Art. 168.

Possession of counterfeit U.S. $20 bills is punished under Art. 168, because the counterfeit dollar bills are comprehended in the words, "any of the false or falsified instruments referred to in this section," of Art. 168. It is incumbent upon the person in possession thereof to satisfactorily explain his innocence for said possession, it being a fact relied upon by him as a justification or excuse and which lies peculiarly within his knowledge. (People vs. Perez, CA-G.R. No. 12581-R, Jan. 31, 1955)

A person in possession of falsified document and who makes use of the same is presumed to be material author of falsification.

The evidence conclusively proves that Samson, as the representative or collector of the supposed creditor, Carried Construction Supply Co., handcarried the vouchers in question to the offices of the provincial engineer, treasurer and auditor and the back to the treasurer's office for payment. He actually received the cash payments. Under those circumstances, Samson is presumed to be the forger of the vouchers. The rule is that if a person had in his possession a falsified document and he made use of it (uttered it), taking advantage of it and profiting thereby, the presumption is that he is the material author of the falsification. This is specially true if the use or uttering of the forged documents was so closely connected in time with the forgery that the user or possessor may be proven to have the capacity of committing the forgery, or to have close connection with the forgers, and, therefore, had complicity in the forgery. (People vs. Sendaydiego, 82 SCRA 120)

Intent to use is sufficient to consummate the crime when the offender is in possession of false or falsified obligations or notes.

Although the bogus P100-bill was *not accepted* by the person to whom it was handed in the course of a transaction (it was offered in payment of 10 chickens), the crime is consummated. (People vs. Santos, C.A., 47 O.G. 3587)

But in a case where the accused, instead of carrying out his intention, threw away the forged note, it was held that he was not liable whatever

might be his motive in getting rid of it, for the law will not close the door of repentance on him, who, having set foot on the path of crime, retraces his steps before it is too late. (People vs. Padilla, C.A., 36 O.G. 2404)

Mere possession of false money bill, without intent to use it to the damage of another, is not a crime.

Thus, a person who had a counterfeited P50-bill under the glass of his table among other objects as decoration, is not liable for illegal possession of false bank note, there being no intent to use it to the damage of another.

Accused has the burden to give satisfactory explanation of his possession of forged bills.

The failure of the accused to explain satisfactorily his possession of the counterfeit bills means either (1) that he forged them himself, or (2) that he knows who falsified them, but he does not want to divulge him. (People vs. De la Roca, C.A., 40 O.G. Supp. 4, 328)

The possession of 100 falsified P20-bills can not indicate anything except, first, the *knowledge* which the appellant had of the falsity of said bills and, second, the *intention* of the appellant to utter said bills. (People vs. Luis Sane, C.A., 40 O.G., Supp. 5, 113)

Is it an impossible crime when the act performed would have been a crime of illegal possession of false treasury notes?

Certain one-peso, ten-peso, and twenty-peso treasury notes were so made by pressing a genuine treasury note against a coupon bond, saturated with chemicals. All the printed matter in the treasury note is inversely reproduced in the coupon bond. Their appearance carries an inherent impossibility for anyone to accept them as genuine money. *Held:* This case falls within the purview of paragraph 2, Article 4, in relation to Article 59 of the Revised Penal Code. (People vs. Casals, *et al,* CA-G.R. No. 12455-R, May 17, 1955)

Note: In impossible crimes under paragraph 2 of Article 4 of the Code, the act performed would have been an offense against *persons or property.* Forging or falsification of treasury notes is neither an offense against persons nor an offense against property.

Art. 169. ***How forgery is committed.*** **— The forgery referred to in this section may be committed by any of the following means:**

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

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

Forgery includes falsification and counterfeiting.

With the definition given in this article, the crime of counterfeiting or forging treasury or bank notes or other documents payable to bearer or to order includes (1) acts of counterfeiting or forging said instruments, and (2) acts of falsification. (Guevara)

Example of forgery under paragraph No. 1:

People vs. Galano
(C.A., 54 O.G. 5899)

Facts: **The accused admitted, during the investigation at the police headquarters, having written the word "Victory" in ink at the back of the one-peso bill (Exhibit A) which he gave to Cruz as payment for the four *balut* eggs.**

The one-peso paper bill (Exhibit A) is a genuine pre-war treasury certificate "payable to the bearer on demand" which has been, however, withdrawn from circulation. It is, however, redeemable at its face value if presented to the Central Bank, pursuant to Republic Acts Nos. 17 and 199.

Held: **The forgery here committed comes under this first paragraph of Article 169 of the Code (By giving to a treasury or bank note or any instrument payable to bearer or to order mentioned therein, the appearance of a true and genuine document). We believe that this provision contemplates not only the situations where a spurious, false or fake document, but also the situations involving originally true and genuine documents which have been withdrawn or demonetized, or have outlived their usefulness. The case under consideration could not come within the second paragraph of the aforesaid article (By erasing, substituting, counterfeiting or altering by any means the figures, letters, works or signs contained therein), because no figure, letter, word or sign contained in Exhibit A has been erased, substituted, counterfeited or altered. The forgery consists in the addition of a word in an effort to give to the present document the appearance of the true and genuine certificate that it used to have before it was withdrawn or has outlived its usefulness.**

Giving fake checks the appearance of true and genuine documents.

The accused caused the printing of the checks and, to give them the appearance of true and genuine documents, he directed the printer to incorporate therein the important details and wording contained in checks regularly issued by a U.S. Government Office or agency. In furtherance of the same objective, the accused availed of the service of the Advance Bookbinding Service to engrave on the checks in block bold types the date of issue, name of the payee and the amount payable, in words and figures. Finally, he caused rubber stamp and dry seal to be made and used them on the checks.

The accused admitted that he signed the name "A. Lobster" on each of the checks in question, without having any authority to do so. As a matter of fact, that name was chosen by the accused as part of the deception, without knowing whether there was in fact a living person bearing that name. In the light of all the foregoing, the accused had in effect committed forgery within the meaning of paragraph 1 of Article 169 of the Revised Penal Code on instruments payable to order, thereby making him guilty of a violation of Article 167 of the Revised Penal Code. (People vs. Orqueza, 14 C.A. Rep. 730)

Example of forgery under paragraph No. 2:

Facts: **A received a treasury warrant, a check issued by the Government. It was originally made payable to B, or his order. A wrote B's name on the back of said treasury warrant as if B had indorsed it, and then presented it for payment. It was paid to A.**

Held: **This is forgery, because when A wrote B's name on the back of the treasury warrant which was originally made payable to B or his order, he converted, by such supposed indorsement, the treasury warrant to one payable to bearer. It had the effect of erasing the phrase "or his order" upon the face of the warrant. There was material alteration on a genuine document. (U.S. vs. Solito, 36 Phil. 785)**

Defacement, mutilation, tearing, burning or destroying of Central Bank notes and coins, penalized.

It is ordered and decreed:

1. **That it shall be unlawful for any person to willfully deface, mutilate, tear, burn or destroy, in any manner whatsoever, currency notes and coins issued by the Central Bank of the Philippines; and**

2. That any person who shall violate this Decree shall, upon conviction, be punished by a fine of not more than twenty thousand pesos and/or by imprisonment of not more than five years.

All laws, orders and regulations, or parts thereof, inconsistent herewith are hereby modified or repealed accordingly. (Presidential Decree No. 247, which took effect on July 18, 1973)

Section Four. — Falsification of legislative, public, commercial, and private documents, and wireless, telegraph, and telephone messages

Five classes of falsification:

1. Falsification of legislative documents. (Art. 170)
2. Falsification of a document by a public officer, employee or notary public. (Art. 171)
3. Falsification of a public or official, or commercial document by a private individual. (Art. 172, par. 1)
4. Falsification of a private document by any person. (Art. 172, par. 2)
5. Falsification of wireless, telegraph and telephone messages. (Art. 173)

Forgery and falsification, distinguished.

The term forgery as used in Art. 169 refers to the falsification and counterfeiting of treasury or bank notes or any instruments payable to bearer or to order. Falsification is the commission of any of the eight (8) acts mentioned in Art. 171 on legislative (only the act of making alteration), public or official, commercial, or private documents, or wireless, or telegraph messages. See Title Four, Chapter One, Section Four.

Forging and falsification are crimes under *Forgeries*. See Title Four. Chapter One.

Art. 170. ***Falsification of legislative documents.*** **— The penalty of** ***prision correccional*** **in its maximum period**[1] **and**

[1]See Appendix "A." Table of Penalties, No. 13.

a fine not exceeding 6,000 pesos shall be imposed upon any person who, without proper authority therefor, alters any bill, resolution, or ordinance enacted or approved or pending approval by either House of the Legislature or any provincial board or municipal council.

Elements:

1. That there be a bill, resolution or ordinance *enacted* or *approved* or *pending approval* by either House of the Legislature or any *provincial board* or *municipal council.*
2. That the offender alters the same.
3. That he has *no proper authority* therefor.
4. That the *alteration* has *changed* the *meaning* of the document.

Note: The words "municipal council" should include the city council or municipal board.

The bill, resolution or ordinance must be genuine.

Note that the falsification in Article 170 is committed by altering a legislative document, which presupposes that the bill, resolution, or ordinance altered must be genuine. Besides, the bill, resolution or ordinance is "*enacted or approved or pending approval* by the National Assembly or any provincial board or municipal council." A fabricated or simulated legislative document is not covered by Art. 170.

The offender is any person.

Art. 170 does not require that the offender be a private individual. All that the provision requires is that the offender has *no proper authority* to make the alteration. Hence, the offender may be a private individual or a public officer.

The act of falsification in legislative document is limited to altering it which changes its meaning.

Art. 170 punishes "any person who, without proper authority therefor, alters any bill," etc. Hence, other acts of falsification, even in legislative document, are punished either under Art. 171 or under Art. 172.

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

Art. 171. ***Falsification by public officer, employee or notary or ecclesiastical minister.*** — The penalty of *prision mayor*[13] and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature, or rubric;

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any

[13] See Appendix "A," Table of Penalties, No. 19.

record or document of such character that its falsification may affect the civil status of persons.

Elements:

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

First element. — *Persons liable under Art. 171.*

Under this article, only public officer, employee or notary public or ecclesiastical minister can be the offender.

The ecclesiastical minister is liable under this article if he shall commit any of the acts of falsification enumerated in this article with respect to any record or document of such character that its falsification may *affect the civil status* of persons.

Second element. — *The offender takes advantage of his official position.*

The offender takes advantage of his official position in falsifying a document when (1) he has the duty to *make* or to *prepare* or otherwise to *intervene* in the preparation of the document; or (2) he has the *official custody* of the document which he falsifies. (See People vs. Santiago Uy, 53 O.G. 7236, and U.S. vs. Inosanto, 20 Phil. 376)

Even if the offender was a public officer but if he *did not take advantage* of his official position, he would be guilty of falsification of a document by a *private person* under Art. 172.

Thus, a court stenographer who deliberately and maliciously changed, in making transcription of his notes, the statements of a witness taken by him is guilty of falsification under this article; while any other officer, say a chief of police, who happened to make the same changes or alterations in the same document, is guilty of falsification of a public document by a private person under Article 172, par. 1. (U.S. vs. Austero, 14 Phil. 377; People vs. Teves, 44 Phil. 275)

A municipal president falsified an inscription in the register of births kept by, and under the charge of, the municipal secretary who issued a certified copy of such false inscription.

Is he guilty under Art. 171?

No, because, although he is a public officer, the falsification committed by him was upon an act, certificate or instrument the issuance of which does not pertain to his office and, therefore, it was without abuse of his office. (U.S. vs. Inosanto, 20 Phil. 376)

Third element. — *The offender falsifies a document.*

Definition of document.

A document is any written statement by which a right is established or an obligation extinguished. (People vs. Moreno, C.A., 38 O.G. 119)

A document is a writing or instrument by which a fact may be proven and affirmed.

Thus, if the payroll is merely a draft, because it has not been approved by the proper authority, it can prove nothing and affirm nothing. (People vs. Camacho, 44 Phil. 488)

The pamphlets cannot be said to evidence a fact, agreement or disposition. They are rather merchandise as any other article usually sent by C.O.D. mail. (People vs. Agnis, 47 Phil. 945)

The document must be *complete* or at least it must have the appearance of a true and genuine document.

The document must be of apparent *legal efficacy.* Thus, making a writing which is invalid on its face, as in the case of a will not signed by the requisite number of witnesses, is not falsification. (Miller on Criminal Law, 406)

Must there be a genuine document in falsification?

In falsification by (1) making alteration or intercalation, or (2) including in a copy a different statement, there must be a genuine document that is falsified. Thus, in paragraphs 6, 7, in its second part, and 8 of Art. 171, the law requires that there be a genuine document where the intercalation or alteration is made changing its meaning.

In the other paragraphs of Art. 171, falsification may be committed by simulating or fabricating a document.

Documents may be simulated or fabricated.

In falsification of a public document, the falsification need not be made on an official form. It is sufficient that the document is given the appearance of, or made to appear similar to, the official form. (People vs. Tupasi, CA-G.R. Nos. 290-292, March 22, 1937)

The simulation of public, official or mercantile document is also contemplated in falsification of those documents. (People vs. David, CA-G.R. No. 44368, Nov. 27, 1936)

U.S. vs. Corral
(15 Phil. 383)

Facts: **To cause the arrest of his common-law wife who had left him and had gone to Corregidor, taking with her a trunk and a diamond ring, the accused simulated a warrant of arrest by making it appear that the same was signed and issued by the authority when in truth and in fact it was not. The accused sent it to the municipal president of Corregidor and, by virtue thereof, the woman was arrested. When prosecuted for falsification of a public document, the accused contended that one can falsify only a genuine document and that what he falsified was no document at all.**

Held: **It is not necessary that it be a real document, it is enough that it be given the appearance of a genuine document.**

"Shall falsify a document."

It will be noted that Art. 171 does not specify the kind of document falsified, the phrase "shall falsify a document" not mentioning whether it is public, official, private or commercial document.

It is not necessary to specify in Art. 171 the document falsified, because when the document is executed with the intervention of a public officer, employee or notary public, such document must necessarily be a public or official document. Even if the document is originally a private document, if it is in the official custody of the public officer or employee or if it forms part of the official record when it is falsified by the public officer or employee, then the crime committed should be punished under Art. 171.

Different modes of falsifying a document.

Any of the eight (8) acts of falsification enumerated in Art. 171 may be committed on any document by a public officer or notary public, or by a private individual — only that if the offender is a private individual or a public officer who does not take advantage of his official position, Art. 172 shall apply.

The offender falsifies a document by committing any of the following acts:

Par. No. 1 — Counterfeiting or imitating (feigning) any handwriting, signature or rubric.

There are two ways of committing falsification under paragraph 1 of Art. 171. They are: (1) counterfeiting, which is imitating any handwriting, signature or rubric; and (2) feigning, which is simulating a signature, handwriting or rubric out of one which does not in fact exist.

Under paragraph 1 of Art. 171, the *mere drawing up* of a false document is not sufficient to constitute the crime of falsification. The signature, handwriting or mark of another person must be signed or made by the offender, without authority to do so. (U.S. vs. Paraiso, 1 Phil. 66)

In counterfeiting, there is an original signature or handwriting which is imitated. An imitation is necessary, but it need not be perfect.

Requisites of counterfeiting.

Imitation of another's signature need not be perfect. It is necessary only (1) that there be an *intent to imitate,* or an *attempt to imitate,* and (2) that the two signatures or handwritings, the genuine and the forged, *bear some resemblance* to each other. (U.S. vs. Rampas, 26 Phil. 189)

There must be an intent or attempt to imitate.

The attempt or the intent to imitate may be shown by a comparison of the handwriting or signature on the document alleged to have been falsified with the genuine handwriting or signature supposed to have been counterfeited. If there is sufficient resemblance between the genuine and the forged signatures, it can be concluded that the accused had the intention and attempted to imitate the signature of the offended party. (U.S. vs. Rampas, *supra)*

The forged and the genuine signatures or handwritings must bear some resemblance to each other.

The resemblance must be such that it is likely to deceive an ordinary person receiving or dealing with the document. (U.S. vs. Rampas, *supra)*

Thus, it has been held that the fact of imitating a person's signature on a check in such a way that the same, when presented for collection "might have passed in the rush of business," although the handwriting is a little bit different, constitutes falsification. (U.S. vs. Litonjua, 4 Phil. 485)

When any of the requisites of counterfeiting is not present.

If there is no attempt whatsoever by the accused to imitate the signatures of other persons so that *they are entirely unlike the genuine signatures* of those persons, the accused may be found guilty under paragraph 2, Art. 171, in causing it to appear that those persons have participated in the act when they did not in fact so participate. (U.S. vs. Freimuth, 3 Phil. 318; U.S. vs. Cinco, *et al.*, 42 Phil. 839; People vs. Llave, C.A., 40 O.G. 1908)

Imitating (feigning).

The Spanish text of Art. 171 "*fingiendo*"(for imitation). In feigning, there is no original signature, handwriting or rubric, but a forgery of a signature, handwriting or rubric that does not exist.

To feign means to represent by a false appearance; to give a mental existence to; to imagine.

Example:

Drawing up an open will purporting to have been executed in March, 1901, by one Petra Mariano and signed by Norberto Cajucom at her request and by attesting witnesses, when as a matter of fact she died on July 28, 1900, is falsification by feigning. (U.S. vs. De los Angeles, *et al.*, 4 Phil. 597)

Making it appear that a person who does not know how to write has signed the document, may be considered feigning of signature.

U.S. vs. Castro
(6 Phil. 11)

Facts: The accused is charged with the falsification of a private document in that he signed the name of one Regino Sevilla, deceased, to a certain bill of sale of a boat or *barangay* the property of the estate of the said Sevilla.

The accused attached the signature of Regino Sevilla to the document in question for the purpose of defrauding Sevilla's heirs and depriving them of their property in the said boat. It does not appear, however, that any attempt was made to simulate the genuine signature, and there is evidence of record that Sevilla himself did not know how to write or even to sign his own name.

Held: This court, adopting the doctrine laid down by the Supreme Court of Spain, has frequently held that upon a charge of falsification by attaching the signature of another to a written document, conviction cannot be had unless it appears that an attempt has been made to simulate the genuine signature of that person; and, therefore, the accused can not be convicted of the crime of falsification as *charged in the information.*

Note: The crime committed could not be falsification under paragraph 2 of Art. 171, because it could not be made to appear that the deceased participated in the execution of the document by signing it, since he did not know how to write.

Par. No. 2 — Causing it to appear that persons have participated in an act or a proceeding.

The imitation of the signature of the offended party is not necessary in falsification under paragraph 2 of Art. 171. (People vs. De la Llave, C.A., 40 O.G. 1908)

Requisites:

1. That the offender caused it to appear in a document that a person or persons participated in an act or a proceeding; and
2. That such person or persons did not in fact so participate in the act or proceeding.

Example:

People vs. Villanueva
(58 Phil. 671)

Facts: On December 7, 1931, there was sent from Hawaii a postal money order for the sum of P200 in favor of Irene Sanchez. On January 14, 1932, there were likewise sent from California five postal money orders, four of which were for the sum of P200 each and one for the sum of P100, in favor of Feliciano Isidro.

The defendant postmaster signed two documents (Exhibits B and D) wherein he admitted having received the money orders, forged the signature of Irene Sanchez and Feliciano Isidro thereon, collected and appropriated the respective amounts thereof.

Held: Even if the signatures of Irene Sanchez and Feliciano Isidro had not been imitated on the money orders, the fact that they were signed thereon in order to make it appear that they intervened in the execution thereof in the sense that they received the corresponding amounts, when they did not in fact intervene or receive the amount in question, is sufficient to constitute the crime of falsification of public documents.

When committed by private individual, Art. 172 should be applied.

The act of falsely impersonating the owner of a piece of land as vendor in the forged deed of sale would constitute an act of falsification under paragraph 2 of Art. 171 (Emas vs. De Zuzuarregui, *et al.*, 53 Phil. 197), and may be punishable under Art. 172 of the Code, the offender being a private individual.

The placing by the accused of their thumbmarks in the list of voters opposite the names of the electors who have not actually voted, thereby making it appear that those electors cast their votes when they did not in fact vote, is falsification under paragraph 2 of Art. 171, and the offenders who are private individuals are liable under Art. 172. (People vs. Asa, *et al.*, 3 C.A., Rep. 1216)

Par. No. 3 — Attributing to persons who have participated in any act or proceeding statements other than those in fact made by them.

Requisites:

1. That a person or persons participated in an act or a proceeding;
2. That such person or persons made statements in that act or proceeding; and

3. That the offender, in making a document, attributed to such person or persons statements other than those in fact made by such person or persons.

Example:

U.S. vs. Capule
(24 Phil. 13)

Facts: Nicasio Capule, for the purpose of appropriating to himself a tract of coconut land, without the knowledge or consent of the owners thereof, by agreement and cooperation with the notary public who later died, prepared and drew up a document setting forth the sale in his favor of the said land, pretending that it was made and executed by the said owners of the tract, stating in the document that they had made the declaration that they had sold said land for the sum of P550 paid at the time of the sale to the vendors; and Eulogio Ortega and Doroteo Guia as the signers of the deed of sale, because the alleged vendors did not know how to do so.

It appears, however, that the. owners of the land did not sell it to Nicasio Capule or that they executed in his favor any document of sale; that what they really did was that they conferred a power of attorney upon him so that he might represent them in a suit they had with Maximino Reyes, because of the absolute confidence they had in the defendant; and that they never were in the house of the notary Inocente Martinez to execute or ratify any document.

Held: The defendant executed upon said notarial document of an official character, acts constituting falsification, by counterfeiting therein the intervention of the owners of the land, to whom he ascribed statements different from what they had made to him and by perverting the truth in the narration of facts, getting persons to sign in the name of the owners of the land, through deceit, after giving them to understand that the document contained a power of attorney, when in fact it was a deed of sale of the land, the legitimate owners whereof had never intended or consented to its alienation.

Par. No. 4 — Making untruthful statements in a narration of facts.

Requisites:

1 That the offender makes in a document statements in a narration of facts;

2. That he has a legal obligation to disclose the truth of the facts narrated by him;

3. That the facts narrated by the offender are absolutely false; and

4. That the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person.

There must be narration of facts, not of conclusion of law.

The Provincial Fiscal filed an information charging the accused with falsification because in her certificate of candidacy for the position of councilor, she had "willfully and unlawfully" made the false statement that she was "eligible" to the said office although "in fact and in truth, she knew fully well that she was under 23 years old, thereby making in this manner, an untruthful statement in the narration of facts."

Held: When the accused certified she was eligible for the position, she practically wrote a *conclusion of law* which turned out to be inexact or erroneous but not entirely groundless; hence, she may not be declared guilty of falsification, specially because the law which she has allegedly violated (Art. 171, Rev. Penal Code), punishes the making of untruthful statements in a *narration of facts.* Had she stated that she was born on *March 29, 1931,* she would undoubtedly have been guilty of falsification, because the date of her birth was a matter of fact. But when she declared that she was "eligible," she merely expressed her belief that the 23 year requirement could be adequately met if she reached 23 years upon assuming the councilorship. Unfortunately, she made a mistake of judgment; but she could not be held thereby to have intentionally made a false statement of fact in violation of Art. 171. (People vs. Yanza, G.R. No. L-12089, prom. April 29, 1960)

Second requisite —

There must be a legal obligation on the part of the accused to disclose the truth of the facts narrated. (People vs. Quasha, *infra,* citing U.S. vs. Lopez, 15 Phil. 515)

"Legal obligation" means that there is a law requiring the disclosure of the truth of the facts narrated.

In *Ramirez vs. Court of Appeals,* 71 SCRA 231, it was held that "Although the acts imputed to the accused constituted, at the time they were committed, falsification of commercial documents penalized under Art. 172, paragraph 1, of the Revised Penal Code, the promulgation of Central Bank Circular 133 abolishing the requirement of specific licensing under Central Bank Circular No. 20 wiped away the legal obligation of the applicants for

foreign exchange to disclose the truth of the facts narrated in the documents supporting their application. As there is no more legal obligation to disclose such truth, an untruthful statement therein no longer constitutes the crime of falsification perpetrated by making false statements in a narration of facts."

People vs. Quasha
(93 Phil. 333)

Facts: The accused was a lawyer who drafted the articles of incorporation of a public utility corporation. In preparing it, the accused made it appear thereon that Baylon, his servant, was the owner of the shares which amounted to more than 60% of the subscribed capital stocks.

The falsification imputed to the accused consisted in not disclosing in the articles of incorporation that Baylon was a mere trustee (or dummy as the prosecution chose to call him) of his American co-incorporators, thus giving the impression that Baylon was the owner of the shares subscribed to by him which, as above stated, amounted to 60.005% of the subscribed capital stock.

Held: The Constitution does not prohibit the mere formation of a public utility corporation without the required proportion of Filipino capital. What it does prohibit is the *granting of a franchise or other form of authorization* for the operation of a public utility to a corporation already in existence but without the requisite proportion of Filipino capital.

For the mere formation of the corporation, such revelation was not essential and the Corporation Law does not require it. Defendant was, therefore, under no obligation under the law to make it.

People vs. Poserio
(C.A., 53 O.G. 6159)

Facts: On June 1, 1951, the defendant was appointed patrolman of the Manila Police Department.

On July 30, 1951, in compliance with one of the requirements of the Manila Police Department, he filled in an information sheet called "Personal Data." On the blank space opposite question No. 10, therein, which asked if the applicant had previously been convicted of a criminal offense, the defendant placed the word "none."

In an investigation later conducted, it was discovered that, contrary to the defendant's answer to question No. 10, he had a previous conviction of the crime of theft.

Held: The prosecution has failed to point to any law or ordinance imposing upon the defendant the *legal obligation* to reveal his previous

conviction in filling in the personal data sheet which members of the Manila Police Department are required to file.

The element, therefore, of "legal obligation" which is necessary in order that the defendant may be convicted of the crime of falsification of the public document under Article 171, paragraph 4, of the Revised Penal Code, is wanting.

The defendant was acquitted.

The person making the narration of facts must be aware of the falsity of the facts narrated by him.

Thus, a municipal treasurer who paid the specified amount in B's voucher, presented by C for payment, and later made *statement* in his accounts current with the government *that the money had been paid to B, not knowing* that the signature of B was forged and, therefore, the municipal treasurer *had no knowledge of the falsity of his statement* in his account current, is not liable for falsification by making untruthful statements in a narration of facts. (U.S. vs. Gonzaga, 14 Phil. 562)

The narration of facts must be absolutely false.

Thus, where the defendant, who was janitor, marked with vertical lines in a payroll opposite the names of some persons under his charge, whose duty it was to take care of and clean the building, to show that said persons had *performed their work,* during the days stated in the payroll, and then certified that the payroll was correct, when as a matter of fact one of the men did his work only before 8 o'clock in the morning but absented himself during the whole day and worked as a cook in the house of the defendant during said period, it was held that the defendant was not liable for falsification by making false statements in the narration of facts, for the reason that said person who worked as a cook in his house really worked in the building, although it was not for the whole day and that the nature of the work of said person was such that it could be finished before 8 o'clock every morning. (U.S. vs. Bayot, 10 Phil. 518)

The rule is that if the statements are not altogether false, there being some colorable truth in such statements, the crime of falsification is not deemed to have been committed. Cuello Calon is authority for the statement that *"La mera inexactitud no es bastante para integrar este delito."* (Cuello Calon, Derecho Penal, 6th ed., Vol. II, p. 216; People vs. Villena, *et al.*, C.A., 51 O.G. 5691)

It is a settled doctrine that in falsification by an employee under par. 4 of Article 171, which reads — "by making untruthful statements in a narration of facts," — the following elements must concur — (a) That

the offender makes in a document, untruthful statements in a narration of facts; (b) That he has a legal obligation to disclose the truth of the facts narrated by him; (c) That the facts narrated by the offender are absolutely false; and (d) That the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person. Herein petitioner contends that the foregoing elements are not present in the case at bar. The correction of the figure from 1,539 to 1,533 pieces to conform to the actual number of treasury notes under custody is not falsification because it was made to speak the truth. (Cabigas vs. People, 152 SCRA 18)

Legal obligation to disclose the truth, inherent in residence certificate.

The obligation on the part of the accused to disclose the truth as to the facts that should appear in a residence certificate to be issued to him, is inherent in the very nature and purpose of said document. Hence, if a person buying a residence certificate gave to the clerk of the treasurer's office false information as to his full name, place and date of birth, citizenship, civil status, length of residence in the Philippines, length of residence in the city or municipality where the certificate is issued, occupation or calling, which are required to appear in the residence certificate by Com. Act No. 465, for the purpose of establishing his true and correct identity, he thereby committed falsification as principal by induction in making false statement in the narration of fact. (People vs. Po Giok To, 96 Phil. 913)

The perversion of truth in the narration of facts must be made with the wrongful intent of injuring a third person.

On the authority of *U.S. vs. Reyes,* 1 Phil. 341, the perversion of truth in the narration of facts must be made with the wrongful intent of injuring a third person. (People vs. Quasha, *supra)*

As we analyze the facts, the appellants cannot be legally convicted of the crime of falsification of a public document. There is no showing that in omitting to disclose the truth in the minutes in question, the appellants were *animated by a desire to do wrong to, or injure, a third person.* The law does not require the filing with the Department of Labor of the minutes of the organization-meeting of a labor union. The erroneous narration of facts found in said minutes, therefore, as to the presence of appellant Leonardo T. Arca in the organization-meeting therein described is not an essential part of the notice and does not affect the integrity of said minutes as a notice. For, whether the meeting was presided over by appellant Leonardo T. Arca, or by any other person, the stubborn fact remains that the union was duly organized, its Constitution and By-Laws approved, and its officers were duly

elected, which are the essential requirements of the notice contemplated in the law. (People vs. Arca, *et al.*, A.C., 56 O.G. 297)

Wrongful intent not essential when the document falsified is public document.

The law is clear that wrongful intent on the part of the accused to injure a third person is not an essential element of the crime of falsification of public document. (People vs. Po Giok To, 96 Phil. 917)

There is no falsification by one who acted in good faith.

The statement in the affidavit *that the affiant was the owner of a banca* which he had raised from the bottom of the *estero* by virtue of a contract with the municipality and that it remained unclaimed, is not falsification because he *believed* that he was entitled to its ownership. (U.S. vs. San Jose, 7 Phil. 604)

The fact that one's consent to a contract was obtained by means of violence does not make the facts narrated therein false.

By means of threats and intimidation, A, B and C succeeded in having D and E *execute* a deed of sale over a parcel of land belonging to said D and E in favor of A. In the deed of sale, it was stated *that for and in consideration of a certain amount of money, D and E sold said parcel of land to A.*

Held: A, B and C are not guilty of falsification, because the fact that one's consent to the contract was obtained by means of violence or intimidation does not make it a false contract in the sense that no consent had ever been given and the entire document had been simulated, since the signatures of the parties are genuine. (U.S. vs. Milla, 4 Phil. 391)

Falsification by omission.

An assistant bookkeeper of the post exchange at Fort Stotsenberg who, having bought several articles in the post exchange for which he signed several chits, intentionally did not record in his personal account most of the said chits and destroyed them so that he could avoid paying the amount thereof, is guilty of falsification by omission. (People vs. Dizon, 47 Phil. 350)

Par. No. 5 — Altering true dates.

Date must be essential.

There is falsification under this paragraph *only* when the date mentioned in the document is *essential.* The alteration of the date or dates in a document must *affect* either the *veracity* of the document or the *effects* thereof. (Decisions of the Supreme Court of Spain of February 25, 1885, and June 21, 1886, cited in the case of People vs. Reodica and Cordero, 62 Phil. 567)

Thus, when in the payroll, the municipal treasurer certified that he paid the salary of an employee on July 31, when in fact it was done on July 23, it was held that at any rate the employee having been in fact paid, it was immaterial whether it was done on July 23 or July 31. The employee was granted a *leave* of eight days from July 23 to July 31 and for the purposes of the payment of his salary, this amounted to his having rendered services during that period. (People vs. Reodica and Cordero, 62 Phil. 567)

Note: The alteration of the date of the actual payment of the salary of the employee did not affect either the veracity of the document or the effects thereof, such date not being essential.

Example of alteration of dates which are essential.

The chief of police, in conspiracy with the justice of the peace, altered the dates in the police blotter, book of records of arrest, bail bond, and the return of the warrant of arrest of S so as to make them show that S was arrested and gave bond on September 13, 1930. The falsifications were made to meet the administrative charges against the justice of the peace who had to dispose of the preliminary investigation of the case against S within 10 days, but failed to do so. (People vs. Montano and Cabagsang, 57 Phil. 599)

The date altered by the accused in those documents was essential, because the date, September 6, 1930, will show that there was a delay in the preliminary investigation of the case, in violation of the circular of the Court of First Instance.

The dates of birth, marriage and death are essential, because without them the documents "cannot produce any legal effect." (Albert)

Altering dates in official receipts to prevent the discovery of malversation is falsification.

When the auditor examined the book of receipts of the accused, it was noticed that there were signs of alteration on the duplicate receipt No.

5246316 in the portion corresponding to the date of issuance, by making it appear that the payment of the real estate tax in the amount of P109.26 was made on the 4th of August, when in truth and in fact it was made on the 30th of July. Because of the alteration, the accused was able to make use of the money covered by the receipt which should have been credited to the public funds on July 30, 1936.

Held: The accused is guilty of falsification. It is true that if the alteration of a date does not affect the integrity of the document, it does not constitute the crime of falsification, but the rule has no application when the act is committed, not by *ignorance* or *mistake* but rather to prevent the discovery of an illegal appropriation of public funds. (People vs. Belgica, C.A., 40 O.G., Supp. 4, 17)

Par. No. 6 — Making alteration or intercalation in a genuine document which changes its meaning.

Requisites:

1. That there be an alteration (change) or intercalation (insertion) on a document;
2. That it was made on a genuine document;
3. That the alteration or intercalation has changed the meaning of the document; and
4. That the change made the document speak something *false.*

Example of falsification by making alteration.

The accused was arrested for having in his possession a falsified duplicate copy of Traffic Violation Report previously issued to him as temporary driver's permit. The alterations were found to consist in erasing or obliterating the originally written figure "III" and the word "three" after the words "pending cases" and by writing and superimposing thereon number "I" and the word "one." The accused made such alterations to hide his previously pending traffic violation cases and thereby avoid immediate arrest should he be caught committing a fourth traffic violation.

Held: The accused is guilty of falsification of an official document, by making alterations on a genuine document which changed its meaning. (People vs. Manansala, 105 Phil. 1253)

Alteration which speaks the truth is not falsification.

The defendant, a priest of Aliaga, Nueva Ecija, was called on in the performance of his duties to execute an affidavit. When asked to produce his

personal *cedula,* it was observed that the age therein had been altered, the figure "23" having been changed to "25." It appeared that defendant's real age was 25. He was prosecuted for falsification of his *cedula,* for altering the age appearing therein.

Held: The defendant did not commit any crime in changing his age. He simply made the cedula speak the truth. It was a *correction,* not falsification. Generally, the word *alteration* has inherent in it the idea of deception — of making the instrument speak something which the parties did not intend it to speak. To be an alteration in violation of the law, it must be one "which causes the instrument to speak a language different in *legal effect* from that which it originally spoke." (U.S. vs. Mateo, 25 Phil. 324; Arriola vs. Republic, 103 Phil. 730)

The alteration must affect the integrity or change the effects of the document.

The change in the public document must be such as to affect the integrity of the same or to change the effects which it would otherwise produce; for, unless that happens, there could not exist the essential element of the intention to commit the crime. (People vs. Pacana, 47 Phil. 48)

Altering the grades in examination papers involves several acts of falsification.

On the composition of a bar candidate, the grades 73% in Civil Law and 64% in Remedial Law were written by an employee of the Supreme Court, *after striking* out the grade of 63% theretofore given to the composition in Civil Law and 58% theretofore given to the composition in Remedial Law.

Held: The acts of falsification are: (1) making alterations on genuine documents, (2) making it appear that the correctors had participated in blotting out the grades and writing new and increased grades opposite their initials, and (3) attributing to the correctors statements other than those in fact made by them. (People vs. Romualdez, *et al.*, 57 Phil. 151)

Par. No. 7 — Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original.

The acts of falsification mentioned in this paragraph cannot be committed by a private individual or by a notary public or a public officer who does not take advantage of his official position.

Such acts of falsification can be committed only by a public officer or notary public who takes advantage of his official position, since the authentication of a document can be made only by the custodian or the one who prepared and retained a copy of the original document.

1. *Purporting to be a copy of an original when no such original exists.*

That a notary public made a supposed copy of a deed of sale which was never executed and of which he had no copy, is an example.

2. *Including in a copy a statement contrary to, or different from, that of the genuine original.*

That a civil registrar stated in a certified copy of a record of birth that the person mentioned therein was legitimate when there was no such statement in the original, is an example.

Liability of private individual in falsification by a public officer when there is conspiracy.

A private person who cooperates with a public officer in the falsification of a public document is guilty of this crime and incurs the same liability and penalty as the public officer. (Viada, 2 Cod. Pen. 387; U.S. vs. Ponte, 20 Phil. 379)

Intent to gain or prejudice not necessary.

It will be noted that in Art. 171, it is the official character of the offender which is mainly taken into consideration.

The idea of gain or the intent to cause damage to a third person is not necessary, because it is the interest of the community which is intended to be guaranteed by the strictest faithfulness of the officials charged with the preparation and preservation of the acts in which they intervene.

Art. 172. ***Falsification by private individuals and use of falsified documents.*** **— The penalty of *prision correccional* in its medium and maximum periods[14] and a fine of not more than 5,000 pesos shall be imposed upon:**

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

[14] See Appendix "A," Table of Penalties, No. 15.

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

Three acts are punished under Article 172.

They are:

1. Falsification of *public, official* or *commercial* document by a private individual. (Paragraph No. 1)
2. Falsification of *private* document by any person. (Paragraph No. 2)
3. *Use* of falsified document. (Last paragraph)

Falsification under paragraph 1 of Article 172.

Elements of falsification of public, official, or commercial document by a private individual:

1. That the offender is a private individual or a public officer or employee who did not take advantage of his official position.
2. That he committed any of the acts of falsification enumerated in Art. 171.
3. That the falsification was committed in a *public or official or commercial document.*

The offender should not be a public officer, employee or notary public, who takes advantage of his official position.

Art. 172 does not punish falsification by public officer, employee or notary public who takes advantage of his official position.

The offender under Art. 172 must be a private individual or even a public officer, employee or notary public *who does not take advantage* of his official position.

The acts of falsification are the same as those in Article 171.

Any one of the different modes of falsification in paragraphs 1 to 6 of Article 171 must be employed by the offender in committing the crimes defined in paragraph Nos. 1 and 2 of Article 172.

The acts of falsification mentioned in paragraph 7 of Art. 171 cannot be committed by a private individual.

Such acts of falsification can be committed only by a public officer or notary public who takes advantage of his official position, since the authentication of a document can be made only by the custodian or the one who prepared and retained a copy of the original document.

The document falsified must be public, official or commercial.

Four kinds of document:

(1) *Public document* — a document created, executed or issued by a public official in response to the exigencies of the public service, or in the execution of which a public official intervened. (U.S. vs. Asensi, 34 Phil. 765)

A *public document* is any instrument authorized by a notary public or a competent public official, with the solemnities required by law. (Cacnio, *et al.* vs. Baens, 5 Phil. 742)

(2) *Official document* — a document which is issued by a public official *in the exercise of the functions of his office.* An official document is also a public document. It falls within the larger class called public documents. (U.S. vs. Asensi, *supra)*

A document required by a bureau to be filled by its officers for purposes of its record and information is an *official document.* (People vs. Uy, 101 Phil. 159)

It has been held that a receipt issued by the department of assessments and collections of the City of Manila, for taxes collected, is a public document, and one who falsifies the same is guilty of the falsification of a public document. (U.S. vs. Leyson, 5 Phil. 447) In the case of *U.S. vs. Mateo* (5 Phil. 462), a burial permit issued by the Board of Public Health of the City of Manila was held to be a public document. In the case of *U.S. vs. Vy Guico* (12 Phil. 209), it was held that the official receipt prescribed by the Government to be issued upon the receipt of money for public purposes is a public document.

In the case of U.S. vs. Weems (7 Phil. 241), it was held that an official cashbook kept by the disbursing officer of the Coast Guard and Transportation Department, was a public or an official document. In the case of U.S. vs. Barrios (10 Phil. 366), it was held that the

cashbook of a public official, in which entries are made of accounts of public moneys received, is also public document. In the case of *U.S. vs. Vy Gucio* (*supra*), an official receipt was held to be a public document, for the reason that it was invested with the character of an official document by reason of the fact that it was printed in accordance with the standard forms required by the Government. In the present case, the document in question was printed in accordance with Schedule C and furnished to merchants, in accordance with the provisions of the law of 1904. This form was evidently prescribed by the internal revenue department of the Government. When presented to the internal revenue department of the Government, it became part of the records of that office and is fully invested with the character of an official or public document. (U.S. vs. Asensi, 34 Phil. 750)

A petition for *habeas corpus* duly subscribed and sworn to before a clerk of court and filed with the court of first instance forming a part of the court records in said proceedings, is a public or official document as contemplated in Articles 171 and 172 of the Revised Penal Code. (Bermejo vs. Barrios, 31 SCRA 764)

Note: All pleadings filed with the court are public or official documents.

(3) *Private document* - a deed or instrument executed by a private person without the intervention of a notary public or other person legally authorized, by which document some disposition or agreement is proved, evidenced or set forth. (U.S. vs. Orera, 11 Phil. 596)

A *theater ticket* is a private document, because it evidences an agreement for the rent of a place in the theater to enable a possessor to witness a theatrical performance. (U.S. vs. Orera, *supra)*

(4) *Commercial document* — any document defined and regulated by the Code of Commerce (People vs. Co Beng, C.A., 40 O.G. 1913) or any other commercial law.

Commercial documents are documents or instruments used by merchants or businessmen to promote or facilitate trade. (People vs. Lizares, C.A., 65 O.G. 7174, citing 2 Viada Codigo Penal, 419-420)

Examples of commercial documents:

(a) Letters of exchange, letters of credit, drafts, trade acceptances, checks, notes or pagares issued in the course of a business transaction, quedans, bonds, books of accounts, and in general, any negotiable instrument. (People vs. Francisco, 10 C.A. Rep. 341, citing Viada, 2 Cod. Pen. 419-420)

(b) Quedans or warehouse receipts. (People vs. Cu Unjieng, 61 Phil. 236)

(c) Cash files, deposit slips and bank statements. (People vs. Benito 57 Phil. 587)

(d) Surety account, journal books, ledgers. (People vs. Lerma, 44 Phil. 471)

(e) Air way bills. These are in the nature of bills of lading.

Cash disbursement vouchers are not commercial documents.

Cash disbursement vouchers or receipts evidencing payment to borrowers of the loans extended to them are not negotiable instruments nor are they defined and regulated by the Code of Commerce and as such are private documents only. (People vs. Francisco, C.A., 64 O.G. 537)

Public and private writings under the Rules of Court.

The following writings are public:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (Sec. 19, Rule 132, Revised Rules of Court)

Private document considered public document.

1. A deed acknowledged before a notary public is a public document, and in a criminal prosecution for falsification of document, the fact that the falsification was committed before the document was presented to the notary does not alter the character of the crime as falsification of public document, if the document was presented to the notary by the party who committed the falsification, or at his instance. (People vs. Tan Bomping, 48 Phil. 877)

2. A private document may acquire the character of a public document when it becomes part of an official record and is certified by a public officer duly authorized by law.

Examples of commercial document:

(a) Quedans or warehouse receipts. (People vs. Cu Unjieng, 61 Phil. 236)

(b) Customer's order to a stockholder. (Nassiff vs. People, 73 Phil. 69)

(c) Bank checks. (People vs. Wilson and Dolores, 52 Phil. 919)

(d) Cash files, deposit slips and bank statements. (People vs. Benito, 57 Phil. 587)

(e) Journals, books, ledgers. (People vs. Lerma, 44 Phil. 471)

(f) Drafts, letters of credit, and other negotiable instruments. (Viada, 2 Cod. Pen., 419-420)

(g) Air way bills. They are in the nature of bills of lading. Commercial documents are, in general, documents or instruments which are used by merchants or businessmen to promote or facilitate trade. (People vs. Lizares, C.A., 65 O.G. 7174, citing 2 Viada Codigo Penal, 419-420)

Cash disbursement vouchers are not commercial documents.

Cash disbursement vouchers or receipts evidencing payment to borrowers of the loans extended to them are not negotiable instruments nor are they defined and regulated by the Code of Commerce and as such are private documents only. (People vs. Francisco, C.A., 64 O.G. 537)

Mere blank form of an official document is not in itself a document.

In order that a blank form might come within the purview of Articles 166, 167, 171 or 172 of the Code, it is necessary that the *blank spaces be filled* and the *signature* of a party purported to be authorized to issue it be written by another in the counterfeited instrument. (People vs. Santiago, *et al.*, C.A., 48 O.G. 4858)

The possessor of a certificate of title is presumed to be the author of the falsification that made possible the transfer of title.

Thus, when a woman had obtained possession of the original certificate of title in the name of the deceased and because of a falsified deed of sale, the original certificate of title was issued, the presumption is that she was the one who falsified the deed of sale and the one who counterfeited the signature of the deceased owner. The crime could not have been committed if the perpetrator had not been in possession of the certificate of title. Not having offered any explanation as to what she did with the certificate, the position of that woman is analogous to that of a person who immediately after a larceny has been committed, is found in possession of the stolen goods and offers no explanation. (People vs. Domingo, *et al.*, 49 Phil. 28)

The possessor of a falsified document is presumed to be the author of the falsification.

People vs. Manansala
(105 Phil. 1253)

Facts: **The trial court convicted the accused of the crime of falsification of official or public document mainly on the proposition that "the only person who could have made the erasures and the superimposition mentioned is the one who will be benefited by alterations thus made" and that he "alone could have the motive for making such alterations."**

Held: **It is an established rule that when a person has in his possession a falsified document and makes use of the same, the presumption or inference is justified that such person is the forger. The circumstances, therefore, that the accused made use and benefited from the falsified TVR is a strong evidence that he himself either falsified it or caused the same to be falsified. The accused had a sufficient and strong motive to commit the falsification, because the policy and practice of the Manila Police Department was to arrest a driver who had committed a fourth traffic violation instead of merely issuing to him a TVR, as usually done for the first, second and third violations. Hence, the accused had the strongest temptation to erase the three violations in the TVR in question and make it appear thereon that he committed only one violation in order to escape arrest in case of a fourth traffic infraction.**

The rule is that if a person had in his possession a falsified document and he made use of it (uttered it) taking advantage of it and profiting thereby, the presumption is that he is the material author of the falsification. (People vs. Sendaydiego, 81 SCRA 120)

Instance when presumption was not applied.

The fact that the petitioner prepared the voucher, considering that it was his official duty to prepare the payroll, vouchers, and other documents assigned to him is not a sufficient reason for the respondent court to conclude that "there is no doubt that the forgery or falsification was effected by the appellant." Unfortunately, the respondent court mistakenly applied the rule that: "one found in possession of and who used a forged document is the forger or the one who caused the forgery and, therefore, is guilty of falsification." The accused is entitled to the constitutional presumption of innocence specially where the evidence on the alleged forged voucher is extremely doubtful. (Alonzo vs. Intermediate Appellate Court, 151 SCRA 552)

In paragraph 1, Art. 172, damage or intent to cause damage is not necessary.

Note that in paragraph 1 of Art. 172, as in Art. 171, damage or intent to cause damage to another is not necessary.

In the falsification of public or official documents, whether by public officials or by private persons, it is not necessary that there be present the idea of gain or the intent to cause damage to a third person, for the reason that, in contradistinction to private documents, the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed. (Decision of the Supreme Court of Spain of Dec. 23, 1886, cited in People vs. Pacana, 47 Phil. 56)

The existence of a wrongful intent to injure a third person is not necessary when the falsified document is a public document. (Siquian vs. People, 171 SCRA 223)

Note: This statement applies as well to commercial documents, because as to this kind of document, a credit is sought to be protected.

Lack of malice or criminal intent is a defense in falsification of public document.

While it is true that falsification of a public document does not require as an essential element, damage to a third person or intent to cause such damage, signing the name of a deceased heir in a deed of sale of a piece of land owned in common by several heirs, having been done by the accused *with the authority of the children of the deceased heir,* is not a punishable act of falsification, the accused not having acted with malice. (People vs. Unico, *et al.*, C.A. 56 O.G. 1681)

Falsification under paragraph 2 of Art. 172.

Elements of falsification of private document:

1. That the offender committed any of the acts of falsification, except those in paragraph 7, enumerated in Art. 171.
2. That the falsification was committed in any *private* document.
3. That the falsification *caused damage* to a third party or at least the falsification was committed *with intent to cause such damage.*

Mere falsification of private documents is not enough.

If an individual falsified a receipt by counterfeiting the signature of the creditor thereon and, after keeping it in his house for sometime, *without*

delivering or showing it to anyone, destroyed it, he did not prejudice anyone by the mere fact of having made it.

Therefore, two things are required:

(1) He must have counterfeited the false document.

(2) He must have performed an independent act which operates to the prejudice of a third person.

"With the intent to cause such damage" means that the offender performs some other independent act in order to make use of it — an act which, while it does not result in prejudice to a third party, has been done nevertheless with the intention of causing such prejudice. (See U.S. vs. Paraiso, 1 Phil. 127)

Damage need not be material.

The "perjuicio" caused to another in falsification of private document need not be material. The law does not make any distinction between *"perjuicio"* and *"daño."* Damage to one's honor is included. (People vs. Marasigan, G.R. No. 6040, Oct. 18, 1940)

It is not necessary that the offender profited or hoped to profit by the falsification.

Thus, although one of the offenders did not personally profit from the falsification of the private document, he was liable, as all that the law requires is an intent to prejudice another person. (U.S. vs. Infante, *et al.*, 36 Phil. 146)

Falsification of private document in Rizal and damage in Manila — the court of Rizal has jurisdiction to try the case.

In the instant case, wherein the appellant was charged with having sent to the Bureau of Labor at Manila the letter (Exh. A) alleged to have been falsified by him in Makati, Rizal, the intent to cause damage must have co-existed with the act of falsification itself. If that is so, then the offense, if at all committed, was consummated in Makati, Rizal, and the courts of which should assume jurisdiction to try the same.

It will be absurd to suppose that while the act of falsifying took place in Makati, Rizal, the element of intent to cause damage occurred in Manila To adopt this view would be virtually admitting that when the act of falsifying was done in Makati, the element of intent to cause damage was not present, in which case the crime of falsification of private document could not have been committed, because this crime can exist only if both the

fact of falsifying and the intent to case damage concur. (People vs. Morales, C.A., 58 O.G. 5667)

Falsification as a necessary means to commit other crimes.

When the offender commits on a document any of the acts of falsification enumerated in Art. 171 as a necessary means to commit another crime, like estafa, theft or malversation, the two crimes form a complex crime under Art. 48. However, the document falsified must be *public, official* or *commercial.*

The falsification of a public, official or commercial document may be a means of committing estafa, because before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is estafa. But the damage to another is caused by the commission of estafa, not by the falsification of the document, Therefore, the falsification of the public, official or commercial document is only a necessary means to commit the estafa.

On the other hand, in the falsification of a private document, there is no crime unless another fact, independent of that of falsifying the document, is proved: *i.e.,* damage or intent to cause it. Therefore, when one makes use of a private document, which he falsified, to defraud another, there results only one crime: that of falsification of a private documcnt. The damage to another is caused by the commission of the crime of falsification of private document. The intent to defraud in using the falsified private document is part and parcel of the crime, and cannot give rise to the crime of estafa, because the damage, if it resulted, was caused by, and became the element of, the crime of falsification of private document. The crime of estafa in such case was not committed, as it could not exist without its own element of damage.

Estafa through falsification of a public document.

A person who counterfeits or imitates the signatures of the officials named in a traffic police sticker issued to the holder of a certificate of public convenience as a sort of road or bridge pass is liable for the crime of falsification under Art. 172, par. 1, the sticker being a public document. If he sells such falsified sticker, he is liable for estafa through falsification of a public document. (People vs. Asistio, 59 O.G. 8625)

The accused who, not being the owner of a piece of land, made it appear in a deed of sale acknowledged before a notary public that he was

the owner thereof and that as owner, he sold and conveyed it unto a third person who paid to him the purchase price of the land, to the prejudice of the offended party, is guilty of the complex crime of estafa through falsification of a public document. (People vs. Paguio, *et al.*, C.A., 45 O.G. 2551)

Theft through falsification of official document.

Having somehow obtained an official form of purchase order, certain employees of a military depot filled its blanks and placed thereon the initial RBR of a member of the U.S. Army in charge of approving the issuance of purchase orders. Through the falsified purchase order and a pass, the offenders were able to obtain goods which they loaded on the truck. The acts of falsification consisted in making untruthful statement in a narration of facts and causing it to appear that Raymond B. Russel, the one in charge of approving the issuance of purchase orders and to whose name correspond the initials RBR, initialed and approved the falsified purchase order. The falsification of the purchase order, an official document, was a necessary means to commit the crime of theft. (People vs. Sison, *et al.*, C.A., 44 O.G. 3354)

Estafa through falsification of commercial document by reckless imprudence.

Upon request of his former classmate, the accused endorsed two Philippine National Bank checks by way of identification of the signatures of the supposed payees on the back thereof, even if he did not know them. The checks were cashed by the wrong persons who misappropriated the proceeds thereof.

Held: Even assuming that the accused had no intention to defraud the offended party, his participation together with the participation of his co-accused in the commission of the offense completed all the elements necessary for the perpetration of the complex crime of estafa through falsification of commercial document. His acts of endorsing the checks by way of identification of the signatures of the payees entitled to said checks and proceeds, constituted written representation that the true payees participated in the endorsement and cashing of the checks, when in truth and in fact the true payees had no direct intervention in the proceedings, as it turned out that the checks were delivered to the wrong parties. The accused did not take proper and adequate means to assure himself of the identity of the real claimants as an ordinary prudent man would do. (Samson vs. Court of Appeals, *et al.*, 103 Phil. 277)

In the case of *People vs. Castillo, et al.*, CA-G.R. No. 14352-R, April 28, 1956, the Court of Appeals held that there being no evidence that

the accused acted with malice in identifying as the payee of the check a person whom he did not know, and there being *no evidences that he shared in the proceeds of the check,* he was guilty of the crime of falsification of a commercial document through reckless imprudence, *not* estafa through falsification by reckless imprudence.

Malversation through falsification of public document.

A special deputy of the provincial treasurer, an accountable public officer, who altered the duplicates of cedulas, collected the sum of P2.00 from each of the taxpayers to whom they were issued, and misappropriated the money collected, a public fund, was held liable for the complex crime of malversation through falsification of the duplicates of cedulas, which are public documents. (U.S. vs. Barbas, 60 Phil. 241)

There is no complex crime of estafa through falsification of a private document.

There is no complex crime of estafa through falsification of a private document, because the *immediate effect* of falsification of private document is the same as that of estafa. The falsification of a private document cannot be said to be a means to commit estafa, because the fraudulent gain obtained through deceit in estafa, in the commission of which a private document was falsified, is nothing more nor less than the very damage caused by the falsification of such document.

If a private document is falsified to obtain from the offended party the money or other personal property which the offender later misappropriated, the crime committed is falsification of private document only.

In a case, the accused was in charge of entering the laborers' workdays in the time book of the Calamba Sugar Estate. He falsified the time book, a private document, by making it appear that a laborer, Ciriaco Sario, worked 21 days during the month of July, 1929, when in reality he had worked only 11 days, and then charged the offended party, the Calamba Sugar Estate, the wages of said laborer for 21 days. The accused misappropriated the wages for 10 days during which the laborer did not work. It will be noted that in this case, the accused had to falsify the private document to obtain the laborer's wages for ten days. He was convicted of falsification of private document. (People vs. Reyes, 56 Phil. 286)

The accused who changed the description of the pawned article as it appeared on the face of the pawn ticket and substituted therefor the description of another article of greatly superior value, and thereafter the

falsified ticket was itself pawned in another pawnshop for an amount largely in excess of the true value of the article pawned, is guilty of falsification of a *private document* only, not estafa through falsification. (U.S vs Infante *et al,* 36 Phil. 146)

If a private document is falsified to conceal the misappropriation of the money or other personal property which has been in the possession of the offender, the crime committed is estafa with abuse of confidence only.

Thus, the manager of the sales department of the "La Tondeña" who made it appear in the issue vouchers that the quality, quantity and price of goods sold by him were less than actually were, turning over to the cashier the lesser amount and appropriating for himself the difference, is guilty only of estafa with abuse of confidence, not a complex crime of estafa through falsification of a commercial document, because the issue vouchers are not commercial documents, they not being defined and regulated by any commercial law. The issue vouchers are private documents. There is no complex crime of estafa through falsification of a private document. (People vs. Co Beng, C.A., 40 O.G. 1913)

Note: If the estafa was already consummated at the time of the falsification of the private document, or if the falsification of a private document was committed *for the purpose of concealing the estafa,* the *falsification* is *not punishable,* because as regards the falsification of the private document, there was no damage or intent to cause damage. The limited damage that resulted was caused by the commission of estafa, not by the falsification of the private document.

Falsification through reckless imprudence.

The director of a hospital who, having a contract with the Philippine Veterans Board, for the cure and hospitalization of sick veterans at the rate of P10 a day per patient, signed a bill wherein it appeared that a patient was hospitalized for 31 days when said patient was confined there for only 6 days and collected P310, relying entirely upon his personnel's reports, without in any way checking them or having someone check them for him is guilty of falsification through reckless imprudence. (People vs. Banas, CA-G.R. Mo. 11761-R, May 31, 1955)

But in a case where the chief clerk of the municipal treasurer's office, acting as local civil registrar, signed a certified copy of a record of birth prepared and initialed by a clerk in the office, who was the custodian of the register of births, and it turned out that the said copy contained falsities, it was held that the chief clearly was not guilty of falsification through reckless

imprudence, because he had a right to rely on his subordinate employee and it was not necessary for him to compare the copy with the original entry in the registry of births. (El Pueblo de las Islas Filipinas *contra* Amado L. Mendoza, CA-G.R. No. 7658, Marzo 24, 1942; Abril, 1942, O.G. 189)

There is no falsification of private document through reckless imprudence.

Since in falsification of a private document, there is at least intent to cause damage, that is, there must be malice, and falsification through imprudence implies lack of such intent or malice, there is no such crime as falsification of a private document through negligence or reckless imprudence.

Private document considered public document.

1. A deed acknowledged before a notary public is a public document, and in a criminal prosecution for falsification of document, the fact that the *falsification was committed before the document was presented to the notary* does not alter the character of the crime as falsification of public document, if the document was presented to the notary by the party who committed the falsification, or at his instance. (People vs. Tan Bomping, 48 Phil. 877)

2. A private document may acquire the character of a public document when it becomes part of an official record and is certified by a public officer duly authorized by law.

When the private document was falsified before it becomes part of official record.

The accused, municipal president, bought a typewriter *as a private person* for the use of the municipality and paid $90 for which the vendor issued a receipt. Later, the accused, as a private person, sought reimbursement, prepared the corresponding voucher and attached thereto the receipt. The receipt was altered by raising the amount to $95. The accused was found *guilty of falsification of private document only,* because at the time the receipt was falsified, it was *not yet a part of the public or official record, nor was it certified by any person authorized to certify public documents.* The receipt and the voucher did not emanate from any public office. (U.S. vs. Nieto, 5 Phil. 582)

The crime is falsification of a public document, even if the falsification took place before the private document becomes part of the public records.

Although the minutes of the organization-meeting was a private document when it was certified and attested to by the appellants, nevertheless, it became a public document upon its filing with the Department of Labor. The fact that its falsification took place before it became part of the public records is immaterial. (People vs. Leonidas, 40 O.G. [4th Supp.] 101; People vs. Arca, *et al.*, C.A., 56 O.G. 297)

It seems that if the document is intended by law to be part of the public or official record, the preparation of which being in accordance with the rules and regulations issued by the Government, the falsification of that document, although it was a private document at the time of its falsification, is regarded as falsification of a public or official document.

This is the ruling in the cases of *U.S. vs. Asensi*, 34 Phil. 750, and *People vs. Leonidas, et al.*, C.A., *supra.* In the Asensi case, the falsification was made on a blank form of the Bureau of Internal Revenue, and in the Leonidas case, the falsification consisted in the accused Tupas taking the civil service examination and feigning to be the examinee Leonidas. When the falsifications were committed, the documents were not yet part of public or official record and the offenders were private persons.

Difference between falsification of public or official documents and that of private documents.

The essential difference between falsification of private documents and that of public or official documents lies in the fact that while in the former, the *prejudice to a third party* is primarily taken into account so that if such damage is not apparent, or there is at least *no intention to cause it*, the falsification is not punishable; in the latter, that is, in the falsification of public or official documents, the principal thing punished is the violation of public faith and the perversion of truth which the document solemnly proclaims, and for this reason it is *immaterial* whether or not some prejudice has been caused to third persons. (See People vs. Pacana, 47 Phil. 48.)

Generally, falsification has no attempted or frustrated stage.

Falsification is consummated the moment the genuine document is altered or the moment the false document is executed. It is immaterial that the offender did not achieve his objectives.

There may be frustrated crime of falsification, if the falsification is imperfect. (II Cuello Calon, Codigo Penal, 10th Ed., pp. 247-248)

Use of falsified document (last paragraph of Art. 172).

Elements of use of falsified document:

Introducing in a judicial proceeding —

1. That the offender knew that a document was falsified *by another person.*
2. That the false document is *embraced* in Art. 171 or in any subdivisions No. 1 or 2 of Art. 172.
3. That he *introduced* said document *in evidence* in any *judicial proceeding.*

Use in any other transaction —

1. That the offender *knew* that a document was falsified *by another person.*
2. That the false document is embraced in Art. 171 or in any of subdivision No. 1 or 2 of Art. 172.
3. That he used such document (not in judicial proceedings).
4. That the *use* of the false document *caused damage to another* or at least it was used *with intent to cause such damage.*

Damage is not necessary in the crime of introducing in judicial proceeding a false document.

Damage to another is not indispensable nor does it have to concur with the very act of introducing a falsified document in judicial proceeding. The phrase "or to the damage of another or who, with the intent to cause such damage," refers to the use of the false document in a proceeding not judicial.

In the crime of introducing a falsified document in a judicial proceeding, as defined and penalized under the last paragraph of Article 172 of the Revised Penal Code, the element of damage to another is not indispensable nor does it have to concur with the very act of introduction of the falsified document in the judicial proceeding. The element of damage to another is a requisite only when the falsified document is introduced in evidence in a proceeding other than judicial. (People vs. Prudente, 1 C.A. Rep. 759)

Use of falsified document in proceeding not judicial, requires at least intent to cause damage.

When a falsified document is used in proceeding other than judicial, damage or, at least, intent to cause damage is essential.

The accused who purchased tires from the Firestone Rubber Co. and in payment therefor gave a check drawn from the Philippine National Bank, knowing that the check was false, is guilty of using a falsified document in a proceeding not judicial. (People vs. Astudillo, 60 Phil. 338)

The person who used the falsified document is not the one who falsified the document. If the one who used the falsified document is the same person who falsified it, the crime is only falsification and the use of the same is not a separate crime.

Use of false document is not necessarily included in the crime of falsification.

The crime punished in the last paragraph of Art. 172 of the Revised Penal Code may be a lesser offense, but it certainly cannot be deemed necessarily included in the crime of falsification of a public document by a public officer or employee or by a private person. (People vs. Mendoza, 93 Phil. 581)

The user of the falsified document is deemed the author of the falsification, if (1) the use was so closely connected in time with the falsification, and (2) the user had the capacity of falsifying the document.

Thus, in a case where the blank form, wherein the falsified check was written, was stolen from a book of blank checks between 12 noon on December 1, 1903, and 11 a.m. of the following day, when the check was presented by the accused for payment, and the accused, who was a clerk in the office of the person by whom the check was purported to be drawn, was alone in the office on the evening of December 1, it was held that as the uttering of the check was so closely connected in time with the forging, the accused should be considered the forger thereof. He was guilty of falsification of commercial document, not merely of using a falsified document. (U.S. vs. Castillo, 6 Phil. 453)

Art. 173. ***Falsification of wireless, cable, telegraph, and telephone messages, and use of said falsified messages.*** **— The penalty of *prision correccional* in its medium and maximum periods[15] shall be imposed upon any officer or employee of the Government or of any private corporation or concern**

[15]See Appendix "A," Table of Penalties, No. 15.

engaged in the service of sending or receiving wireless, cable, telegraph, or telephone messages who utters a fictitious wireless, telegraph, or telephone message of any system or falsifies the same.

Any person who shall use such falsified dispatch to the prejudice of a third party or with the intent to cause such prejudice, shall suffer the penalty next lower in degree.[16]

Three acts are punishable under Art. 173.

1. **Uttering fictitious wireless, telegraph or telephone message.**
2. **Falsifying wireless, telegraph or telephone message.**
3. **Using such falsified message.**

Uttering fictitious message or falsifying the same. (Par. 1, Art. 173)

Elements:

1. **That the offender is an *officer* or *employee* of the Government or an officer or employee of a *private corporation, engaged* in the *service of sending* or *receiving* wireless, cable or telephone message.**
2. **That the offender commits any of the following acts:**
   - (a) ***Uttering*** **fictitious wireless, cable, telegraph or telephone message; or**
   - (b) ***Falsifying*** **wireless, cable, telegraph, or telephone message.**

The public officer, to be liable, must be engaged in the service of sending or receiving wireless, cable, telegraph or telephone message.

The officer or employee of the Government, to be liable, must be engaged in the service of sending or receiving wireless, cable, telegraph or telephone messages, like the telegraph operator of the Bureau of Posts or the operator of Government telephone.

Example of falsifying telegraph message.

The accused, a telegraph operator, who received two telegrams for transmission, reduced the number of words of the telegraph messages by

[16] See Appendix "A," Table of Penalties, No. 8.

twelve and eight words, respectively, without having been authorized to do so by the sender. He pocketed the differences in the prices charged in the sums of P0.72 and P0.48, respectively. *Held:* The accused was guilty of falsification of telegraph messages. (U.S. vs. Romero, 17 Phil. 76)

Use of said falsified messages. (Par. 2, Art. 173)

Elements:

1. That the accused *knew* that wireless, cable, telegraph, or telephone message was falsified by any of the persons specified in the first paragraph of Art. 173.
2. That the accused *used* such falsified dispatch.
3. That the use of the falsified dispatch resulted in the *prejudice* of a third party, or that the use thereof was with *intent to cause* such prejudice.

Private individual cannot be a principal by direct participation in falsification of telegraphic dispatches under Art. 173.

A private individual cannot commit the crime of falsification of telegraphic dispatches by direct participation, unless he is an employee of a corporation engaged in the business of sending or receiving wireless, telegraph or telephone messages.

But a private individual can be held criminally liable as principal by inducement in the falsification of telegraph dispatches or telephone messages.

But if he knowingly uses any falsified telegraph, wireless or telephone messages to the prejudice of a third person, or with intent to cause such prejudice, it is not necessary that he be connected with such corporation.

Act No. 1851, Sec. 4, punishes private individuals who forge or alter telegram.

Any person who willfully forges or substantially alters a telegram or who utters a telegram knowing the same to be forged, or who utters as a telegram any message or communication which he knows to be not a telegram, is punished by a fine not exceeding 100 pesos.

Section Five. — Falsification of medical certificates, certificates of merit or service, and the like

Art 174 *False medical certificates, false certificates of merit or service, etc.* — **The penalties of** *arresto mayor* **in its maximum period to** *prision correccional* **in its minimum period**[17] **and a fine not to exceed 1,000 pesos shall be imposed upon:**

1. Any physician or surgeon who, in connection with the practice of his profession, shall issue a false certificate; and

2. Any public officer who shall issue a false certificate of merit or service, good conduct, or similar circumstances.

The penalty of *arresto mayor*[18] **shall be imposed upon any private person who shall falsify a certificate falling within the classes mentioned in the two preceding subdivisions.**

Certificate, defined.

A certificate is any writing by which testimony is given that a fact has or has not taken place. (Bouvier's Law Dictionary, p. 442)

Persons liable for falsification of certificates.

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

   Note: **The crime is False Medical Certificate** *by a physician.*

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

   Note: **The crime is False Certificate of Merit or Service by a** *public officer.*

3. *Private individual* **who falsified a certificate falling in the classes mentioned in Nos. 1 and 2.**

   Note: **The crime is False Medical Certificate** *by a private individual* **or False Certificate of Merit or Service** *by a private individual.*

[17] See Appendix "A," Table of Penalties, No. 8.
[18] See Appendix "A," Table of Penalties, No. 19.

Example of falsification of certificate of merit.

In an application to the Civil Service Board for examination a document printed in accordance with the form prescribed by said Board, and in that part thereof which contained recommendations of the applicant, certificate No. 3 appeared to be subscribed by Frank N. West, the latter having neither subscribed it nor written the contents thereof, the same not being correct in some respects, *viz.*, as regards the age of the party certifying and the length of time during which he knew the candidate recommended. (See U.S. vs. Michelena, 4 Phil. 492)

The falsification of the certificate of large cattle is not now covered by Art. 174.

Certificate of large cattle is a public document and its falsification is covered by Art. 171 or Art. 172, depending on whether the offender is a public officer or a private individual.

The ruling in the cases of *U.S. vs. Sayson*, 6 Phil. 382, and *U.S. vs. Dumandan*, 8 Phil. 61, was based on Art. 310 of the old Penal Code, which punished "a public official who shall issue a false certificate of merit or service or of good conduct, *of property*," etc. In view of the omission of the words "of property" in paragraph No. 2 of Art. 174, it is doubted that certificates of large cattle are covered by Article 174.

The phrase "or similar circumstances" in Art. 174 does not seem to cover property, because the circumstance contemplated must be similar to "merit," "service," or "good conduct."

But certificate of residence for voting purposes is certificate of "similar circumstances."

Thus, a person who falsely stated under oath that he was a resident of the town of Jimenez for the required period of time, so as to be able to take part in the municipal elections, was found guilty of falsification of a certificate, not of falsification of a public document. (U.S. vs. Deloso, 11 Phil. 180)

Art. 175. *Using false certificates.* — The penalty of *arresto menor* shall be imposed upon any one who shall knowingly use any of the false certificates mentioned in the next preceding article.

Elements:

1. That a *physician* or *surgeon* had issued a false medical certificate, or a *public officer* had issued a false certificate of merit or service, good conduct, or similar circumstances, or a *private person* had falsified any of said certificates.
2. That the offender *knew* that the certificate was false.
3. That he *used* the same.

When any of the false certificates mentioned in Art. 174 is used in the judicial proceeding, Art. 172 does not apply, because the use of false document in judicial proceeding under Art. 172 is limited to those false documents embraced in Arts. 171 and 172.

Section Six. — Manufacturing, importing, and possession of instruments or implements intended for the commission of falsification

Art. 176. ***Manufacturing and possession of instruments or implements for falsification.*** **— The penalty of *prision correccional* in its medium and maximum periods[19] and a fine not to exceed 10,000 pesos shall be imposed upon any person who shall make or introduce into the Philippine Islands any stamps, dies, marks, or other instruments or implements intended to be used in the commission of the offenses of counterfeiting or falsification mentioned in the preceding sections of this chapter.**

Any person who, with the intention of using them, shall have in his possession any of the instruments or implements mentioned in the preceding paragraph, shall suffer the penalty next lower in degree[20] than that provided therein.

Acts punished under Article 176:

They are:

1. *Making or introducing* into the Philippines any stamps, dies, marks, or other instruments or implements for counterfeiting or falsification.

[19]See Appendix "A," Table of Penalties, No. 15.
[20]See Appendix "A," Table of Penalties, No. 8.

2. *Possessing* with *intent to use* the instruments or implements for counterfeiting or falsification made in or introduced into the Philippines by *another person.*

Examples:

1. A person who manufactured a seal in imitation of the seal of Lipa, Batangas, for making false certificates for the transfer of livestock, is guilty of *making* instrument for falsification of certificates. (U.S. vs. Angeles, 6 Phil. 435)

2. A person who possessed an iron brand to be used in falsifying the official brand of a municipality for cattle branding, is guilty of *illegal possession* of instrument for falsification. (People vs. Magpale, 70 Phil. 177)

The implements confiscated need not form a complete set.

In order to secure a conviction under the 2nd paragraph of Art. 176, it is not necessary that the implements confiscated form a complete set for counterfeiting, it being enough that they may be employed by themselves or *together with other implements* to commit the crime of counterfeiting or falsification. (People vs. Santiago, *et al.*, C.A. 48 O.G. 4401)

Arts. 165 and 176, Revised Penal Code, also punish constructive possession.

The possession prohibited in Articles 165 and 176 of the Revised Penal Code is possession in general, that is, not only actual, physical possession, but also constructive possession or the subjection of the thing to one's control.

Where the sale of counterfeiting paraphernalia is made subject to the condition that the vendor must demonstrate how counterfeiting is done, and, on the way to the place where the demonstration is to be done, the vehicle carrying the paraphernalia is intercepted and its cargo is confiscated, the vendor, although not in the vehicle, is nonetheless in constructive possession of the articles and the same still legally subject to his control. (People vs. Andrada, C.A., 64 O.G. 5751, citing Art. 1502, Civil Code)

Chapter Two

OTHER FALSITIES

Section One. — Usurpation of authority, rank, title, and improper use of names, uniforms, and insignia

Art. 177. ***Usurpation of authority or official functions.*** **— Any person who shall knowingly and falsely represent himself to be an officer, agent, or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of** ***prision correccional*** **in its minimum and medium periods.**[1] ***(As amended by Rep. Act No. 379)***

Two offenses are contemplated in Art. 177.

Two offenses are contemplated in Art. 177 — usurpation of authority, covered by the first portion thereof; and usurpation of official functions, covered by the second portion. (People vs. Belarmino, C.A., 58 O.G. 6284)

Two ways of committing the crime under Art. 177:

1. By knowingly and falsely representing oneself to be an officer, agent or representative of any department or agency of the Philippine Government or any foreign government.

   Note that in usurpation of authority, the mere act of knowingly and falsely representing oneself to be an officer, etc. is sufficient. It is not necessary that he performs an act pertaining to a public officer.

[1]See Appendix "A," Table of Penalties, No. 14.

2. By *performing* any *act* pertaining to any *person in authority* or *public officer* of the Philippine Government or of a foreign government or any agency thereof, *under pretense of official position,* and *without being lawfully entitled* to do so.

Note that in usurpation of official functions, it is essential that the offender should have *performed* an act pertaining to a person in authority or public officer, in addition to other requirements.

There must be positive, express and explicit representation.

The law demands positive, express and explicit representation on the part of the offender before he can be convicted of usurpation of authority. The crime is not committed if the accused *merely did not deny* that he was an agent of the Philippine Government when introduced as such by public officials who responded to the intrigues of one Jose B. Lazaro. (People vs. Calinisan, 8 C.A. Rep. 20)

The offender (1) should have represented himself to be an officer, agent or representative of any department or agency of the government; or (2) should have performed an act pertaining to a person in authority or public officer.

Thus, the accused who falsely represented himself to the owner of a *carinderia* that he was a safety officer of the Philippine Board of Safety and as such he had authority to demand for examination of the payroll and/or records of sales, is not liable under Art. 177, as amended, it appearing that the Philippine Board of Safety was *not a public corporation* with authority over merchant's books including sales book and payroll. Not being a public corporation, it was not a department or an agency of the Philippine Government. Hence, in representing himself to be a safety officer of the Philippine Board of Safety, even though the representation was false and he knew it to be false, the accused did not knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government, or perform any act pertaining to a person in authority or public officer of the Philippine Government. (See People vs. Belarmino, C.A., *supra)*

False representation may be shown by acts.

It is not necessary that the offender should falsely represent himself to be an officer, agent or representative of any department or agency of the government. Thus, even in the absence of evidence that the accused represented himself as a police officer, his acts in blowing his whistle, stopping buses and ordering drivers to step down their passenger vehicles

and produce their driver's licenses, sufficiently establish his culpability for the crime of usurpation of official functions under Art. 177 of the Revised Penal Code. (People vs. Reyes, C.A., 70 O.G. 7801)

Art. 177 may be violated by a public officer.

People vs. Hilvano
(99 Phil. 655)

Facts: When the Mayor of Villareal, Samar, departed for Manila on official business on September 22, 1952, he designated the defendant councilor to discharge the duties of his office. Later, during office hours of that same day, the Vice-Mayor went to the municipal building; and having found the defendant acting in the place of the Mayor, he served written notices to the corresponding municipal officers, including the defendant that he as Vice-Mayor was assuming the duties of the absent Mayor. However, the defendant refused to yield, arguing that he had been designated by the Mayor. Whereupon, the Vice-Mayor sent a telegram to the Executive Secretary informing the latter of the controversy. And the said Secretary replied by letter, that under Sec. 2195 of the Revised Administrative Code, it was the Vice-Mayor who should discharge the duties of the Mayor during the latter's temporary absence. Shown this official pronouncement, the defendant still refused to surrender the position. Again the Vice-Mayor sought the opinion of the Provincial Fiscal, who by letter replied that the Vice-Mayor had the right to the office. Notwithstanding such opinion, which was exhibited to him, the defendant declined to vacate the post, which he held for about a month, appointing some policemen, solemnizing marriages and collecting the corresponding salary for mayor. He was charged with usurpation of authority and official functions under Art. 177 of the Revised Penal Code, as amended by Rep. Act No. 379.

It was contended, however, for the defendant that he committed no usurpation of authority because he was a councilor, an official of the Government, and that such crime may only be committed by private *individuals.*

Held: There is actually no reason to restrict the operation of Article 177 to private individuals. For one thing, it applies to "any person"; and when the law does not distinguish, we should not distinguish. Furthermore, contrary to appellant's assumption that Articles 238-241 of the Revised Penal Code penalize all kinds of usurpation of official function by public officers, said articles merely punish interference by officers of *one of the three departments of government* (legislative, executive and judicial) with functions of officials of *another department.* Said articles do not cover usurpation of one officer or employee of a given department of the powers

of another officer *in the same department.* For instance, the exercise by a bureau employee of the power of his director.

There is no excuse for the defendant. In the beginning he might have pleaded good faith, invoking the designation by the Mayor; but after he had been shown the letter of the Executive Secretary and the opinion of the Provincial Fiscal, he has no right thereafter stubbornly to stick to the position.

Art. 177, as amended, does not apply to occupant under color of title.

Article 177 of the Revised Penal Code, as amended, punishes the usurper or one who acts under false pretenses and not the occupant under color of title. A usurper is "one who introduces himself into an office that is vacant, or who, without color of title, ousts the incumbent and assumes to act as an officer by exercising some of the functions of the office." (People vs. Buenaflor, *et al.*, C.A., 72 O.G. 364)

Art. 177, as amended, punishes usurpation of authority or official functions of any officer of any foreign government.

Note that the offenses defined and penalized in Art. 177, as amended, may be committed by knowingly and falsely representing oneself to be an officer, agent or representative of any department or agency of any foreign government; and by performing, under pretense of official position and without being lawfully entitled to do so, any act pertaining to any person in authority or public officer of any foreign government, or any agency thereof.

Additional penalty for usurping the authority of diplomatic or consular or any other official of a foreign government.

Sec. 1 of Rep. Act No. 75 punishes any person who shall *falsely assume* and take upon himself *to act* as a diplomatic, consular, or any other official of a foreign government duly accredited as such to the Government of the Republic of the Philippines *with intent to defraud* such foreign government or the Government of the Philippines.

In addition to the penalties that may be imposed under the Revised Penal Code, the offender shall be fined not more than P5,000 or shall be imprisoned for not more than five years or both.

Note: The offender must have the intent to defraud either government.

Republic Act No. 10.

Republic Act No. 10, which was enacted on September 2, 1946, provides as follows:

> "Sec. 1. Any person who with or without pretense of official position, shall perform any act pertaining to the Government, or to any person in authority or public officer, without being lawfully entitled to do so, shall be punished with imprisonment for not less than two years, nor more than ten years."

The act performed, without the offender being lawfully entitled to do so, must pertain (1) to the Government, or (2) to any person in authority, or (3) to any public officer.

To be chargeable and punishable under Section 1 of Republic Act No. 10, one must perform any act pertaining (1) to the Government, or (2) to any person in authority, or (3) to any public officer, without being lawfully entitled to do so. Now, the question is — has the accused performed such an Act? As per the aforequoted information, the act allegedly committed by accused consisted in having appointed and issued identification cards designating Gregorio Noval and Moises E. Roble as Sergeants, Inf. 12 Sampaguita II, 1st Div-A, under the ANDERSON FIL-AMERICAN GUERRILLAS (AFAG), without being lawfully entitled to do so. If it is the point of the prosecution that the act just mentioned allegedly committed by accused pertains (1) to the Government, or (2) to any person in authority, or (3) to any public officer — the prosecution has not bothered to show or even to intimate any law, executive order or legal decree authorizing the Government to perform such an act, much less the government agency, person in authority or public officer who actually performs the same. For illustration, if one is charged with the usurpation of authority to solemnize marriage or to effect an arrest, it is understood that, under the law, only judges and law enforcement agents, among others, are authorized to perform said acts. But in the instant cases, as just adverted to, the prosecution has not even intimated what government agency, person in authority or public official is by law authorized to appoint and issue identification cards designating Gregorio Noval and Moises E. Roble as Sergeants, etc., under the said AFAG. In the absence of any specification of such government agency, person in authority or public official — what public authority could the accused have, or had he, allegedly usurped? We have searched in vain for the answer to this question in the prosecution's theory of the case. (People vs. Laguitan, C.A., 64 O.G. 11823-11824)

Rep. Act No. 10 applicable only to members of seditious organization engaged in subversive activities.

People vs. Lidres
(G.R. No. L-12495, July 26, 1960)

Facts: To fill up the vacancy expected to be created by the maternity leave of one Magdalena P. Echavez, a public school teacher, Josita Diotay and defendant Dionisio Lidres filed their respective applications as substitute teachers. Diotay was recommended by the supervising teacher to fill up the position. However, he (supervising teacher) requested Diotay to sign an agreement, wherein both Diotay and defendant agreed to take over Echavez' position on a "50-50" basis, *i.e.,* the period from January to March 1954 would be equally divided between them. Thereafter, Diotay began teaching on January 4, 1954. On February 12, 1954, apparently on the strength of the agreement, defendant appeared at the school, armed with a prepared letter of resignation for the signature of Diotay. Diotay refused to resign. So, on February 22, 1954, defendant went to the classroom where Diotay was conducting her classes, and against the latter's will took over the class.

Held: Examination of the discussion of House Bill No. 126, which became Republic Act 10, discloses indisputably that said Act was really intended as an emergency measure, to cope with the abnormal situation created by the subversive activities of seditious organizations at the time of its passage in September 1946. Hence, the elimination of the element of pretense of official position required under Art. 177 of the Revised Penal Code. And since it is neither alleged in the information nor proved during the trial that defendant is a member of a seditious organization engaged in subversive activities, he could not be held liable or found guilty under said provision of Republic Act No. 10. Granting, *arguendo,* that Rep. Act No. 10 is an amendment to Art. 177, and not merely an implementation thereof, the subsequent enactment of Rep. Act 379, effective June 14, 1949, would constitute an amendment thereof by restoring the *element of pretense of official position* in the offense of usurpation of official functions. Under Rep. Act No. 379 then, the law in force at the time of the commission of the alleged offense by defendant, pretense of official position is an essential element of the crime of usurpation of official functions. But the information specifically charges that defendant committed the offense "without pretense of official position." Under the circumstances, the facts alleged in the information fail to constitute an offense.

Art. 178. ***Using fictitious name and concealing true name.*** **— The penalty of *arresto mayor*[2] and a fine not to exceed 500 pesos shall be imposed upon any person who shall publicly use a fictitious name for the purpose of concealing a crime, evading the execution of a judgment, or causing damage.**

Any person who conceals his true name and other personal circumstances shall be punished by *arresto menor* or a fine not to exceed 200 pesos.

I. Elements (using fictitious name):

1. That the offender uses a name *other than his real* name.
2. That he uses that fictitious name *publicly.*
3. That the purpose of the offender is —
   a. to conceal a crime;
   b. to evade the execution of a judgment; or
   c. to cause damage to public interest.

What is a fictitious name?

Any other name which a person publicly applies to himself without authority of law is a fictitious name. (U.S. vs. To Lee Piu, 35 Phil. 4)

Causing damage must be to public interest.

If the purpose is for causing damage, it must be damage to *public interest.* If it is damage to private interest, the crime will be estafa under Art. 315, subdivision 2, par. (a).

Signing fictitious name in an application for passport is publicly using such fictitious name.

The signing of a fictitious name, *i.e.,* Toribio Jalijali, instead of To Lee Piu, in an application for passport, is publicly using a fictitious name. (U.S. vs. To Lee Piu, 35 Phil. 4)

[2]See Appendix "A," Table of Penalties, No. 1.

To evade the execution of judgment or to conceal a crime.

Where a person takes the place of another who has been convicted by *final judgment*, he is guilty of using a fictitious name punishable under Art. 178, and not of evasion of the service of the sentence, because the real convict alone is guilty thereof. (Albert)

It seems that such person is also liable for delivering prisoners from jail under Art. 156, by helping the escape of the real convict by other means.

The prisoner who is replaced must necessarily use the name of another, and in this case he is also guilty of using a fictitious name to *evade the execution of the judgment* against him. And the one who takes his place has to use a fictitious name to *conceal the crime* of delivering a prisoner from jail.

II. Elements (concealing true name):

1. That the offender conceals —
   a. his true name; and
   b. all other personal circumstances.
2. That the purpose is only to conceal his identity.

Distinction between use of fictitious name and concealing true name.

(a) In use of fictitious name, the element of publicity must be present; in concealing true name and other personal circumstances, that element is not necessary.

(b) The purpose in use of fictitious name is any of those three enumerated (to conceal a crime, to evade the execution of a judgment, or to cause damage); in concealing true name it is merely to conceal identity.

Use of unregistered aliases.

Com. Act No. 142, regulating the use of aliases was amended by Rep. Act No. 6085, which provides:

"SECTION 1. Except as pseudonym solely for literary, cinema, television, radio or other entertainment purposes and in athletic events where the use of pseudonym is a normally accepted practice, no person shall use any name different from the one with which he was registered at birth in the office of the local civil registry, or with which he was registered in the bureau of immigration upon entry; or such substitute name as may have been authorized by a competent court: *Provided,* That persons, whose

births have not been registered in any local civil registry and who have not been baptized, have one year from the approval of this Act within which to register their names in the civil registry of their residence. The name shall comprise the patronymic name and one or two surnames.

SEC. 2. Any person desiring to use an alias shall apply for authority therefor in proceedings like those legally provided to obtain judicial authority for a change of name, and no person shall be allowed to secure such judicial authority for more than one alias. The petition for an alias shall set forth the person's baptismal and family name and the name recorded in the civil registry, if different, his immigrant's name, if an alien, and his pseudonym, if he has such names other than his original or real name, specifying the reason or reasons for the use of the desired alias. The judicial authority for the use of alias, the christian name and the alien's immigrant name shall be recorded in the proper local civil registry, and no person shall use any name or names other than his original or real name unless the same is or are duly recorded in the proper local civil registry.

SEC. 3. No person having been baptized with a name different from that with which he was registered at birth in the local civil registry, or in case of an alien, registered in the bureau of immigration upon entry, or any person who obtained judicial authority to use an alias, or who uses a pseudonym, shall represent himself in any public or private transaction or shall sign or execute any public or private document without stating or affixing his real or original name and all names or aliases or pseudonym he is or may have been authorized to use.

SEC. 4. Six months from the approval of this Act and subject to the provisions of section 1 hereof, all persons who have used any name and/or name and alias or aliases different from those authorized in section one of this Act and duly recorded in the local civil registry, shall be prohibited to use such other name or names and/or alias or aliases.

SEC. 5. Any violation of this Act shall be punished with imprisonment of from one year to five years and a fine of P5,000 to P10,000.

x x x."

Republic Act No. 6085 was approved on August 4, 1969.

Example of violation of the Anti-Alias Law.

Aside from the name "Ong Hick Lian," appellee is using the alias "Julian Ong." There is no evidence that appellee has been baptized with the later name or that he has been known by it since childhood, or that the court has authorized the use thereof. Appellee has, therefore, committed a violation of the Anti-Alias Law. (Hock Lian vs. Republic, 17 SCRA 188)

Art. 179. *Illegal use of uniforms or insignia.*— The penalty of *arresto mayor*[3] shall be imposed upon any person who shall publicly and improperly make use of insignia, uniforms, or dress pertaining to an office not held by such person or to class of persons of which he is not a member.

Elements:

1. That the offender makes use of *insignia, uniform* or *dress.*
2. That the insignia, uniform or dress pertains to an office *not* held by the offender or to a class of persons of which he is *not* a member.
3. That said insignia, uniform or dress is used *publicly* and *improperly.*

Wearing the uniform of an imaginary office, not punishable.

Note that the second element requires that the insignia, uniform or dress pertains to an *office* or *class of persons.*

Hence, if the insignia, uniform or dress pertains to an office which does not originally exist, this provision is not violated.

An exact imitation of a uniform or dress is unnecessary.

In November, 1955, information reached the Mother Superior of the religious order, Daughters of St. Paul, that a woman was roaming around alone asking for alms for orphans in the name of said organization. The woman was wearing the habit of the Daughters of St. Paul. The Daughters of St. Paul had no orphans; asking for alms was not its mission.

Amongst those approached by said woman was Leandra Sajagon, mother of two sisters in the convent of the Daughters of St. Paul. Leandra gave her P1.00 for which no receipt was issued.

Held: To bring a culprit within the coverage of Article 179 of the Revised Penal Code, on the illegal use of uniforms and insignia, an exact imitation of a uniform is unnecessary. A colorable resemblance calculated to deceive the common run of people — not those thoroughly familiar with every detail or accessory thereof — is sufficient. (People vs. Romero, C.A., 58 O.G. 4402)

A layman who wears publicly the ecclesiastical habit of a Catholic priest is liable under Art. 179.

[3]See Appendix "A," Table of Penalties, No. 1.

Using uniform, decoration or regalia of foreign State is punished by Rep. Act No. 75.

Rep. Act No. 75, Sec. 3, punishes by a fine not exceeding P200 or imprisonment not exceeding 6 months, or both such fine and imprisonment, the unauthorized wearing of any naval, military, police or other official uniform, decoration or regalia of a foreign State, or one nearly resembling the same, *with intent to deceive or mislead.*

Wearing insignia, badge or emblem of rank of the members of the Armed Forces of the Philippines or Constabulary is punished by Rep. Act No. 493.

Except those excluded from the prohibition in section one of Rep. Act No. 493, any person who uses or wears the insignia, badge or emblem of rank of members of the Armed Forces of the Philippines or the Philippine Constabulary, or any colorable imitation thereof, shall be punished by a fine of not less than P100 and not exceeding P2,000, or by imprisonment for not less than one month and not exceeding two years, or both.

This provision if not applicable to the using and wearing of such insignia, badge or emblem of rank in playhouse or theater or in moving picture films.

Illegal manufacture, sale, distribution and use of PNP uniforms, insignias and other accoutrements are punished by Executive Order No. 297.

The unauthorized manufacture, sale and distribution of PNP uniforms, insignias and other accoutrements is hereby prohibited. Any violation of this rule shall, after due notice and hearing, result in the immediate closure of the establishment, plant and/or office where the uniforms and other items are manufactured, stored, sold and/or distributed, the cancellation of its business license or permit, the condemnation, seizure and forfeiture of all paraphernalia used or intended to be used in the manufacture, sale and/or distribution and the imposition of reasonable administrative fines, without prejudice to the filing of administrative, civil and/or criminal actions.

The use of PNP uniforms, insignias and other accoutrements by person who is not a member of the unformed PNP personnel is also prohibited. Any violation of this rule shall, after due notice and hearing, be penalized by public censure which shall be published at least once in a newspaper of general circulation without prejudice to the filing of administrative, civil and/or criminal actions.

Any person who shall publicly and improperly make use of insignias, uniforms or dress pertaining exclusively for uniformed PNP personnel and

the PNP of which he/she is not a member shall be criminally liable pursuant to Article 179 of the Revised Penal Code.

Section Two. — False testimony

False testimony, defined.

False testimony is committed by a person who, being under oath and required to testify as to the truth of a certain matter at a hearing before a competent authority, shall deny the truth or say something contrary to it.

What are the three forms of false testimony?

1. False testimony in criminal cases. (Arts. 180 and 181)
2. False testimony in civil cases. (Art. 182)
3. False testimony in other cases. (Art. 183)

Nature of the crime of false testimony.

Falsehood is ever reprehensible; but it is particularly odious when committed in judicial proceedings, as it constitutes an imposition upon the court and seriously exposes it to a miscarriage of justice. (People vs. Reyes, C.A., 48 O.G. 1837)

Art. 180. ***False testimony against a defendant.*** **— Any person who shall give false testimony against the defendant in any criminal case shall suffer:**

1. The penalty of *reclusion temporal*,[4] if the defendant in said case shall have been sentenced to death;

2. The penalty of *prision mayor*,[5] if the defendant shall have been sentenced to *reclusion temporal* or *perpetua;*

3. The penalty of *prision correccional*,[6] if the defendant shall have been sentenced to any other afflictive penalty; and

[4]See Appendix "A," Table of Penalties, No. 28.
[5]See Appendix "A," Table of Penalties, No. 19.
[6]See Appendix "A," Table of Penalties, No. 10.

4. The penalty of *arrestomayor*,[7] if the defendant shall have been sentenced to a correctional penalty or a fine, or shall have been acquitted.

In cases provided in subdivisions 3 and 4 of this article the offender shall further suffer a fine not to exceed 1,000 pesos.

Elements:

1. That there be a criminal proceeding.
2. That the offender testifies falsely under oath against the defendant therein.
3. That the offender who gives false testimony knows that it is false.
4. That the defendant against whom the false testimony is given is either acquitted or convicted in a *final judgment.* (People vs. Maneja, 72 Phil. 256)

Penalty depends upon the sentence of the defendant against whom false testimony was given.

Note that the penalty for false testimony against the defendant in a criminal case depends upon the sentence imposed on the person against whom the false testimony was given. For instance, a witness testifies *falsely* against the accused charged with murder. If the accused is convicted and sentenced to death and the witness is prosecuted and convicted, the penalty to be imposed on that false witness is *reclusion temporal.* On the other hand, if the accused is acquitted, the penalty to be imposed on the false witness is *arresto mayor.*

The four cases enumerated in Art. 180 uniformly presuppose a final judgment of conviction or acquittal in the basic case as a prerequisite to the actionability of the crime of false testimony against the defendant.

Defendant must be sentenced at least to (1) a correctional penalty, or (2) a fine, or (3) must be acquitted.

Problem: A is accused of slight physical injuries punishable by one month imprisonment. B falsely testified against him. A is convicted and sentenced to 15 days of *arresto menor*. Is B guilty of false testimony? No,

[7] See Appendix "A," Table of Penalties, No. 1.

because Art. 180, par. 4, provides that the defendant in the principal case shall be sentenced at least to a *correctional* penalty or a fine, or shall have been acquitted.

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

Reason: Since the law punishes the false witness even if the defendant in the principal case is *acquitted,* it would seem that the law intends to punish the mere giving of false testimony.

Art. 181. ***False testimony favorable to the defendant.*** **— Any person who shall give false testimony in favor of the defendant in a criminal case, shall suffer the penalties of** *arresto mayor* **in its maximum period to** *prision correccional* **in its minimum period[8] and a fine not to exceed 1,000 pesos, if the prosecution is for a felony punishable by an afflictive penalty, and the penalty of** *arresto mayor*[9] **in any other case.**

False testimony favorable to the defendant is equally repugnant to the orderly administration of justice.

While false testimony in favor of an accused may be less obnoxious than false testimony against him, both forms of false testimony are equally repugnant to the orderly administration of justice, and deserve to be rigorously repressed. (People vs. Reyes, C.A., 48 O.G. 1837)

Reason for punishing the crime of false testimony.

False testimony is punished not *because of the effect* it actually produces, but because of its *tendency* to favor or to prejudice the defendant. (Dec. Sup. Ct. of Spain, Jan. 4, 1904)

False testimony by negative statement is in favor of defendant.

A witness who *falsely* testified that he neither saw nor was present at the killing of the deceased, is guilty of false testimony because by not

[8]See Appendix "A," Table of Penalties, No. 8.
[9]See Appendix "A," Table of Penalties, No. 1.

testifying for the prosecution, he favored the accused. (Dec. Sup. Ct. of Spain, April 2, 1883)

The false testimony in favor of defendant need not directly influence the decision of acquittal.

People vs. Reyes
(C.A., 48 O.G. 1837)

Facts: The accused was the star witness in a prosecution for robbery against Jemenia. Before the trial, the accused executed an affidavit in which he manifested that he was not interested in the prosecution of the case and that he wanted to give the accused "a chance to earn his living wisely and in the honest way." The fiscal refused to ask for the dismissal of the case. When the case was called for trial, the accused, who was asked to identify Jemenia, testified that he could not remember anymore the face of Jemenia. After further questions failed to elicit other data, the case against Jemenia was dismissed by the court, resulting in his acquittal.

Held: The contention of the defense that the acquittal of Jemenia was due to the failure of the fiscal to call other witnesses who could have properly identified Jemenia, is irrelevant. It is not necessary that the testimony given by the witness should directly influence the decision of acquittal, it being sufficient that it was given with the intent to favor the accused (in this case, Jemenia).

The false testimony favorable to the defendant need not benefit the defendant.

In a case, the accused *falsely testified* in a criminal case *in favor* of one Tupas, the defendant in that criminal case. Tupas was convicted in spite of the favorable testimony given by the accused. It was held that the accused was guilty, even if his testimony did not benefit Tupas. (U.S. vs. Adolfo, 12 Phil. 296)

Under Art. 181, it is sufficient that the false testimony was given *with intent to favor the defendant.* In the case of *People vs. Reyes,* C.A., *supra,* such intent is indicated by the repeated statement of the accused that he was not interested in the prosecution of the defendant in the criminal case where he gave the false testimony.

A statement by a witness that he is an expert in handwriting is a statement of a mere opinion, the falsity of which is not sufficient to convict him.

In judicial trials, the mere affirmation of a witness that he is an expert in handwriting is of no value. Upon such statement, he is not allowed to testify as an expert. He is required to give the experience which he has had in the art in question. (U.S. vs. McGovern, 4 Phil. 451)

Note: If it is his testimony relative to his experience which is false, this not being a statement of mere opinion, he may he liable.

Conviction or acquittal of defendant in principal case, not necessary.

Note that under Art. 181, it is sufficient that the defendant in the principal case is *prosecuted* for a felony punishable by afflictive penalty or by other penalty.

But the gravity of the crime for which the defendant was prosecuted in the case where the false testimony was given should be shown in order to determine the proper penalty to be imposed on the false witness.

The defendant who falsely testified in his own behalf in a criminal case is guilty of false testimony favorable to the defendant.

A defendant, charged with estafa, testified falsely that the extrajudicial confession attributed to him was procured by the police by the use of force, intimidation and prolonged torture. On the basis of his testimony, he was acquitted.

Held: It must not be forgotten that the right of an accused person to testify in his own behalf is secured to him, not that he may be enabled to introduce false testimony into the record, but to enable him to spread upon the record the truth as to any matter within his knowledge which will tend to establish his innocence. (U.S. vs. Soliman, 36 Phil. 5)

Note: It would seem that the ruling in the Soliman case should apply only when, as in that case, the defendant voluntarily goes upon the witness stand and falsely imputes to some other person the commission of a grave offense. If he merely denies the commission of the crime or his participation therein, he should not be prosecuted for false testimony.

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

On direct examination, the witness stated that the accused told him to get up for he had killed a person. On cross-examination, the witness changed his testimony and stated he did not hear clearly what the accused said.

Held: The witness is not liable, there being no sufficient evidence that he acted with malice or with criminal intent to testify falsely. (People vs. Ambal, 69 Phil. 710)

Art. 182. *False testimony in civil cases.* — Any person found guilty of false testimony in a civil case shall suffer the penalty of *prision correccional* in its minimum period[10] and a fine not to exceed 6,000 pesos, if the amount in controversy shall exceed 5,000 pesos; and the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period[11] and a fine not to exceed 1,000 pesos, if the amount in controversy shall not exceed said amount or cannot be estimated.

Elements:

1. That the testimony must be given in a civil case.
2. That the testimony must *relate* to the issues presented in said case.
3. That the testimony must be *false*.
4. That the false testimony must be given by the defendant *knowing the same to be false.*
5. That the testimony must be *malicious* and given with an intent to affect the issues presented in said case. (U.S. vs. Aragon, 5 Phil. 469)

The testimony given in the civil case must be false.

Defendant declared in court that her property was free from encumbrance, whereas in fact there was a subsisting mortgage on the property to guarantee the obligation of an agent. Could defendant be prosecuted for false testimony? Mere guaranty is no lien on the property. The prosecution failed to prove that the agent owed money to the principal at the time the accused testified and that there was then a subsisting debt for which the property was given as a security. (People vs. Collantes, C.A., 37 O.G. 1804)

[10]See Appendix "A," Table of Penalties, No. 11.
[11]See Appendix "A," Table of Penalties, No. 8.

Art. 182 is not applicable when the false testimony is given in special proceedings.

Art. 182 applies only to ordinary civil cases, as contemplated in Section 1, Rule 2 of the Rules of Court, and does not apply to special proceedings, such as the summary settlement of estates of small value, under Section 2 Rule 74, of the Rules of Court, which may fall under the category of "other cases" contemplated in Art. 183.

The Revised Penal Code punishes, among other acts, the giving of false testimony either against or in favor of the defendant in a criminal case (Arts. 180 and 181); false testimony in a civil case, the penalty being made dependent upon "the amount in controversy" (Art. 182); and false testimony in other cases "upon any material matter.: (Art. 183) On the other hand, the Rules of Court comprises four parts: Part I, on Civil Actions; Part II, on Special Proceedings; Part III, on Criminal Procedure; and Part IV, on General Provisions. Section 1, Rule 2, defines "actions" (civil) as "an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong," and says, further, that "every other remedy is a special proceeding." (People vs. Hernandez, C.A., 67 O.G. 8330)

Example of false testimony in a civil case.

During the trial of Civil Case No. 1692 in the Court of First Instance of Iloilo, wherein Juan Abraham, Jr. sued Vasquez for some nine thousand and odd pesos, the balance due on account, the latter produced an alleged receipt for P8,700 which he alleged had been signed and delivered to him by Juan Abraham ,Jr., and testified under oath that he had paid him this amount. The receipt was not genuine and Vasquez had not paid the P8,700. (U.S. vs. Vasquez, 26 Phil. 480)

Falsity of testimony must first be established.

The falsity of the subject testimonies of private respondents is yet to be established. It is noted that at the time of the filing of the criminal complaints, the civil case filed by Ark Travel is still pending decision. Ark Travel has yet to prove the validity of its monetary claims and damages against NFMAI. It is only after trial that the RTC can assess the veracity or falsity of the testimony and correspondingly render a decision. Thus, the civil case is so intimately connected with the subject crime that it is determinative of the guilt or innocence of the respondents in the criminal cases. In other words, whether or not the testimonies of private respondents in the civil cases are false is a prejudicial question. Hence, pending determination of the falsity of the subject testimonies of private respondents in the civil case, the criminal action for false testimony must perforce be suspended. As such,

under the attendant circumstances, although there is no motion to suspend proceedings on the part of the private respondents, orderly administration of justice dictates that the criminal cases should be suspended. (Ark Travel vs. Hon. Abrogar, G.R. No. 137010, December 8, 2003)

Penalty depends on the amount of the controversy.

The penalties vary - if the amount of the controversy is over P5,000; if not exceeding P5,000; or if it cannot be estimated.

Art. 183. ***False testimony in other cases and perjury in solemn affirmation.*** **— The penalty of** ***arresto mayor*** **in its maximum period to** ***prision correccional*** **in its minimum period[12] shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.**

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

Two ways of committing perjury.

They are:

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

Note: Falsely testifying under oath should not be in a *judicial* proceeding.

Elements of perjury:

1. That the accused made a *statement under oath* or executed an *affidavit* upon a *material matter*;

[12]See Appendix "A," Table of Penalties, No. 8.

2. That the statement or affidavit was made before a *competent officer,* authorized to receive and administer oath;

3. That in that statement or affidavit, the accused made a *willful* and *deliberate* assertion of a falsehood; and

4. That the sworn statement or affidavit containing the falsity is *required by law.* (People vs. Bautista, C.A., 40 O.G. 2491)

What is oath?

Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully. It involves the idea of calling on God to witness what is averred as truth, and it is supposed to be accompanied with an invocation of His vengeance, or a renunciation of His favor, in the event of falsehood. (39 Am. Jur., 494)

Meaning of affidavit.

An affidavit is a sworn statement in writing; a declaration in writing, made upon oath before an authorized magistrate or officer.

Statement under oath — as the basis of the charge of perjury.

B made a statement falsely charging *O* with estafa, that is, that the latter borrowed from him an English manuscript entitled "Manual of Exercises on Correcting Everyday Errors," and that when he demanded its return, *O* denied having received it. *B* made it under oath in the preliminary investigation before the Justice of the Peace, a *competent officer* authorized to administer oath. *B's* statement constitutes a *material matter* and is a *deliberate falsehood,* because *O* never borrowed the manuscript. *Held: B* is guilty of perjury. (People vs. Bautista, C.A., 40 O.G. 2491)

False affidavit — as the basis of the charge of perjury.

The accused Rufo B. Cruz filled up an application blank (Civil Service Form No. 2) for the patrolman examination. He stated therein that he had never been accused, indicted or tried for violation of any law, ordinance or regulation before any court, when in truth and in fact, as the accused well knew, he had been prosecuted and tried before the Justice of the Peace Court of Cainta, Rizal, for different crimes. The application was signed and sworn to by him before the municipal mayor of Cainta, Rizal.

Held: The crime committed is perjury. The offense as defined in Art. 183 of the Revised Penal Code is the willful and corrupt assertion of a falsehood under oath or affirmation administered by authority of law on a material matter. (People vs. Cruz, 108 Phil. 255)

A false affidavit to a criminal complaint may give rise to perjury.

The lower court had the opinion that an affidavit to a criminal complaint has an entirely different status from an affidavit for other purposes. In the case of *People vs. Rivera* (59 Phil. 236), it was held that the false affidavit was not a violation of Article 363 of the Revised Penal Code but it was not held that it would not violate Article 183 of said Code. (People vs. Cabero, 61 Phil. 121)

Material matter, defined.

It is the *main fact* which is the *subject of the inquiry* or any circumstance which *tends to prove* that fact, or any fact or circumstance which *tends to corroborate or strengthen* the testimony relative to the subject of inquiry, or which *legitimately affects* the credit of any witness who testifies. (U.S. vs. Estraña, 16 Phil. 520)

Example of material matter:

In the case of *People vs. Bautista, supra,* the material matter, that is, the main fact which was the subject of the inquiry by the Justice of the Peace, was whether the offended party borrowed the English manuscript. The testimony of the accused that the offended party borrowed it from him was upon that material matter. If it was true, then the charge of estafa would prosper; if it was not true, the complaint for estafa would be dropped by the justice of the peace.

People vs. Banzil
(CA-G.R. No. 22964-R, 56 O.G. 4929)

Facts: Accused Estanislao Banzil, an employee of the City of Manila, was administratively charged with immorality upon the complaint of the husband of the offended woman, and in the course of the investigation, he gave his personal circumstances, as follows:

"Q — Please give your name and personal circumstances.

"A — Estanislao Banzil, 37 years old, *single,* residing at Sta. Monica, Lubao, Pampanga, employed as market collector."

The Court below said in the appealed judgment:

> "The administrative case against the accused was for immorality. His civil status was material to the case. He probably conceived the idea that if he succeeded to convince the investigator that he is single, his advances to a married woman would be justified, or at least his responsibility minimized."

There is no question that the testimony of the accused relative to his civil status was false, because in fact he was married.

Held: The Solicitor General agrees with the defense that the appellant's false statement was not material to the immorality charge. They are correct. Single or married, the appellant may be convicted of immorality as a government employee.

Considering the observation of the lower court that the herein appellant "probably conceived the idea that if he succeeded to convince the investigator that he is single, his advances to a married woman would be justified, or at least his responsibility minimized," the Court believes that the testimony of the accused concerning his civil status is not material as tending either to prove or disprove a fact bearing on any matter at issue; and the collateral matter does not become a "material matter" merely because the declarant mistakenly thinks it is in connection with the main subject of investigation. The test of materiality is whether a false statement can influence the tribunal, not whether it does (70 C.J.S. 466), or could probably influence the result of the trial.

The accused was acquitted of the crime of perjury.

Also, in a case where a witness lied as to his residence, the fact not being material to the issue, it was held that there was no perjury. (U.S. vs. Estrana, 16 Phil. 520)

There must be competent proof of materiality.

Where materiality is a statutory element of the crime, it is settled that there must be competent proof of the materiality of the false testimony. (U.S. vs. Estrana, *supra)*

"Material," "relevant," and "pertinent," distinguished.

The matter is "*material*" when it is directed to prove a fact in issue. (Wigmore on Evidence, p. 37)

It is *"relevant"* when it tends in any reasonable degree to establish the probability or improbability of a fact in issue. (1 Elliot on Evidence, p. 197)

It is *"pertinent"* when it concerns *collateral matters* which make more or less probable the proposition at issue. (Words and Phrases, p. 468, No. 32)

No perjury if sworn statement is not material to the principal matter under investigation.

If the false testimony given by the witness is not important, essential or material to the principal matter under investigation, it cannot properly be held that perjury is committed. (U.S. vs. Jurado, 31 Phil. 491)

In a prosecution under Art. 183, the information alleges that the accused, "knowingly making untruthful statements, made and subscribed to an affidavit before the Register of Deeds, who is authorized by law to receive and administer oaths, upon facts *pertinent* to the issuance of an order of the Court of First Instance of Tarlac for the purpose of causing the Register of Deeds to issue him a new copy of his title No. 201, knowing such facts stated by him in the affidavit to be false."

Held: In order that perjury could exist, it is necessary that the false statement of the accused refers to material matter and not merely to facts pertinent to the case in connection with which it was made. (People vs. Capinlac, 64 Phil. 442)

Competent person authorized to administer oath.

The phrase "competent person authorized to administer an oath" means a person who has a right to inquire into the questions presented to him upon matters under his jurisdiction. (U.S. vs. Go Chanco, 23 Phil. 641)

No perjury if defendant subscribed and swore before a clerk in treasurer's office.

Thus, a false affidavit or solemn affirmation made in a marriage application before a *clerk* of the municipal treasurer's office, who signs and holds out himself as "assistant and in the absence of the civil registrar" is not the falsehood penalized under Art. 183, par. 2, because such clerk is not a competent person authorized to administer oaths. (People vs. Bella David, C.A., 11 O.G. 496 [1943])

The assertion of falsehood must be willful and deliberate.

Note the phrase "*knowingly* making untruthful statements" in Art. 183. This is the basis of the third element of the crime of perjury. The word *knowingly* suggests that the assertion of falsehood must be willful and deliberate.

Hence, there is no perjury through negligence or imprudence.

Good faith or lack of malice is a defense in perjury.

People vs. Abaya
(74 Phil. 59)

Facts: The accused filed a petition for voluntary insolvency. He included in the inventory of properties attached to the petition his undivided

half interest in certain parcels of land which had already been sold by the sheriff to Zosimo Fernandez to satisfy the latter's claim for P4,000. He also included in the schedule of debts the said debt of P4,000. Both the schedule and the inventory were under oath.

The accused was charged with a violation of Article 183 in that he stated under oath in his insolvency case that the undivided half of the land was his, when he fully knew that the same no longer belonged to him, as it was already owned by Zosimo Fernandez.

Held: The accused did not act with malice. Since the land was still registered in his name, he might be charged with concealing property standing in his name in the registry of property, which is a violation of the Insolvency Law. The accused who could not be expected to determine the property, from a legal point of view of the inclusion, merely stated a fact in said inventory.

Meaning of the 4th element — Is it necessary that there be a specific provision of law requiring the affidavit or sworn statement to be made in the particular cases?

To induce the clerk in the office of the municipal treasurer to issue a certificate of transfer of a large cattle, the accused executed an affidavit wherein the latter swore falsely that he was authorized by its owner to sell it. *Held:* That affidavit could not be made the basis of perjury for the reason that the execution or filing of such an affidavit was not required by law. (People vs. Tupasi, *et al,* C.A., 36 O.G. 2086)

Note: The basis of this ruling is the phrase in Article 183, which is, "shall testify under oath, or make an affidavit, x x x *in cases in which the law so requires.*"

A sworn statement containing a falsity made by a witness in preliminary examination which leads to the issuance of a warrant of arrest may constitute perjury, because the Revised Administrative Code requires that in a preliminary investigation of a criminal case all the witnesses, including the complainant, must be examined under oath. (People vs. Bautista, C.A., 40 O.G. 2491)

Examples of cases where affidavits are required by law are: (1) affidavit attached to the petition for receivership, (2) affidavit attached to complaint for ejectment, and (3) affidavit for application for marriage license.

However, in an unpublished decision (People vs. Angangco), it was held that the word "requires" in the phrase "in cases in which the law so requires" may be given the meaning of "authorizes." Hence, the 4th element may be read "that the sworn statement containing the falsity is authorized by law."

Hence, even if there is no law, requiring the statement to be made under oath, as long as it *is made for a legal purpose,* it is sufficient.

People vs. Angangco
(G.R. No. L-47693, Oct. 12, 1943)

Facts: In connection with an investigation concerning anomalies in the administration of the estate of a deceased person, accused Angangco defined certain signatures in writing and later it was sworn to by him before a notary. When the papers of the case were forwarded to the City Fiscal and the latter examined accused Angangco under oath about the same signatures, he repudiated his statement contained in his affidavit.

When prosecuted for perjury, accused Angangco contended that the phrase "in case in which the law so requires" appearing at the end of the first paragraph of Art. 183 refers to the affidavit or any statement under oath, so that if the sworn statement is not required by law to be made, no perjury is committed.

Held: The contention is without merit. The term "requires" in the phrase mentioned should have a permissive — not mandatory — effect so as to make the said phrase read: "in cases in which the law so authorizes." Hence, it is not necessary that there be a specific provision of law requiring the affidavit to be made in the particular case.

It is sufficient that the oath had been administered with a view of carrying into effect a legal purpose intended. In the instant case, the investigating officer administered oath to the accused undoubtedly with a view of being assured of the veracity of the latter and thus be furnished with foundational evidence with which to proceed against Juan L. Quintos in his suspected acts of embezzlement of the estate of the deceased.

Policy of the law on perjury.

Every interest of public policy demands that perjury be not shielded by artificial refinements and narrow technicalities. For perjury strikes at the very administration of the laws. It is the policy of the law that judicial proceedings and judgment shall be fair and free from fraud, and that litigants and parties be encouraged to tell the truth and that they be punished if they do not. (People vs. Cainglet, G.R. Nos. L-21493-94, April 29, 1966)

"Not being included in the provisions of the next preceding articles."

This phrase indicates that perjury is a crime other than false testimony in criminal cases or false testimony in civil cases, which are perversions of truth in judicial proceedings.

Perjury is an offense which covers false oaths other than those taken in the course of judicial proceedings. (U.S. vs. Estrana, 16 Phil. 521)

False testimony before the justice of the peace or fiscal during the preliminary investigation may give rise to the crime of perjury, because false testimony in judicial proceedings contemplates an actual trial where a judgment of conviction or acquittal is rendered. (People vs. Bautista, C.A., 40 O.G. 2491)

Are two contradictory sworn statements sufficient to convict of perjury?

No, the prosecution must prove which of the two statements is false, and must show that statement to be false by other evidence than the contradictory statement. (U.S. vs. Capistrano, 40 Phil. 902)

Note: The importance of this rule may be shown in the following illustration: A testified under oath before the fiscal during the preliminary investigation of a homicide case. When the case was filed in court and there A testified, he gave a different testimony contradicting his testimony before the fiscal. If his testimony before the fiscal is false, it is perjury. If his testimony before the court is false, it is false testimony in a judicial proceeding.

Subornation of perjury.

Subornation of perjury is committed by a person who knowingly and wilfully procures another to swear falsely and the witness suborned does testify under circumstances *rendering him guilty of perjury.* (U.S. vs. Ballena, 18 Phil. 382)

Example:

B induced A to testify falsely against a fiscal. A, after having been duly sworn, knowingly and willfully testified falsely against the fiscal that the latter attempted to rape her (A's) daughter.

Held: B was guilty of subornation of perjury. B not only knowingly and willfully induced A to swear falsely, but he did so maliciously, as it appeared from the record that he was an enemy of the fiscal who had prosecuted him before. (See U.S. vs. Ballena, 18 Phil. 382)

Subornation of perjury is not expressly penalized in the Revised Penal Code; but the direct induction of a person by another to commit perjury may be punished under Art. 183 in relation to Art. 17.

The specific provision under the old Penal Code penalizing subornation of perjury was omitted in the Revised Penal Code. The crime is now treated as plain perjury, the one inducing another as principal by inducement and the latter as principal by direct participation. (People vs. Pudol, *et al.*, 66 Phil. 365)

Art. 184. *Offering false testimony in evidence.* — Any person who shall knowingly offer in evidence a false witness or testimony in any judicial or official proceeding, shall be punished as guilty of false testimony and shall suffer the respective penalties provided in this section.

Elements of offering false testimony in evidence:

1. That the offender *offered in evidence a false witness or false testimony.*
2. That he *knew* the witness or the testimony was false.
3. That the offer was made in a *judicial* or *official proceeding.*

"Shall knowingly offer in evidence a false witness or testimony."

Offer of evidence under Sec. 35, Rule 132 of the Rules of Court, insofar as testimonial evidence is concerned, begins the moment a witness is called to the witness stand and interrogated by counsel. The witness must have to testify.

Is the person who presented a false witness liable under Art. 184, even if the false witness did not testify on any material matter because the latter desisted from testifying?

It seems that the person who called to the stand a false witness is liable for attempted offering false testimony in evidence. While Art. 184 speaks of a false "witness" or "testimony," that article requires to consummate the offense that the witness or the testimony must be *offered in evidence.*

Even if there was conspiracy between the false witness and the party who presented him, the witness having desisted before he could testify

on any material matter, he is not liable, because desistance during the attempted stage of execution is an absolutory cause which exempts him from criminal liability.

The party who presented him, not having desisted, is criminally liable.

Art. 184 applies when the offender does not induce a witness to testify falsely.

Art. 184 contemplates of a case where a person, *without inducing* another, but knowing him to be a false witness, presented him, and the latter testified falsely in a judicial or official proceeding.

If there is an inducement, Art. 180, Art. 181, Art. 182, or Art. 183, in relation to Art. 7, par. 2, will apply.

Penalty is that for false testimony if committed in a judicial proceeding or that for perjury if committed in other official proceeding.

The accused "shall be punished as guilty of false testimony and shall suffer the respective penalties provided" for *false testimony* or *perjury.*

Chapter Three

FRAUDS

What are the crimes classified as frauds?

1. Machinations in public auctions. (Art. 185)
2. Monopolies and combinations in restraint of trade. (Art. 186)
3. Importation and disposition of falsely marked articles or merchandise made of gold, silver or other precious metals. (Art. 187)
4. Substituting and altering trademarks and tradenames or service marks. (Art. 188)
5. Unfair competition, fraudulent registration of tradename, trademark, or service mark; fraudulent designation of origin and false description. (Art. 189)

Section One. — Machinations, monopolies, and combinations

Art. 185. *Machinations in public auctions.* — Any person who shall solicit any gift or promise as a consideration for refraining from taking part in any public auction, and any person who shall attempt to cause bidders to stay away from an auction by threats, gifts, promises, or any other artifice, with intent to cause the reduction of the price of the thing auctioned, shall suffer the penalty of *prision correccional* in its minimum period[1] and a fine ranging from 10 to 50 per centum of the value of the thing auctioned.

[1]See Appendix "A," Table of Penalties, No. 11.

Acts punishable under Art. 185.

1. By *soliciting* any gift or promise as a consideration for refraining from taking part in any public auction.

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

Elements of soliciting gift or promise:

a. That there be a public auction.

b. That the accused solicited any gift or a promise from any of the bidders.

c. That such gift or promise was the consideration for *his refraining from taking part* in that public auction.

d. That the accused had the intent to cause the reduction of the price of the thing auctioned.

Consummated by mere solicitation.

It is not required that the person making the proposal actually refrains from taking part in any public auction.

It is consummated by *mere solicitation* of gift or promise as consideration for not bidding.

If the person to whom the solicitation is made agrees to pay or gives the gift or makes a promise, then he will be a principal in the crime. His act will be similar to the second way of committing the crime.

Elements of attempting to cause bidders to stay away:

a. That there be a public auction.

b. That the accused attempted to cause the bidders to stay away from that public auction.

c. That it was done by *threats, gifts,* promises or any other *artifice.*

d. That the accused had the intent to cause the reduction of the price of the thing auctioned.

"Other artifice."

Thus, the bidders may be caused to stay away from public auction by tricks, such as by telling them that the public bidding would not be held at that time to make them go away, knowing that the bidding would not be postponed.

Mere attempt consummates the crime.

Likewise, *an attempt* to cause prospective bidders to stay away from an auction by means of threats, gifts, promises or any other artifice with intent that the thing auctioned should command a lesser price, is sufficient to constitute an offense.

The *threat* need *not be effective* nor the offer or gift accepted for the crime to arise.

Example of machination in public auction.

Diaz vs. Kapunan
(45 Phil. 482)

Facts: Vicente Diaz and Segundino de Mendezona formed a partnership and entered into extensive business transactions. Unfortunately, however, the business failed to prosper, with the result that on liquidation, it was found to have suffered a loss of P67,000. When Diaz and Mendezona came to settle up their affairs, they eventually formulated a document of sale and mortgage in which Mendezona recognized a debt in favor of Diaz in the sum of P80,000 and an additional sum of P10,000 owing to Diaz, laid upon the *hacienda* "Mapuyo," and to be paid within the term of one year. When the year had expired, Mendezona was not to be found and his family was unable to meet the payment. There followed the usual proceedings for foreclosure and sale, which resulted in the *hacienda's* being offered for sale at public auction.

At the time fixed for the sale, there appeared Vicente Diaz and Ruperto Kapunan. Kapunan was ready to bid on the property up to P16,000 in order to assist the Mendezona family which was in financial straits. At any rate, the bidding was opened by Kapunan offering P12,000 for the property and with Diaz and Kapunan raising the bids until finally Diaz offered P12,500. There the bids stopped on account of Diaz and Kapunan entering into the agreement, of decisive importance, which we next quote in full:

"We, Vicente Diaz and Ruperto Kapunan, both being the bidders at the auction held for the sale of the properties of Segundino Mendezona, do hereby agree that Don Ruperto Kapunan should withdraw his bid and refrain from bidding at the said auction as he does hereby withdraw his bid, and in consideration thereof, the said Mr. Diaz offers him a premium of one thousand pesos (P1,000) which, out of consideration to said Don Vicente Diaz, Mr. Kapunan accepts and has, for this reason, refrained from bidding in competition with said Mr. Diaz."

Following the termination of the sheriff sale, Diaz gave Kapunan P500 of the P1,000 mentioned in the above quoted document. Diaz took over the property of Mendezona pursuant to his bid of P12,500.

Held: This is exactly the situation covered by Art. 542 (now Art. 185) of the Penal Code.

Reason for the provision.

Execution sales should be opened to free and full competition in order to secure the maximum benefit for the debtors. (Diaz vs. Kapunan, 46 Phil 482)

Art. 186. ***Monopolies and combinations in restraint of trade.*** **— The penalty of** ***prision correccional*** **in its minimum period[2] or a fine ranging from two hundred to six thousand pesos, or both, shall be imposed upon:**

1. Any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market.

2. Any person who shall monopolize any merchandise or object of trade or commerce, or shall combine with any other person or persons to monopolize said merchandise or object in order to alter the price thereof by spreading false rumors or making use of any other artifice to restrain free competition in the market.

3. Any person who, being a manufacturer, producer, or processor of any merchandise or object of commerce or an importer of any merchandise or object of commerce from any foreign country, either as principal or agent, wholesaler or retailer, shall combine, conspire or agree in any manner with any person likewise engaged in the manufacture, production, processing, assembling or importation of such merchandise or object of commerce or with any other persons not so similarly engaged for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippines, of any such merchandise or object of commerce manufactured, produced, processed,

[2]See Appendix "A," Table of Penalties, No. 11.

assembled in or imported into the Philippines, or of any article in the manufacture of which such manufactured, produced, processed, or imported merchandise or object of commerce is used.

If the offense mentioned in this Article affects any food substance, motor fuel or lubricants, or other articles of prime necessity, the penalty shall be that of *prision mayor* in its maximum and medium periods,[3] it being sufficient for the imposition thereof that the initial steps have been taken toward carrying out the purposes of the combination.

Any property possessed under any contract or by any combination mentioned in the preceding paragraphs, and being the subject thereof, shall be forfeited to the Government of the Philippines.

Whenever any of the offenses described above is committed by a corporation or association, the president and each one of the directors or managers of said corporation or association or its agent or representative in the Philippines in case of a foreign corporation or association, who shall have knowingly permitted or failed to prevent the commission of such offenses, shall be held liable as principals thereof. *(As amended by Rep. Act No. 1956)*

Acts punished as monopolies and combinations in restraint of trade:

(a) ***Combination to prevent free competition in the market.***

By *entering* into any *contract* or *agreement* or taking part in any *conspiracy* or *combination* in the form of a trust or otherwise, *in restraint* of trade or commerce or to prevent by artificial means *free competition* in the market.

(b) ***Monopoly to restrain free competition in the market.***

By *monopolizing* any merchandise or object of trade or commerce, or by combining with any other person or persons to monopolize said merchandise or object in order to alter the prices thereof by *spreading*

[3]See Appendix "A," Table of Penalties, No. 23.

false rumors or making use of any other artifice to restrain free competition in the market.

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

The person liable is the: (1) manufacturer, (2) producer, (3) processor, or (4) importer of any merchandise or object of commerce.

The *crime is committed* by (1) combining, (2) conspiring, or (3) agreeing with any person.

The *purpose* is (1) to make transactions prejudicial to lawful commerce, or (2) to increase the market price of any merchandise or object of commerce *manufactured, produced, processed, assembled* or *imported into the Philippines.*

Theory of the law in penalizing monopolies and combinations in restraint of trade.

The theory of the law in penalizing monopolies and combinations in restraint of trade is that competition, not combination, should be the law of trade. (Miller, Criminal Law, 448-449)

Example of spreading false rumors to restrain free competition.

A person went about distributing papers and proclamations to the people of a certain town spreading subversive and fanatic ideas that unless they lower the prices of needful commodities they would be visited by flood and other calamities. The people were thereby caused to lower the prices of commodities and to provide themselves with instruments of measure larger than the regular size. (U.S. vs. Fulgueras, 4 Phil. 432)

Note: This is spreading false rumors or making use of any other artifice to restrain free competition in the market.

Property is forfeited to the Government.

Any property possessed under any contract *or* combination contemplated in this article, shall be forfeited to the Government. (Par. 3, Art. 186)

Mere conspiracy or combination is punished.

The law intends to punish the mere *conspiracy* or *combination* at which it is aimed.

If the offense affects any food substance or other article of prime necessity, it is sufficient that initial steps are taken.

If the monopolies and combinations in restraint of trade affect any *food substance, motor fuel* or *lubricants* or other *article of prime necessity,* it is sufficient for the imposition of a higher penalty *that the initial steps have been taken toward carrying out the purposes of combination.* (Art. 186)

When offense is committed by a corporation or association, the president and directors or managers are liable.

The president and each one of the directors or managers of said corporation or association, Or its agent or representative in the Philippines, in case of a foreign corporation or association, who knowingly *permitted* or *failed to prevent* the commission of such offenses, shall be held liable as principals thereof. (last par., Art. 186)

Note: This is the exception to the rule that a director or other officer of a corporation is not liable criminally for the corporate acts performed by other officers or agents thereof, as held in the case of *People vs. Montilla, C.A.,* 52 O.G. 4327.

By express provision of Art. 186, the president and each one of the directors or managers of the corporation or association shall be held as principals of the crime of monopolies and combinations in restraint of trade. (People vs. Torres, C.A., 51 O.G. 6280)

But they are liable only when they (1) *knowingly permitted,* or (2) *failed to prevent the commission* of such offenses.

Republic Act No. 3720, approved June 22, 1963, is an Act to ensure the safety and purity of foods, drugs and cosmetics being made available to the public by creating the Food and Drug Administration which shall administer and enforce the laws pertaining thereto.

Republic Act No. 6361, approved July 27, 1971, provides for the fixing of the maximum selling price of essential articles or commodities, creates the Price Control Council, and for other purposes.

Republic Act No. 1180, approved June 19, 1954, is an Act to regulate the Retail Business.

Section Two. — Frauds in commerce and industry

Art. 187. ***Importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious***

metals or their alloys. — **The penalty of *prision correccional*[4] or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any person who shall knowingly import or sell or dispose of any article or merchandise made of gold, silver or other precious metals, or their alloys, with stamps, brands or marks which fail to indicate the actual fineness or quality of said metals or alloys.**

Any stamp, brand, label, or mark shall be deemed to fail to indicate the actual fineness of the article on which it is engraved, printed, stamped, labeled, attached, when the test of the article shows that the quality or fineness thereof is less by more than one-half karat, if made of gold, and less by more than four one-thousandth, if made of silver, than what is shown by said stamp, brand, label or mark. But in case of watch cases and flatware made of gold, the actual fineness of such gold shall not be less by more than three one-thousandth than the fineness indicated by said stamp, brand, label or mark.

Articles or merchandise involved.

Those made of —

(a) Gold,

(b) Silver,

(c) Other precious metals, or

(d) Their alloys.

Elements:

1. **That the offender *imports, sells* or *disposes* of any of those articles or merchandise.**
2. **That the *stamps, brands,* or *marks* of those articles of merchandise *fail to indicate* the actual fineness or quality of said metals or alloys.**
3. **That the offender *knows* that the stamps, brands, or marks fail to indicate the *actual fineness* or *quality* of the metals or alloys.**

[4] **See Appendix "A," Table of Penalties, No. 10.**

Selling the misbranded articles is not necessary.

Since one of the acts penalized in Art. 187 is knowingly importing misbranded articles made of gold, silver, etc., which includes possession thereof after importing the same, it is not necessary that they be sold and the public actually deceived. But there must be evidence showing that the articles were imported.

Art. 187 does not apply to manufacturer of misbranded articles made of gold, silver, etc.

The manufacturer who alters the quality or fineness of anything pertaining to his art or business is liable for estafa under Art. 315, subdivision 2(b), of the Code.

Rep. Act No. 8293, otherwise known as the *Intellectual Property Code of the Philippines,* repealed. The provisions of Arts. 188 and 189 of the Revised Penal Code which are inconsistent therewith.

Art. 188. *Substituting and altering trademarks, tradenames, or service marks.* — The penalty of *prision correccional* in its minimum period[5] or a fine ranging from 500 to 2,000 pesos, or both, shall be imposed upon:

1. Any person who shall substitute the trade name or trademark of some other manufacturer or dealer, or a colorable imitation thereof, for the tradename or trademark of the real manufacturer or dealer upon any article of commerce and shall sell the same;

2. Any person who shall sell such articles of commerce or offer the same for sale, knowing that the trade name or trademark has been fraudulently used in such goods as described in the preceding subdivision;

3. Any person who, in the sale or advertising of his services, shall use or substitute the service mark of other persons, or colorable imitation of such mark; or

4. Any person who, knowing the purposes for which the trade name, trademark, or service mark of a person is

[5]See Appendix "A," Table of Penalties, No. 11.

to be used, prints, lithographs, or in any way reproduces such trade name, trademark, or service mark or a colorable imitation thereof, for another person, to enable that other person to fraudulently use such tradename, trademark, or service mark on his own goods or in connection with the sale or advertising of his services.

A tradename or trademark as herein used is a word or words, name, title, symbol, emblem, sign, or device, or any combination thereof used as an advertisement, sign, label, poster, or otherwise for the purpose of enabling the public to distinguish the business of the person who owns and uses said tradename or trademark.

A service mark as herein used is a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising. *(As amended by* ***Rep. Act*** *No. 172)*

Acts punishable under Art. 188:

1. By (1) *substituting* the tradename or trademark of some other manufacturer or dealer, or a colorable imitation thereof, for the trade name or trademark of the real manufacturer or dealer upon any article of commerce, and (2) *selling* the same.
2. By selling or by *offering for sale* such articles of commerce, knowing that the tradename or trademark has been *fraudulently used.*
3. By *using* or *substituting* the service mark of some other person, or a colorable imitation of such mark, in the sale or advertising of his *services*.
4. By *printing, lithographing* or *reproducing* tradename, trademark, or service mark of one person, or a colorable imitation thereof, to enable another person to fraudulently use the same, knowing the fraudulent purpose for which it is to be used.

Art. 189. ***Unfair competition, fraudulent registration of trade name, trademark, or service mark, fraudulent designa-***

Hon of origin, and false description. **— The penalty provided in the next preceding article shall be imposed upon:**

1. Any person who, in unfair competition and for the purpose of deceiving or defrauding another of his legitimate trade or the public in general, shall sell his goods giving them the general appearance of the goods of another manufacturer or dealer, either as to the goods themselves, or in the wrapping of the packages in which they are contained, or the device or words thereon, or in any other feature of their appearance which would be likely to induce the public to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer, or shall give other persons a chance or opportunity to do the same with a like purpose.

2. Any person who shall affix, apply, annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, and shall sell such goods or services.

3. Any person who, by means of false or fraudulent representations or declarations, orally or in writing, or by other fraudulent means shall procure from the patent office or from any other office which may hereafter be established by law for the purposes, the registration of a tradename, trademark, or service mark, or of himself as the owner of such tradename, trademark, or service mark, or an entry respecting a tradename, trademark, or service mark. ***(As amended by Rep. Act No. 172.)***

Acts punished under Art. 189.

The acts of the offender punished under Art. 189 are:

1. ***By selling*** **his goods, giving them the general appearance of the goods of another manufacturer or dealer. (Unfair competition)**
2. ***By*** **(a)** ***affixing*** **to his goods or** ***using*** **in connection with his services** ***a false designation of origin, or any false description*** **or** ***representation,*** **and (b)** ***selling*** **such goods or services. (Fraudulent designation of origin; False description)**

3. *By procuring* fraudulently from the patent office the registration of trade name, trademark or service mark. (Fraudulent registration)

REPUBLIC ACT NO. 8293

Intellectual Property Code of the Philippines

Penalties for Infringement, Unfair Competition, False Designation of Origin and False Description or Representation.

Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty Thousand Pesos (P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in:

a) Section 155 (Infringement);

b) Section 168 (Unfair Competition); and

c) Subsection 169.1 (False designation of origin and false description or representation) of the Intellectual Property Code of the Philippines. (See Sec. 170, Intellectual Property Code of the Philippines)

INFRINGEMENT

Who is liable for infringement?

Infringement is committed by any person who shall, without the consent of the owner of the registered mark:

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

2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive. (See Sec. 155.2, IP Code)

Definition of mark.

"Mark" means any visible sign capable of distinguishing the goods (trademark) or services (Service mark) of an enterprise and shall include a stamped or marked container. (Sec. 121.1, P.D. No 8293)

Definition of tradename.

"Tradename" means the name or designation identifying or distinguishing an enterprise. (Sec. 121.3, P.D. No. 8293)

Tradename distinguished from trademark.

Greilsammer Hermanos imported from a manufacturing firm in Europe a certain class of watches upon which it engraved a trademark consisting of a sphere across which ran a scroll bearing the mark Meridian. The watches were advertised and put on sale under the *tradename* of Meridian watches. The trademark was duly registered. The accused purchased the same kind of watches from the same manufacturer in Europe and later displayed a number of them in his show windows under a show card or placard with the words "Meridian watches". When prosecuted for infringement of tradename, the accused contended that since he did not place the tradename or the trademark on his watches, he could not be held liable.

Held: The contention of the accused is untenable. Trade name is a name used in trade to designate a particular business of certain individuals considered as an entity; whereas, trademark is used to indicate the origin or ownership of the goods to which it is affixed.

One of the distinguishing characteristics of a trade name is that, unlike trademarks, it is not necessarily attached or affixed to the goods of the owner. (U.S. vs. Kyburz, 28 Phil. 475)

Office or function of trademark.

The office or function of a trademark is not to name or describe the quality of the goods to which it is attached but instead, it is to *indicate the origin or ownership* of the goods to which it is fixed. It is to distinguish the goods of one person from those of another, and to prevent one person from passing off his goods or his business as the goods or business of another. (63 C.J., Sec. 4)

The objects of a trademark.

The objects of a trademark are to point out distinctly the origin or ownership of the article to which it is affixed, to secure to him, who has been instrumental in bringing into market a superior article of merchandise, the

fruit of his industry and skill, and to prevent fraud and imposition. (Etepha vs. Director of Patents, *et al,* 16 SCRA 495)

Elements of trademark infringement.

1. The validity of plaintiff's mark;
2. The plaintiffs ownership of the mark; and
3. The use of the mark or its colorable imitation by the *alleged* infringer results in "likelihood of confusion." *(See A* & H Sportswear Co. vs. Victoria's Secret Stores, Inc., 167 F.Supp.2d 770 [2001]).

Of these, it is the *element of* likelihood of confusion that is the gravamen of trademark infringement. (Shaley's Inc. vs. Covalt, 704 F.2d 426 (1983).

Illustration of infringement of trademark.

A corporation, manufacturer and seller of khaki, used the word "Wigan" to indicate the particular quality of its khaki. The word was contained in its trademark and stenciled upon its bolts of khaki. Defendant, using a different trademark, stamped the same word on the bolts of khaki of inferior grade sold by it.

Held: Such use of the word "Wigan" by defendant was an infringement of the other manufacturer's registered trademark in which the word was incorporated. (E. Spinner & Co. vs. Hesslein Corporation, 54 Phil. 224)

FIRST ELEMENT: THE VALIDITY OF THE PLAINTIFF'S MARK

Trademark must not be merely descriptive or generic.

The Intellectual Property Code of the Philippines provides that a mark which "consist[s] exclusively of signs that are generic for the goods or services they seek to identify" is not registrable. (Sec. 132.1[h])

Generic terms are those which constitute "the common descriptive name of an article or substance," or comprise the "genus of which the particular product is a species," or are "commonly used as the name or description of a kind of goods," or "imply reference to every member of a genus and the exclusion of individuating characters," or "refer to the basic nature of the wares or services provided rather than to the more idiosyncratic characteristics of a particular product," and are not legally protectable. (Federal Unfair Competition: Lanham Act § 43(a), p. 3-22.1.)

Thus, the word "Bubble gum" cannot be considered as a trademark, because the words are merely descriptive and generic, designating the article made of sweetened gum which, if chewed and blown off mouth,

produces a bubble. (Am. Sweets, Inc. vs. O'Racca Confectionery Co., C.A., 36 O.G. 2217)

The Intellectual Property Code of the Philippines provides that marks that "consist exclusively of signs or any indication that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services or other characteristics of the goods or services" are not registrable. (Sec. 132.1[j])

A term is descriptive and therefore invalid as a trademark if, as understood in its normal and natural sense, it "forthwith conveys the characteristics, functions, qualities or ingredients of a product to one who has never seen it and does not know what it is," or "if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods," or if it clearly denotes what goods or services are provided in such a way that the consumer does not have to exercise powers of perception or imagination (Federal Unfair Competition: Lanham Act § 43(a), p. 3-36.)

A dealer in shoes cannot register an alleged trademark "Leather Shoes", because that is merely descriptive and it would be unjust to deprive other dealers in leather shoes of the right to use the same words with reference to their merchandise. (Masso Hermanos S.A. vs. Director of Patents, 94 Phil. 136)

Mere geographical names, like "Wellington" which is the capital of New Zealand, are ordinarily regarded as common property, and it is a general rule that same can not be appropriated as the subject of an exclusive trademark or tradename. (52 Am. Jur. 548) Even if Wellington were a surname, which is not even that of plaintiff-appellants, it can not also be validly registered as a trade name. (Section 4, Paragraph (3), Rep. Act. No. 166) As the term can not be appropriated as a trademark or trade name, no action for violation thereof can be maintained, as none is granted by the statute in such cases. (Heng and Dee vs. Wellington Department Store, Inc., *et al,* 92 Phil. 448)

Trademark which loses its distinctiveness or has become 'publici juris'.

The exclusive right to an originally valid trademark or tradename is lost, if for any reason it loses its distinctiveness or has become *"publici juris"*. (63 C.J., Sec. 228)

Example: The word "Chorritos." The registration of "chorritos" as trademark for cigarette wrappers does not give the owner thereof the exclusive right to use the word as a trademark.

Thus, we have "La *Yebana chorritos." "Alhambra chorritos"* and *"Charritos de Gamu."*

SECOND ELEMENT: *THE PLAINTIFF'S OWNERSHIP OF THE MARK.*

The tradename or trademark must be registered.

The trademark must be registered in the Intellectual Property Office of the Philippines. A certificate of registration of a mark shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. (Sec. 138, IP Code)

Where the accused infringed the "Apo" trademark of the Cebu Portland Cement Co, but it was not shown that the said trademark was registered, the accused is not criminally liable under Art. 188. (People vs. Go Yee Bio., 36 O.G. 1082)

THIRD ELEMENT: *THE USE OF THE MARK OR ITS COLORABLE IMITATION BY THE ALLEGED INFRINGER RESULTS IN 'LIKELIHOOD OF CONFUSION.*

"Or a colorable imitation thereof."

The trademark used by the offender need not be identical with the infringed trademark. A colorable imitation is sufficient.

Colorable imitation denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons, or such a resemblance to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, as to cause him to purchase the one supposing it to be the other. (Etepha vs. Director of Patents, *et al,* 16 SCRA 495, 497-498 [1966]).

Tests in determining confusing similarity.

1. **The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception, and thus infringement.**

   If the competing trademark contains the main, essential or dominant features of another, and confusion or deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or deceive purchasers. (Emerald Garment Manufacturing Corporation vs. Court of Appeals, 251 SCRA 600 [1995])

2. The Holistic Test requires that the entirety of the marks in question be considered in resolving confusing similarity. Comparison of words is not the only determining factor.

The trademarks in their entirety as they appear in their respective labels or hang tags must also be considered in relation to the goods to which they are attached. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels in order that he may draw his conclusion whether one is confusingly similar to the other. (Emerald Garment Manufacturing Corporation vs. Court of Appeals, 251 SCRA 600 [1995])

Dominancy Test, to determine question of infringement.

The Supreme Court has relied on the dominancy test rather than the holistic test. The dominancy test considers the dominant features in the competing marks in *determining* whether they are confusingly similar. Under the dominancy test, courts give greater weight to the similarity of the appearance of the product arising from *the adoption of* the dominant features of the registered mark, disregarding *minor* differences. (Amador, Trademarks Under The Intellectual Property Code 263 [1999]). Courts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets and market segments.

Thus, in the 1954 case of *Co Tiong Sa vs. Director of Patents,* 95 Phil. 1 (1954), the Court ruled:

> "xxx It has been consistently held that the question of infringement of a trademark is to be *determined* by the test of dominancy. Similarity in size, form and color, while relevant, is not conclusive. If the competing trademark contains the main or essential or dominant features of another, and confusion and deception is likely to result, infringement takes place. Duplication or imitation is not *necessary;* nor is it *necessary* that the infringing label should suggest an effort to imitate. (G. Heilman Brewing Co. vs. Independent Brewing Co., 191 F., 489, 495, citing Eagle White Lead Co. vs. Pflugh (CC) 180 Fed. 579). The question at issue in *cases of* infringement of trademarks is whether *the use of* the marks involved would be likely to cause confusion or mistakes in the mind of the public or deceive purchasers. (Auburn Rubber Corporation vs. Honover Rubber Co., 107 F. 2d 588; xxx) (Emphasis supplied.)

The Court reiterated the dominancy test in Lim Hoa vs. Director of Patents, 100 Phil. 214 (1956), Phil. Nut Industry, Inc. vs. Standard Brands Inc., 65 SCRA 575 [1975], Converse Rubber Corporation vs. Universal

Rubber Products, Inc., 147 SCRA 154 [1987], and Asia Brewery, Inc. vs. Court of Appeals, 224 SCRA 437 [1993]. In the 2001 case of Societe Des Produits Nestle, S.A. vs. Court of Appeals, G.R. No. 112012, 356 SCRA 207 [2001], the Court explicitly rejected the holistic test in this wise:

> "[T]he totality or holistic test is contrary to the elementary postulate of the law on trademarks and unfair competition that confusing similarity is to be *determined on the basis of* visual, aural, connotative comparisons and *overall* impressions engendered by the marks in controversy as they are *encountered* in the realities of the marketplace. (Emphasis supplied)"

The test of dominancy is now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code which defines infringement as *the* "colorable *imitation of* a registered mark xxx or a dominant feature *thereof.*" (see McDonald's Corp., *et al.* vs. L.C. Big Mak Corp., *et al.*, G.R. No. 143993, August 18, 2004)

There must not be differences which are glaring and striking to the eye.

It is true that between petitioner's trademark "ALACTA" and respondent's "ALASKA," there are similarities in spelling, appearance and sound, for both are composed of six letters of three syllables each and each syllable has the same vowel, but in determining if they are confusingly similar a comparison of said words is not the only determining factor. The two marks in their entirety as they appear in the respective labels must also be considered. While there are similarities in the two marks, there are also differences which are glaring and striking to the eye. Thus, the sizes of the containers of the goods differ from each other. The colors, too, differ. Petitioner's mark has only the first letter capitalized and is printed in black, while respondent's mark has all the letters capitalized written in white. (Mead Johnson & Co. vs. Van Dorp, Ltd., *et al.*, G.R. No. L-17501, April 27, 1963)

Types of confusion arising from the use of similar or colorable imitation marks.

1. Confusion of goods (product confusion)

The ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. (Sterling Products International, Incorporated vs. Farbenfabriken Bayer Aktiengesellschaft, *et al.*, 137 Phil. 838 [1969]).

2. Confusion of business (source or origin confusion)

Though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would then be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, *in fact,* does not exist. (Sterling Products International, Incorporated vs. Farbenfabriken Bayer Aktiengesellschaft, *et al.*, 137 Phil. 838 [1969]).

Types of confusion, distinguished.

There is confusion of goods when the products are competing. Confusion of business exists when the products are non-competing but related enough to produce confusion of affiliation. (Agpalo, The Law On Trademark, Infringement and Unfair Competition 45-46 [2000]).

Concept of Related Goods.

When goods are so related that the public may be, or is actually, deceived and misled that they come from the same maker or manufacturer, trademark infringement occurs.

Non-competing goods may be those which, though they are not in actual competition, are so related to each other that it can reasonably be assumed that they originate from one manufacturer, in which case, confusion of business can arise out of the use of similar marks. They may also be those which, being entirely unrelated, cannot be assumed to have a common source; hence, there is no confusion of business, even though similar marks are used. (Esso Standard Eastern, Inc. vs. Court of Appeals, 116 SCRA 336 [1982]). Thus, there is no trademark infringement if the public does not expect the plaintiff to make or sell the same class of goods as those made or sold by the defendant. (I CALLMAN 1121 cited in Philippine Refining Co., Inc. vs. Ng Sam and the Director of Patents, 115 SCRA 472 [1982])

Product classification, not decisive factor in the determination of whether goods are related.

Product classification alone cannot serve as the decisive factor in the resolution of whether or not wines and cigarettes are related goods. Emphasis should be on the similarity of the products involved and not on the arbitrary classification or general description of their properties or characteristics. (Mighty Corp. vs. EJ Gallo Winery, G.R. No. 154342, July 14, 2004)

It is not necessary that the goods of the prior user and the late user of the trademark are of the same categories.

The law (Rep. Act No. 166, Sec. 4, par. d, as amended) does not require that the articles of manufacture of the previous user and the late user of the mark should possess the same descriptive properties or should fall in the same categories as to bar the latter from registering his mark in the principal register. (Chua Che vs. Philippine Patent Office, *et al.*, 13 SCRA 67 [between toiletries and laundry soap], citing Application Sylvan Sweets Co., 205 F. 2nd 207 [between candies and cigarettes]).

Therefore, whether or not shirts and shoes have the same descriptive properties, or whether or not it is the practice or the tendency of tailors and haberdashers to expand their business into shoemaking, are not controlling. The meat of the matter is the likelihood of confusion, mistake or deception upon purchasers of the goods of the junior user of the mark and the goods manufactured by the previous user. Here, the resemblance or similarity of the mark FLORMANN and the name FLORMEN and the likelihood of confusion, one to the other, is admitted, therefore, the prior adopter has the better right to use the mark. (Sta. Ana vs. Maliwat, *et al.*, 24 SCRA 1018)

UNFAIR COMPETITION

Who has the right to be protected against unfair competition?

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

Who is liable for unfair competition?

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

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

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, whether

as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words appearing thereon, or in any other feature of their appearance, which would be likely to influence other purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

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

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another. (Secs. 168.2 and 168.3, IP Code)

Unfair competition, defined.

It consists in employing deception or any other means contrary to good faith by which has shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result. (Secs. 168.2, IP Code)

Elements of unfair competition.

1. Confusing similarity in the general appearance of the goods, and

2. Intent to deceive the public and defraud a competitor. (V. Amador, Trademarks Under The Intellectual Property Code 278 [1999])

The confusing similarity may or may not result from similarity in the marks, but may result from other external factors in *the packaging or presentation* of the goods. The intent to deceive and defraud may be inferred from the similarity of the appearance of the goods as offered for sale to the public. (Shell Co. of the Philippines, Ltd. vs. Ins. Petroleum Refining Co., Ltd., 120 Phil. 434 [1964]; "La Insular" vs. Jao Oge, 42 Phil. 366 [1921])

Reasons for punishing unfair competition.

The basis of the provision penalizing unfair competition is that no one shall, by imitation or any unfair device, induce the public to believe that the goods he offers for sale are the goods of another, and thereby appropriate to himself the value of the reputation which the other has acquired for the products or merchandise manufactured or sold by him. (U.S. vs. Kyburz 28 Phil. 475)

Evidence of actual fraudulent intent not necessary.

The intent to deceive or to defraud may be inferred from the similarity in the appearance of the goods manufactured or sold by the offender and those of the party claiming to have been damages. (Baxter vs. Zuazua, 5 Phil. 160)

Examples of unfair competition:

1. The soda water, lemonade, and other aerated waters manufactured by A.S. Watson & Co., were sold in bottles specially made for the purpose, with their trademark blown on the side in large raised letters and figures. On those bottles, labels were pasted also bearing the said trademark. The accused manufactured and sold a number of bottles of aerated waters in bottles identical *in form and appearance* with those used by A.S. Watson & Co., with the trademark of that firm blown on the side of the bottles. On the bottles sold by the accused, there were pasted labels with his name, the printed matter contained in these labels being different from that contained in the labels of A.S. Watson & Co.

Held: **The accused, in selling his soft drinks in the bottles of A.S. Watson & Co., gave his goods the general appearance of the soft drinks manufactured by that firm, in a way which would be likely to influence purchasers to believe that the goods offered were those of A.S. Watson & Co. (U.S. vs. Manuel, 7 Phil. 221)**

2. *A* used a paper ring upon the cigars manufactured by him, similar to the paper ring placed by *B* on the cigar manufactured by the latter with trademark duly registered by the latter. (Nelle vs. Senior & Co., 5 Phil. 608)

3. A established large trade in candles which were put in packages wrapped in a form upon which were printed the tradename of that class of candles, consisting of peculiar designs and pictures. *B* used packages of the same size, the same in form, in scheme, color, pictures and design. They differ only in minute details. (Flaming & Co. vs. Ong Tan Chuan, 26 Phil. 579)

True test of unfair competition.

The true test of unfair competition is whether certain goods have been clothed with an appearance which is *likely to deceive the ordinary purchaser* exercising ordinary care, and not whether a certain limited class of purchasers could avoid mistake by the exercise of this special knowledge. (U.S. vs. Manuel, 7 Phil. 221)

Liability of master for acts of servants.

The master is criminally responsible for acts of his servants and employees in violation of the penal provisions touching trademarks, tradenames and unfair competition if he causes the illegal act to be done, or requests, commands or permits it, or in any manner authorizes it, or aids or abets the servant in its commission, whether he is present at the time the unlawful act is committed or not. (U.S. vs. Kyburz, 28 Phil. 475)

Unfair competition under the New Civil Code.

"Unfair competition in agricultural, commercial or industrial enterprise or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage." (Art. 28)

Trademark Infringement, distinguished from Unfair Competition.

1. Unfair competition is broader and more inclusive; infringement of trademark or trade name is of limited range. As the tort of unfair competition is broader than the wrong involved in the infringement of trademark, one who fails to establish the exclusive property right which is essential to the validity of a trademark, may yet frequently, obtain relief on the ground of his competitor's unfairness or fraud. (E. Spinner & Co. vs. Neuss Hesslein Corporation, 54 Phil. 324)

2. In infringement of trademark, the offended party has identified a peculiar symbol or mark with his goods and thereby has acquired a property right in such symbol or mark; in unfair competition, the offended party has identified in the mind of the public the goods he manufactures or deals in from those of others, whether or not a mark or trade name is employed, and has a property right in the goodwill of the said goods. (See Sec. 168.1, IP Code)

3. In infringement of trademark, the offender uses the *trademark* or trade name of another manufacturer or dealer and *sells* his goods on which the trademark is affixed; whereas, in unfair competition, the offender *gives his goods* the *general appearance* of the goods of another manufacturer or dealer and *sells* the same.

In the case of Del Monte Corporation vs. Court of Appeals, 181 SCRA 410, 415 [1990], trademark infringement and unfair competition were distinguished, as follows:

1. Infringement of trademark is the unauthorized use of a trademark, whereas unfair competition is the passing off of one's goods as those of another.
2. In infringement of trademark fraudulent intent is unnecessary, whereas in unfair competition fraudulent intent is essential.
3. In infringement of trademark the prior registration of the trademark is a prerequisite to the action, whereas in unfair competition registration is not necessary.

When trademark infringement constitutes unfair competition.

Trademark infringement constitutes unfair competition when there is not merely likelihood of confusion, but also *actual* or probable deception on the public because of the general appearance of the goods. (McDonald's Corp., *et al.* vs. L.C. Big Mak Corp., *et al.*, G.R. No. 143993, August 18, 2004)

There can be trademark infringement without unfair competition.

There can be trademark infringement without unfair competition as when the infringer discloses on the labels containing the mark that he manufactures the goods, thus preventing the public from being deceived that the goods originate from the trademark owner. (See Q-Tips, Inc. vs. Johnson & Johnson, 108 F.Supp 845 (1952).

FALSE DESIGNATION OF ORIGIN OR FALSE DESCRIPTION OR REPRESENTATION

Who is liable for false designation of origin?

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

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

(b) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities. (Sec. 169, IP Code)

Example of false designation of origin.

Where the accused caused to be affixed in the labels of the bottle containers of the food seasoning a false designation of origin, that the said food seasoning was packed by Chams Products Co. of San Francisco, California, when in truth it was packed in the Philippines, there such false representation falls under paragraph no. 2 of Art. 189. (People vs. Lim Hoa, G.R. No. L-10612, May 30, 1958)

Use of duly stamped or marked containers, regulated.

Republic Act No. 623, approved June 5, 1951, and amended by R.A. No. 5700, regulates the use of duly stamped or marked bottles, boxes, casks, kegs, barrels and other similar containers.

It shall be unlawful for any person, without the written consent of the manufacturer, bottler, or seller, who has successfully registered the marks of ownership in accordance with the provisions of the next preceding section, to fill such bottles, boxes, kegs, barrels, steel cylinders, tanks, flasks, accumulators, or other similar containers so marked or stamped, for the purpose of sale, or to sell, dispose of, buy or traffic in, or wantonly destroy the same, whether filled or not, or to use the same for drinking vessels or glasses or drainpipes, foundation pipes, or for any other purpose than that registered by the manufacturer, bottler or seller. Any violation of this section shall be punished by a fine of note more than one thousand pesos or imprisonment of not more than one year or both. (Sec. 2)

The law in smuggling or illegal importation

A crime which is related to frauds in commerce and industry is smuggling or illegal importation.

Section 2702 of the Revised Administrative Code, as amended by Republic Act No. 455, under which appellant has been convicted, provides as follows:

> "Unlawful importation of merchandise. Any person who shall fraudulently or knowingly import or bring into the Philippine Islands, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell or in any manner facilitate the transportation,

concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, shall be punished by a fine of not less than six hundred pesos but not more than five thousand pesos and by imprisonment for not less than three months nor more than two years and, if the offender is an alien, he may be subject to deportation.

"When, upon trial for violation of this section, the defendant is shown to have or to have had possession of the merchandise in question, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the court."

If there was at all any violation by appellant of this provision, it must be in relation to the second part thereof, which refers to any person who "shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law." There is no suggestion whatsoever that appellant was himself the importer or had any hand in the supposed illegal importation, the finding of guilt made by the trial court being predicated on the possession of the cigarettes in question.

In order that a person may be deemed guilty of smuggling or illegal importation under the foregoing statute, three requisites must concur: (1) that the merchandise must have been fraudulently or knowingly imported contrary to law; (2) that the defendant, if he is not the importer himself, must have received, concealed, bought, sold or in any manner facilitated the transportation, concealment or sale of the merchandise; and (3) that the defendant must be shown to have knowledge that the merchandise had been illegally imported. If the defendant, however, is shown to have had possession of the illegally imported merchandise without satisfactory explanation, such possession shall be deemed sufficient to authorize conviction.

The first and most important question to be determined in this case is whether the cigarettes in question had been illegally imported into the Philippines. This is an element that must be established by the prosecution beyond reasonable doubt, as must be all elements constituting every criminal offense. The fact of illegal importation cannot be presumed from the fact of defendant's unexplained possession. The only presumption that arises therefrom is with respect to the second and third elements necessary for conviction, as above pointed out. In other words, the statute in effect provides that if certain goods or merchandise have been illegally imported and the same are found in the possession of the defendant, without satisfactory explanation, such possession is sufficient evidence that he has knowledge of the fact of illegal importation and that, not being the importer himself,

he has received, concealed, bought, sold or facilitated the transportation, concealment or sale of such illegally imported merchandise.

There is no proof beyond reasonable doubt of the fact that the cigarettes in question had been imported "contrary to law", and that therefore the first and most important element necessary for conviction under Section 2702 of the Revised Administrative Code has not been shown to exist.

The judgment appealed from is reversed and appellant is acquitted with costs *de oficio*. (People vs. Colmenares, C.A., 52 O.G., 3112-3313; 3119)

Regional trial courts have jurisdiction over violations of intellectual property rights.

Republic Act No. 8293 and Republic Act No. 166 are special laws (Faberge Incorporated v. Intermediate Appellate Court, G.R. No. 71189, 4 November 1992, 215 SCRA 316, 32) conferring jurisdiction over violations of intellectual property rights to the Regional Trial Court. They should therefore prevail over Republic Act No. 7691 (An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts), which is a general law (Manzano vs. Valera, G.R. No. 122068, 8 July 1998, 292 SCRA 73). Hence, jurisdiction over the instant criminal case for unfair competition is properly lodged with the Regional Trial Court even if the penalty therefor is imprisonment of less than 6 years, or from 2 to 5 years and a fine ranging from P50,000.00 to P200,000.00. (Samson vs. Daway, G.R. Nos. 160054-55, July 21, 2004)

Title Five

CRIMES RELATIVE TO OPIUM AND OTHER PROHIBITED DRUGS

Articles 190, 191, 192 and 193 of the Revised Penal Code were repealed by Republic Act No. 6425, known as the "Dangerous Drugs Act of 1972," which took effect on March 30, 1972, as amended by P.D. No. 1683 and further amended by Republic Act No. 7659.

Republic Act No. 9165, known as the "Comprehensive Dangerous Drugs Act of 2002," which took effect on July 4, 2002, repealed Republic Act No. 6425 and amended Republic Act No. 7659.

LIMITED APPLICABILITY OF REVISED PENAL CODE TO REPUBLIC ACT NO. 9165.

Section 98 of Rep. Act No. 9165 expressly states that "[n]otwithstanding any law, rule or regulation to the contrary, *the provisions of the Revised Penal Code* (Act No. 3814), as amended, *shall not apply to the provisions of this Act,* except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be *reclusion perpetua* to death.

Acts punished by the Comprehensive Dangerous Drugs Act of 2002.

The acts punished are:

1. **Importation of dangerous drugs and/or controlled precursors and essential chemicals;**
2. **Sale, trading, administration, dispensation, delivery, distribution and transportation of dangerous drugs and/or controlled precursors and essential chemicals;**
3. **Maintenance of a dangerous drug den, dive or resort;**
4. **Being employees or visitors of a dangerous drug den, dive or resort;**

5. Manufacture of dangerous drugs and/or controlled precursors and essential chemicals;
6. Illegal chemical diversion of controlled precursors and essential chemicals;
7. Manufacture or delivery of equipment, instrument, apparatus and other paraphernalia for dangerous drugs and/or controlled precursors and essential chemicals;
8. Possession of dangerous drugs;
9. Possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs;
10. Possession of dangerous drugs during parties, social gatherings or meetings;
11. Possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs during parties, social gatherings or meetings;
12. Use of dangerous drugs;
13. Cultivation or culture of plants classified as dangerous drugs or are sources thereof;
14. Failure to maintain and keep original records of transactions on dangerous drugs and/or controlled precursors and essential chemicals;
15. Unnecessary prescription of dangerous drugs; and
16. Unlawful prescription of dangerous drugs.

Penalties for Unlawful Acts.

1. Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals

The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall import or bring into the Philippines *any dangerous drug,* regardless of the quantity and purity involved, including any and all species of opium poppy or any part thereof or substances derived therefrom even for floral, decorative and culinary purposes.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand

pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall import *any controlled precursor and essential chemical.*

The *maximum penalty* provided for under this Section shall be imposed upon any person, who, unless authorized under this Act, shall import or bring into the Philippines any dangerous drug and/ or controlled precursor and essential chemical *through the use of a diplomatic passport, diplomatic facilities or any other means involving his /her official status intended to facilitate the unlawful entry of the same.* In addition, the diplomatic passport shall be confiscated and canceled.

The *maximum penalty* provided for under this Section shall be imposed upon any person, who *organizes, manages or acts as a "financier"* of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a *"protector /coddler"* of any violator of the provisions under this Section. (Sec. 4)

2. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport *any dangerous drug,* including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport *any controlled precursor and essential chemical,* or shall *act as a broker* in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires *within one hundred (100) meters from the school,* the *maximum penalty* shall be imposed in every case.

For *drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity* directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the *maximum penalty* shall be imposed in every case.

If the *victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical* involved in any offense herein provided *be the proximate cause of death* of a victim thereof, the *maximum penalty* provided for under this Section shall be imposed.

The *maximum penalty* provided for under this Section shall be imposed upon any person who *organizes, manages or acts as a "financier"* of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a *"protecto/coddler"* of any violator of the provisions under this Section. (Sec. 5)

3. Maintenance of a Den, Dive or Resort.

The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person or group of persons who shall maintain a den, dive or resort *where any dangerous drug is used or sold* in any form.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person or group of persons who shall maintain a den, dive, or resort *where any controlled precursor and essential chemical is used or sold* in any form.

The *maximum penalty* provided for under this Section shall be imposed in every case where any dangerous *drug is administered, delivered or sold to a minor who is allowed to use the same* in such a place.

Should any *dangerous drug be the proximate cause of the death of a person* using the same in such den, dive or resort, the penalty of death and a fine ranging from One million (P1,000,000.00) to Fifteen million pesos (P15,000,000.00) shall be imposed *on the maintainer, owner and/or operator.*

If such den, dive or resort is *owned by a third person,* the same shall be *confiscated and escheated in favor of the government: Provided,*

That the criminal complaint shall specifically allege that such place is intentionally used in the furtherance of the crime: *Provided, further,* That the prosecution shall prove such intent on the part of the owner to use the property for such purpose: *Provided, finally,* That the owner shall be included as an accused in the criminal complaint.

The *maximum penally* provided for under this Section shall be imposed upon any person who *organizes, manages or acts as a "financier"* of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a *"protector/coddler"* of any violator of the provisions under this Section. (Sec. 6)

4. Employees and Visitors of a Den, Dive or Resort.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon:

(a) *Any employee* of a den, dive or resort, who is aware of the nature of the place as such; and

(b) Any person who, not being included in the provisions of the next preceding paragraph, is aware of the nature of the place as such and *shall knowingly visit the same.* (Sec. 7)

5. Manufacture of Dangerous Drugs **and/or** Controlled Precursors and Essential Chemicals.

The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall engage in the manufacture of *any dangerous drug.*

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall manufacture any *controlled precursor and essential chemical.*

The presence of any controlled precursor and essential chemical or laboratory equipment in the clandestine laboratory is a *prima facie* proof of manufacture of any dangerous drug. It shall be considered an aggravating circumstance if the clandestine laboratory is undertaken or established under the following circumstances:

(a) Any phase of the manufacturing process was conducted in the presence or with the help of minor/s;

(b) Any phase or manufacturing process was established or undertaken within one hundred (100) meters of a residential, business, church or school premises;

(c) Any clandestine laboratory was secured or protected with booby traps;

(d) Any clandestine laboratory was concealed with legitimate business operations; or

(e) Any employment of a practitioner, chemical engineer, public official or foreigner.

The maximum *penalty* provided for under this Section shall be imposed upon any person, who *organizes, manages or acts as a "financier"* of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a *"protector/coddler"* of any violator of the provisions under this Section. (Sec. 8)

6. Illegal Chemical Diversion of Controlled Precursors and Essential Chemicals.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall illegally *divert any controlled precursor and essential chemical.* (Sec. 9)

7. Manufacture or Delivery of Equipment, Instrument, Apparatus, and Other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person who shall deliver, possess with intent to deliver, or manufacture with intent to deliver *equipment, instrument, apparatus and other paraphernalia for dangerous drugs,* knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain or conceal

any dangerous drug and/or controlled precursor and essential chemical in violation of this Act.

The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed if it *will be used to inject, ingest, inhale or otherwise introduce into the human body a dangerous drug* in violation of this Act.

The maximum penalty provided for under this Section shall be imposed upon any person, who *uses a minor or a mentally incapacitated individual* to deliver such equipment, instrument, apparatus and other paraphernalia for dangerous drugs. (Sec. 10)

8. Possession of Dangerous Drugs.

The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall *possess any dangerous drug* in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of methamphetamine hydrochloride or "shabu";

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydro-

chloride or *"shabu" is ten (10) grams or more but less than fifty (50) grams;*

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are *five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs* such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are *less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu" or other dangerous drugs* such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. (Sec. 11)

9. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.

The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated

in the preceding paragraph shall be *prima facie* evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act. (Sec. 12)

10. Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings.

Any person found possessing any dangerous drug during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) persons, shall suffer the maximum penalties provided for in Section 11 of this Act, regardless of the quantity and purity of such dangerous drugs. (Sec. 13)

11. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings.

The maximum penalty provided for in Section 12 of this Act shall be imposed upon any person, who shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons. (Sec. 14)

12. Use of Dangerous Drugs.

A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00): *Provided,* That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply. (Sec. 15)

13. Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof.

The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who shall *plant, cultivate or culture marijuana, opium poppy or any other plant*

regardless of quantity, which is or may hereafter be classified as a dangerous drug or as a source from which any dangerous drug, may be manufactured or derived: *Provided,* That in the case of medical laboratories and medical research centers which cultivate or culture marijuana, opium poppy and other plants, or materials of such dangerous drugs for medical experiments and research purposes, or for the creation of new types of medicine, the Board shall prescribe the necessary implementing guidelines for the proper cultivation, culture, handling, experimentation and disposal of such plants and materials.

The land or portions thereof and/or greenhouses on which any of said plants is cultivated or cultured shall be confiscated and escheated in favor of the State, unless the owner thereof can prove lack of knowledge of such cultivation or culture despite the exercise of due diligence on his/her part. If the land involved is part of the public domain, the maximum penalty provided for under this Section shall be imposed upon the offender.

The *maximum penalty* provided for under this Section shall be imposed upon any person, who *organizes, manages or acts as a "financier"* of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a *"protecto/coddler"* of any violator of the provisions under this Section. (Sec. 16)

Maintenance and Keeping of Original Records of Transactions on Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

The penalty of imprisonment ranging from one (1) year and one (1) day to six (6) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any practitioner, manufacturer, wholesaler, importer, distributor, dealer or retailer who *violates or fails to comply with the maintenance and keeping of the original records of transactions on any dangerous drug and/or controlled precursor and essential chemical* in accordance with Section 40 of this Act.

An additional penalty shall be imposed through the revocation of the license to practice his/her profession, in case of a practitioner, or of the business, in case of a manufacturer, seller, importer, distributor, dealer or retailer. (Sec. 17)

15. Unnecessary Prescription of Dangerous Drugs.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) and the additional penalty of the revocation of his/her license to practice shall be imposed upon the *practitioner, who shall prescribe any dangerous drug* to any person whose physical or physiological condition does not require the use or in the dosage prescribed therein, as determined by the Board in consultation with recognized competent experts who are authorized representatives of professional organizations of practitioners, particularly those who are involved in the care of persons with severe pain. (Sec. 18)

16. Unlawful Prescription of Dangerous Drugs.

The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall *make or issue a prescription* or any other writing purporting to be a prescription for any dangerous drug. (Sec. 19)

DEFINITION OF TERMS.

(a) Administer. — Any act of introducing any dangerous drug into the body of any person, with or without his/her knowledge, by injection, inhalation, ingestion or other means, or of committing any act of indispensable assistance to a person in administering a dangerous drug to himself/herself unless administered by a duly licensed practitioner for purposes of medication.

(b) Chemical Diversion. — The sale, distribution, supply or transport of legitimately imported, in-transit, manufactured or procured controlled precursors and essential chemicals, in diluted, mixtures or in concentrated form, to any person or entity engaged in the manufacture of any dangerous drug, and shall include packaging, repackaging, labeling, relabeling or concealment of such transaction through fraud, destruction of documents, fraudulent use of permits, misdeclaration, use of front companies or mail fraud.

(c) Clandestine Laboratory. — Any facility used for the illegal manufacture of any dangerous drug and/or controlled precursor and essential chemical.

(d) Controlled Precursors and Essential Chemicals. — Include those listed in Tables I and II of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

(e) Cultivate or Culture. — Any act of knowingly planting, growing, raising, or permitting the planting, growing or raising of any plant which is the source of a dangerous drug.

(f) Dangerous Drugs. — Include those listed in the Schedules annexed to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 Single Convention on Psychotropic Substances.

(g) Deliver. — Any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.

(h) Den, Dive or Resort. — A place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold or used in any form.

(i) Dispense. — Any act of giving away, selling or distributing medicine or any dangerous drug with or without the use of prescription.

(j) Employee of Den, Dive or Resort. — The caretaker, helper, watchman, lookout, and other persons working in the den, dive or resort, employed by the maintainer, owner and/or operator where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, distributed, sold or used, with or without compensation, in connection with the operation thereof.

(k) Financier. — Any person who pays for, raises or supplies money for, or underwrites any of the illegal activities prescribed under this Act.

(l) Illegal Trafficking. — The illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical.

(m) Manufacture. — The production, preparation, compounding or processing of any dangerous drug and/or controlled precursor and essential chemical, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of such substances, design or configuration of its form, or labeling or relabeling of its container; except that such terms do not include the preparation, compounding, packaging or labeling of a drug or other substances by a duly authorized practitioner as an incident to his/her administration or dispensation of such drug or substance in the course of his/her professional practice including research, teaching and chemical analysis of dangerous drugs or such substances that are not intended for sale or for any other purpose.

(n) Cannabis or commonly known as "Marijuana" or "Indian Hemp" or by its any other name. — Embraces every kind, class, genus, or specie of the plant Cannabis Sativa L. including, but not limited to, Cannabis Americana, hashish, bhang, guaza, churrus and ganjab, and embraces every kind, class and character of marijuana, whether dried or fresh and flowering, flowering or fruiting tops, or any part or portion of the plant and seeds thereof, and all its geographic varieties, whether as a reefer, resin, extract, tincture or in any form whatsoever.

(o) Methylenedioxymethamphetamine (MDMA) or commonly known as "Ecstasy," or by its any other name. — Refers to the drug having such chemical composition, including any of its isomers or derivatives in any form.

(p) Methamphetamine Hydrochloride or commonly known as "Shabu," "Ice," "Meth," or by its any other name. — Refers to the drug having such chemical composition, including any of its isomers or derivatives in any form.

(q) Opium. — Refers to the coagulated juice of the opium poppy (Papaver Somniferum L.) and embraces every kind, class and character of opium, whether crude or prepared; the ashes or refuse of the same; narcotic preparations thereof or therefrom; morphine or any alkaloid of opium; preparations in which opium, morphine or any alkaloid of opium enters as an ingredient; opium poppy; opium poppy straw; and leaves or wrappings of opium leaves, whether prepared for use or not.

(r) Opium Poppy. — Refers to any part of the plant of the species Papaver Somniferum L., Papaver Setigerum DC, Papaver Orientale, Papaver Bracteatum and Papaver Rhoeas, which includes the seeds, straws, branches, leaves or any part thereof, or substances derived therefrom, even for floral, decorative and culinary purposes.

(s) Planting of Evidence. — The willful act by any person of maliciously and surreptitiously inserting, placing, adding or attaching directly or indirectly, through any overt or covert act, whatever quantity of any dangerous drug and/or controlled precursor and essential chemical in the person, house, effects or in the immediate vicinity of an innocent individual for the purpose of implicating, incriminating or imputing the commission of any violation of this Act.

(t) Practitioner. — Any person who is a licensed physician, dentist, chemist, medical technologist, nurse, midwife, veterinarian or pharmacist in the Philippines.

(u) Protector/Coddler. — Any person who knowingly and willfully consents to the unlawful acts provided for in this Act and uses his/her influence, power or position in shielding, harboring, screening or

facilitating the escape of any person he/she knows, or has reasonable grounds to believe on or suspects, has violated the provisions of this Act in order to prevent the arrest, prosecution and conviction of the violator.

(v) Pusher. — Any person who sells, trades, administers, dispenses, delivers or gives away to another, on any terms whatsoever, or distributes, dispatches in transit or transports dangerous drugs or who acts as a broker in any of such transactions, in violation of this Act.

(w) Sell. — Any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.

(x) Trading. — Transactions involving the illegal trafficking of dangerous drugs and/or controlled precursors and essential chemicals using electronic devices such as, but not limited to, text messages, e-mail, mobile or landlines, two-way radios, internet, instant messengers and chat rooms or acting as a broker in any of such transactions whether for money or any other consideration in violation of this Act.

(y) Use. — Any act of injecting, intravenously or intramuscularly, of consuming, either by chewing, smoking, sniffing, eating, swallowing, drinking or otherwise introducing into the physiological system of the body, any of the dangerous drugs.

Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act, Including the Properties or Proceeds Derived from the Illegal Trafficking of Dangerous Drugs and/or Precursors and Essential Chemicals.

Every penalty imposed for the —

a) unlawful importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of any dangerous drug and/or controlled precursor and essential chemical,

b) cultivation or culture of plants which are sources of dangerous drugs, and the possession of any equipment, instrument, apparatus and other paraphernalia for dangerous drugs including other laboratory equipment shall carry with it the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the unlawful act, including, but not limited to, money and other assets obtained thereby, and the instruments or tools with which the particular unlawful act was committed, unless they are the property of a third person not

liable for the unlawful act, but those which are not of lawful commerce shall be ordered destroyed without delay pursuant to the provisions of Section 21 of this Act. (Sec. 20)

Non-Applicability of the Probation Law for Drug Traffickers and Pushers.

Any person convicted for drug trafficking or pushing under this Act, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended. (Sec. 24)

Qualifying Aggravating Circumstances in the Commission of a Crime by an Offender Under the Influence of Dangerous Drugs.

Notwithstanding the provisions of any law to the contrary, a positive finding for the use of dangerous drugs shall be a qualifying aggravating circumstance in the commission of a crime by an offender, and the application of the penalty provided for in the Revised Penal Code shall be applicable. (Sec. 25)

Attempt or conspiracy to commit certain acts shall be penalized by the same penalty prescribed for the commission of the same, in the following cases:

(a) Importation of any dangerous drug and/or controlled precursor and essential chemical;

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

(c) Maintenance of a den, dive or resort where any dangerous drug is used in any form;

(d) Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and

(e) Cultivation or culture of plants which are sources of dangerous drugs. (Sec. 26)

Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed.

The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00), in addition to absolute perpetual disqualification from any public office, shall be imposed upon any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts as provided for in this Act.

Any elective local or national official found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or -controlled corporations. (Sec. 27)

Criminal Liability of Government Officials and Employees.

The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.

Criminal Liability for Planting of Evidence.

Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death. (Sec. 29)

Criminal Liability of Officers of Partnerships, Corporations, Associations or Other Juridical Entities.

In case any violation of this Act is committed by a partnership, corporation, association or any juridical entity, the partner, president,

director, manager, trustee, estate administrator, or officer who consents to or knowingly tolerates such violation shall be held criminally liable as a co-principal.

The penalty provided for the offense under this Act shall be imposed upon the partner, president, director, manager, trustee, estate administrator, or officer who knowingly authorizes, tolerates or consents to the use of a vehicle, vessel, aircraft, equipment or other facility, as an instrument in the importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of dangerous drugs, or chemical diversion, if such vehicle, vessel, aircraft, equipment or other instrument is owned by or under the control or supervision of the partnership, corporation, association or juridical entity to which they are affiliated. (Sec. 30)

Additional Penalty if Offender is an Alien.

In addition to the penalties prescribed in the unlawful act committed, any alien who violates such provisions of this Act shall, after service of sentence, be deported immediately without further proceedings, unless the penalty is death. (Sec. 31)

Accessory Penalties.

A person convicted under this Act shall be disqualified to exercise his/her civil rights such as but not limited to, the rights of parental authority or guardianship, either as to the person or property of any ward, the rights to dispose of such property by any act or any conveyance *inter vivos,* and political rights such as but not limited to, the right to vote and be voted for. Such rights shall also be suspended during the pendency of an appeal from such conviction. (Sec. 35)

Voluntary Submission of a Drug Dependent to Confinement, Treatment and Rehabilitation.

A drug dependent or any person who violates Section 15 of this Act may, by himself/herself or through his/her parent. Spouse, guardian or relative within the fourth degree of consanguinity or affinity, apply to the Board or its duly recognized representative, for treatment and rehabilitation of the drug dependency. Upon such application, the Board shall bring forth the matter to the Court which shall order that the applicant be examined for drug dependency. If the examination by a DOH- accredited physician results in the issuance of a certification that the applicant is a drug dependent, he/she shall be ordered by the Court to undergo treatment and rehabilitation in a Center designated by the Board for a period of not less than six (6) months: *Provided,* That a drug dependent may be placed under the care of

a DOH- accredited physician where there is no Center near or accessible to the residence of the drug dependent or where said drug dependent is below eighteen (18) years of age and is a first-time offender and non-confinement in a Center will not pose a serious danger to his/her family or the community.

Confinement in a Center for treatment and rehabilitation shall not exceed one (1) year, after which time the Court, as well as the Board shall be apprised by the head of the treatment and rehabilitation center of the status of said drug dependent and determine whether further confinement will be for the welfare of the drug dependent and his/her family or the community. (Sec. 54)

Exemption from the Criminal Liability Under the Voluntary Submission Program.

A drug dependent under the voluntary submission program, who is finally discharged from confinement, shall be exempt from the criminal liability under Section 15 of this Act subject to the following conditions:

(1) He/she has complied with the rules and regulations of the Center, the applicable rules and regulations of the Board, including the after-care and follow-up program for at least eighteen (18) months following temporary discharge from confinement in the Center or, in the case of a dependent placed under the care of the DOH-accredited physician, the after-care program and follow-up schedule formulated by the DSWD and approved by the Board: *Provided,* That capability-building of local government social workers shall be undertaken by the DSWD;

(2) He/she has never been charged or convicted of any offense punishable under this Act, the Dangerous Drugs Act of 1972 or Republic Act No. 6425, as amended; the Revised Penal Code, as amended; or any special penal laws;

(3) He/she has no record of escape from a Center: *Provided,* That had he/she escaped, he/she surrendered by himself/herself or through his/her parent, spouse, guardian or relative within the fourth degree of consanguinity or affinity, within one (1) week from the date of the said escape; and

(4) He/she poses no serious danger to himself/herself, his/her family or the community by his/her exemption from criminal liability. (Sec. 55)

Filing of Charges Against a Drug Dependent Who is Not Rehabilitated Under the Voluntary Submission Program.

A drug dependent, who is not rehabilitated after the second commitment to the Center under the voluntary submission program, shall upon recommendation of the Board, be charged for violation of Section 15 of this Act and prosecuted like any other offender. If convicted, he/she shall be credited for the period of confinement and rehabilitation in the Center in the service of his/her sentence. (Sec. 58)

Compulsory Confinement of a Drug Dependent Who Refuses to Apply Under the Voluntary Submission Program.

Notwithstanding any law, rule and regulation to the contrary, any person determined and found to be dependent on dangerous drugs shall, upon petition by the Board or any of its authorized representative, be confined for treatment and rehabilitation in any Center duly designated or accredited for the purpose.

A petition for the confinement of a person alleged to be dependent on dangerous drugs to a Center may be filed by any person authorized by the Board with the Regional Trial Court of the province or city where such person is found.

After the petition is filed, the court, by an order, shall immediately fix a date for the hearing, and a copy of such order shall be served on the person alleged to be dependent on dangerous drugs, and to the one having charge of him.

If after such hearing and the facts so warrant, the court shall order the drug dependent to be examined by two (2) physicians accredited by the Board. If both physicians conclude that the respondent is not a drug dependent, the court shall order his/her discharge. If either physician finds him to be a dependent, the court shall conduct a hearing and consider all relevant evidence which may be offered. If the court finds him a drug dependent, it shall issue an order for his/her commitment to a treatment and rehabilitation center under the supervision of the DOH. In any event, the order of discharge or order of confinement or commitment shall be issued not later than fifteen (15) days from the filing of the appropriate petition. (Sec. 61)

Compulsory Submission of a Drug Dependent Charged with an Offense to Treatment and Rehabilitation.

If a person charged with an offense where the imposable penalty is imprisonment of less than six (6) years and one (1) day, and is found by the prosecutor or by the court, at any stage of the proceedings, to be a drug

dependent, the prosecutor or the court as the case may be, shall suspend all further proceedings and transmit copies of the record of the case to the Board.

In the event the Board determines, after medical examination, that public interest requires that such drug dependent be committed to a center for treatment and rehabilitation, it shall file a petition for his/her commitment with the regional trial court of the province or city where he/she is being investigated or tried: *Provided*, That where a criminal case is pending in court, such petition shall be filed in the said court. The court shall take judicial notice of the prior proceedings in the case and shall proceed to hear the petition. If the court finds him to be a drug dependent, it shall order his/her commitment to a Center for treatment and rehabilitation. The head of said Center shall submit to the court every four (4) months, or as often as the court may require, a written report on the progress of the treatment. If the dependent is rehabilitated, as certified by the Center and the Board, he/she shall be returned to the court, which committed him, for his/her discharge therefrom.

Thereafter, his/her prosecution for any offense punishable by law shall be instituted or shall continue, as the case may be. In case of conviction, the judgment shall, if the accused is certified by the treatment and rehabilitation center to have maintained good behavior, indicate that he/she shall be given full credit for the period he/she was confined in the Center: *Provided, however*, That when the offense is for violation of Section 15 of this Act and the accused is not a recidivist, the penalty thereof shall be deemed to have been served in the Center upon his/her release therefrom after certification by the Center and the Board that he/she is rehabilitated. (Sec. 62)

Prescription of the Offense Charged Against a Drug Dependent Under the Compulsory Submission Program.

The period of prescription of the offense charged against a drug dependent under the compulsory submission program shall not run during the time that the drug dependent is under confinement in a Center or otherwise under the treatment and rehabilitation program approved by the Board.

Upon certification of the Center that he/she may temporarily be discharged from the said Center, the court shall order his/her release on condition that he/she shall report to the Board through the DOH for after-care and follow-up treatment for a period not exceeding eighteen (18) months under such terms and conditions as may be imposed by the Board.

If at anytime during the after-care and follow-up period, the Board certifies to his/her complete rehabilitation, the court shall order his/her final discharge from confinement and order for the immediate resumption of

the trial of the case for which he/she is originally charged. Should the Board through the DOH find at anytime during the after-care and follow-up period that he/she requires further treatment and rehabilitation, it shall report to the court, which shall order his/her recommitment to the Center.

Should the drug dependent, having been committed to a Center upon petition by the Board escape therefrom, he/she may resubmit himself/herself for confinement within one (1) week from the date of his/her escape; or his/her parent, spouse, guardian or relative within the fourth degree of consanguinity or affinity may, within the same period, surrender him for recommitment. If, however, the drug dependent does not resubmit himself/herself for confinement or he/she is not surrendered for recommitment, the Board may apply with the court for the issuance of the recommitment order. Upon proof of previous commitment, the court shall issue an order for recommitment. If, subsequent to such recommitment, he/she should escape again, he/she shall no longer be exempt from criminal liability for use of any dangerous drug.

A drug dependent committed under this particular Section who is finally discharged from confinement shall be exempt from criminal liability under Section 15 of this Act, without prejudice to the outcome of any pending case filed in court. On the other hand, a drug dependent who is not rehabilitated after a second commitment to the Center shall, upon conviction by the appropriate court, suffer the same penalties provided for under Section 15 of this Act again without prejudice to the outcome of any pending case filed in court. (Sec. 63)

PROVISIONS APPLICABLE TO FIRST-TIME MINOR OFFENDER.

(1) Suspension of Sentence of a First-Time Minor Offender.

An accused who is over fifteen (15) years of age at the time of the commission of the offense mentioned in Section 11 of this Act, but not more than eighteen (18) years of age at the time when judgment should have been promulgated after having been found guilty of said offense, may be given the benefits of a suspended sentence, subject to the following conditions:

(a) He/she has not been previously convicted of violating any provision of this Act, or of the Dangerous Drugs Act of 1972, as amended; or of the Revised Penal Code; or of any special penal laws;

(b) He/she has not been previously committed to a Center or to the care of a DOH-accredited physician; and

(c) The Board favorably recommends that his/her sentence be suspended.

While under suspended sentence, he/she shall be under the supervision and rehabilitative surveillance of the Board, under such conditions that the court may impose for a period ranging from six (6) months to eighteen (18) months.

Upon recommendation of the Board, the court may commit the accused under suspended sentence to a Center, or to the care of a DOH-accredited physician for at least six (6) months, with after-care and follow-up program for not more than eighteen (18) months.

In the case of minors under fifteen (15) years of age at the time of the commission of any offense penalized under this Act, Article 192 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, as amended by Presidential Decree No. 1179 shall apply, without prejudice to the application of the provisions of this Section. (Sec. 66)

(2) Discharge After Compliance with Conditions of Suspended Sentence of a First-Time Minor Offender.

If the accused first time minor offender under suspended sentence complies with the applicable rules and regulations of the Board, including confinement in a Center, the court, upon a favorable recommendation of the Board for the final discharge of the accused, shall discharge the accused and dismiss all proceedings.

Upon the dismissal of the proceedings against the accused, the court shall enter an order to expunge all official records, other than the confidential record to be retained by the DOJ relating to the case. Such an order, which shall be kept confidential, shall restore the accused to his/her status prior to the case. He/she shall not be held thereafter to be guilty of perjury or of concealment or misrepresentation by reason of his/her failure to acknowledge the case or recite any fact related thereto in response to any inquiry made of him for any purpose. (Sec. 67)

(3) Privilege of Suspended Sentence to be Availed of Only Once by a First-Time Minor Offender.

The privilege of suspended sentence shall be availed of only once by an accused drug dependent who is a first-time offender over fifteen (15) years of age at the time of the commission of the violation of Section 15 of this Act but not more than eighteen (18) years of age at the time when judgment should have been promulgated. (Sec. 68)

(4) Promulgation of Sentence for First-Time Minor Offender.

If the accused first-time minor offender violates any of the conditions of his/her suspended sentence, the applicable rules and regulations of the Board exercising supervision and rehabilitative

surveillance over him, including the rules and regulations of the Center should confinement be required, the court shall pronounce judgment of conviction and he/she shall serve sentence as any other convicted person. (Sec. 69)

(5) Probation or Community Service for a First-Time Minor Offender in Lieu of Imprisonment.

Upon promulgation of the sentence, the court may, in its discretion, place the accused under probation, even if the sentence provided under this Act is higher than that provided under existing law on probation, or impose community service in lieu of imprisonment. In case of probation, the supervision and rehabilitative surveillance shall be undertaken by the Board through the DOH in coordination with the Board of Pardons and Parole and the Probation Administration. Upon compliance with the conditions of the probation, the Board shall submit a written report to the court recommending termination of probation and a final discharge of the probationer, whereupon the court shall issue such an order.

The community service shall be complied with under conditions, time and place as may be determined by the court in its discretion and upon the recommendation of the Board and shall apply only to violators of Section 15 of this Act. The completion of the community service shall be under the supervision and rehabilitative surveillance of the Board during the period required by the court. Thereafter, the Board shall render a report on the manner of compliance of said community service. The court in its discretion may require extension of the community service or order a final discharge.

In both cases, the judicial records shall be covered by the provisions of Sections 60 and 64 of this Act.

If the sentence promulgated by the court requires imprisonment, the period spent in the Center by the accused during the suspended sentence period shall be deducted from the sentence to be served. Sec. 70)

Liability of a Parent, Spouse or Guardian Who Refuses to Cooperate with the Board or any Concerned Agency.

Any parent, spouse or guardian who, without valid reason, refuses to cooperate with the Board or any concerned agency in the treatment and rehabilitation of a drug dependent who is a minor, or in any manner, prevents or delays the after-care, follow-up or other programs for the welfare of the accused drug dependent, whether under voluntary submission program or compulsory submission program, may be cited for contempt by the court. (Sec. 73)

Importation of dangerous drugs.

There must be proof that the ship came from a foreign port. Thus, when the fiscal fails to prove that the steamer in which the opium was found or from which it was landed came from a foreign port, the accused cannot be convicted of illegal importation of opium.

"Possession of opium on board a vessel is punishable when Philippine port is its destination."

When a foreign steamer *anchored* in any of our ports after arriving direct from a foreign country, mere possession of opium therein is punishable. (U.S. vs. Ah Sing, 36 Phil. 978)

The ruling does not apply when the foreign vessel is *in transit,* in which case mere possession of opium therein is not punishable.

Sale of dangerous drugs.

Unlike under the repealed R.A. No. 6425 (1972) or the Dangerous Drugs Act of 1972 where the imposable penalty depends on the quantity of the regulated drug involved, Sec. 5 of RA No. 9165 now imposes the penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) for the sale, trade, administration, dispensation, delivery, distribution and transportation of *shabu,* a dangerous drug, regardless of the quantity involved. (People vs. Villanueva, G.R. No. 172116, October 30, 2006, citing *Mabutas vs. Perello,* 459 SCRA 368, 393 [2005])

A person who visited another who was smoking opium is not liable, if the place is not a drug den, dive or resort.

The accused was charged with having permitted one Ong Ting to use opium personally and with having knowingly visited the place where said Chinaman was smoking opium. It was held that it was not unlawful to be in a room in which another was smoking opium, unless the place is an opium den. (U.S. vs. Sy Bun Kue, 34 Phil. 176)

Possession of dangerous drugs.

It must be (1) unauthorized, (2) either actual or constructive, (3) irrespective of its quantity, and (4) with intent to possess, *i.e.,* with full knowledge that what was possessed was any of the prohibited drugs or dangerous drugs. (See People vs. Say Guat, C.A., 52 O.G., 5913, based on Art. 190, par. 1, of the Revised Penal Code)

That the accused is not authorized to possess opium, need not be alleged in the information.

The phrase "unless lawfully authorized" in the 1st paragraph of Art. 190, states an element if defense and, therefore, it is not necessary to allege in the information that the accused is not authorized to possess opium. (U.S. vs. Chan Toco, 12 Phil. 262)

Example of lack of intent to possess opium.

While the policemen were searching the house for opium, the wife was told by her husband to get from beneath a pillow a small can said to contain opium and to throw it away. *Held:* The wife had no intent to possess the opium. There is *no proof* that *she knew* that the can contained opium. The mere fact that she took possession of it under her husband's order is not such a possession as is intended to be condemned by the law. (U.S. vs. Concepcion, 31 Phil. 182)

But the finding of opium in the house or upon the premises of the accused is *prima facie* evidence of *knowledge* or *animus possidendi* and is sufficient to sustain a conviction in the absence of satisfactory explanation. (U.S. vs. Bandoc, 23 Phil. 14)

The accused may rebut the presumption of knowledge and establish the absence of knowledge on his part as to the presence of the drugs in his premises. (U.S. vs. Gan Lian Po, 34 Phil. 880)

What the law punishes is present possession of dangerous drugs.

One who is found with *stains* only of opium or its derivatives upon the hands or clothing, cannot be convicted of having in his possession opium or its derivatives. Stains of opium indicate merely *past* possession thereof. What the law punishes is the *present* possession of opium. (U.S. vs. Tan Seng Ki, 28 Phil. 54)

But present possession of opium, even in small quantities, like the opium contained in pills, described as *"very slightly"* is punished. (U.S. vs. Lim Poco, 25 Phil. 84)

"Shall possess."

The words "shall possess" are *not limited to manual touch or personal custody.* A principal acting through an agent comes within the purview of this expression.

Thus, where the boatman carried in his boat a sack, *without knowing* that it contained opium, he is not liable. It is the owner of the opium, who

is liable for illegal possession thereof, although the opium was found in the boatman's possession.

The words "shall possess" that is, the relation between the owner of the drug and the drug itself, when the owner is not in actual physical possession, but when it is still under his control and management and subject to his disposition. (U.S. vs. Chan Guy Juan, 23 Phil. 105)

Patent medicine containing opium.

The legislature has intended to penalize the unauthorized use of opium even for medicinal purposes.

The law authorizes its use as medicine, but there must be a *prescription* therefor by a *physician.*

But an innocent purchaser of a patent medicine or other medical preparation who is *not aware* that such preparation contains opium is not guilty. (U.S. vs. Lim Poco, 25 Phil. 84)

Presumption from illegal possession of drug paraphernalia.

In a case where the policeman who raided a house found opium and opium paraphernalia on a table around which the appellants and their co-accused were gathered, it was held that the appellants and their co-accused are presumed the possessors thereof, and such illegal possession of such prohibited article is a *prima facie* evidence that they have used the prohibited drug. (People vs. Lian, *et al.*, 47 O.G. 5209)

Title Six

CRIMES AGAINST PUBLIC MORALS

What are the crimes against public morals?

They are:

(1) Gambling. (Art. 195)

(2) Importation, sale and possession of lottery tickets or advertisements. (Art. 196)

(3) Betting in sport contests. (Art. 197)

(4) Illegal betting on horse races. (Art. 198)

(5) Illegal cockfighting. (Art. 199)

(6) Grave scandal. (Art. 200)

(7) Immoral doctrines, obscene publications and exhibitions. (Art. 201)

(8) Vagrancy and prostitution. (Art. 202)

Chapter One

GAMBLING AND BETTING

Note: The provisions of Articles 195-199 of the Revised Penal Code, as amended, as well as those of Presidential Decree Nos. 483 (betting, game-fixing or point-shaving and machinations in sport contests) and 449 (Cockfighting Law), which are inconsistent with Presidential Decree No. 1602, are repealed.

PRESIDENTIAL DECREE NO. 1602

PRESCRIBING STIFFER PENALTIES IN ILLEGAL GAMBLING

SECTION 1. *Penalties.* - The following penalties are hereby imposed:

(a) The penalty of *prision correccional* in its medium period[1] or a fine ranging from one thousand to six thousand pesos, and in case of recidivism, the penalty of *prision mayor*[2] in its medium period or a fine ranging from five thousand to ten thousand pesos shall be imposed upon:

1. Any person other than those referred to in succeeding subsections who in any manner, shall directly or indirectly take part in any illegal or unauthorized activities or games of cockfighting, jueteng, jai-alai or horse racing to include bookie operations and game fixing, numbers, bingo and other forms of lotteries; cara y cruz, pompiang and the like; 7-11 and any game using dice; black jack, lucky nine, poker and its derivatives, monte, baccarat, cuajo, pangguige and other games, pak

[1]See Appendix "A," Table of Penalties, No. 12.
[2]See Appendix "A," Table of Penalties, No. 21.

que, high and low, mahjong, domino and other games using plastic tiles and the like; slot machines, roulette, pinball and other mechanical contraptions and devices; dog racing, boat racing, car racing and other forms of races; basketball, boxing, volleyball, bowling, pingpong and other forms of individual or team contests to include game fixing, point shaving and other machinations; banking or percentage game, or any other game or scheme, whether upon chance or skill, wherein wagers consisting of money, articles of value or representative of value are at stake or made;

2. Any person who shall knowingly permit any form of gambling referred to in the preceding subparagraph to be carried on in an inhabited or uninhabited place or in any building, vessel or other means of transportation owned or controlled by him. If the place where gambling is carried on has a reputation of a gambling place or that prohibited gambling is frequently carried on therein, or the place is a public or government building or barangay hall, the malefactor shall be punished by *prision correccional* in its maximum period[3] and a fine of six thousand pesos.

(b) The penalty of *prision correccional* in its maximum period or a fine of six thousand pesos shall be imposed upon the maintainer or conductor of the above gambling schemes.

(c) The penalty of *prision mayor* in its medium period[4] with temporary absolute disqualification or a fine of six thousand pesos shall be imposed if the maintainer, conductor or banker of said gambling schemes is a government official, or where such government official is the player, promoter, referee, umpire, judge or coach in case of game fixing, point shaving and machination.

(d) The penalty of *prision correccional* in its medium period[5] or a fine ranging from four hundred to two thousand

[3]See Appendix "A," Table of Penalties, No. 13.
[4]See Appendix "A," Table of Penalties, No. 21.
[5]See Appendix "A," Table of Penalties, No. 12.

pesos shall be imposed upon any person who shall, knowingly and without lawful purpose in any hour of any day, possess any lottery list, paper or other matter containing letters, figures, signs or symbols pertaining to or in any manner used in the games of jueteng, jai-alai or horse racing bookies, and similar games of lotteries and numbers which have taken place or about to take place.

(e) The penalty of temporary absolute disqualification[6] shall be imposed upon any barangay official who, with knowledge of the existence of a gambling house or place in his jurisdiction fails to abate the same or take action in connection therewith.

(f) The penalty of *prision correccional* in its maximum period or a fine ranging from five hundred pesos to two thousand pesos shall be imposed upon any security officer, security guard, watchman, private or house detective of hotels, villages, buildings, enclosures and the like which have the reputation of a gambling place or where gambling activities are being held.

x x x x x x x x x

SEC. 3. *Repealing Clause.* — Provisions of Arts. 195-199 of the Revised Penal Code, as amended, Republic Act No. 3063, Presidential Decree Numbers 483, 449, 519 and 1306, letters of instructions, laws, executive orders, rules and regulations, city and municipal ordinances which are inconsistent with this Decree are hereby repealed.

SEC. 4. ***Effectivity***.- This Decree shall take effect immediately upon publication at least once in a newspaper of general circulation.

Done in the City of Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

[6]See Appendix "A," Table of Penalties, No. 40.

PRESIDENTIAL DECREE NO. 1602
Prescribing stiffer Penalties in Illegal Gambling

What is gambling?

Gambling is any game or scheme, whether upon chance or skill, wherein wagers consisting of money, articles or value or representative of value are at stake or made.

Presidential Decree No. 1602, dated June 11, 1978, provides stiffer penalties for violations of the gambling laws.

(a) The penalty of *prision correccional* in its medium period[7] or a fine ranging from P1,000 to P6,000, and in case of recidivism, the penalty of *prision mayor*[8] in its medium period or a fine ranging from P5,000 to P10,000, shall be imposed upon:

(1) Any person who, in any manner, shall directly or indirectly take part in any illegal or unauthorized activities or games of —

1. cockfighting, jueteng, jai-alai or horse racing to include bookie operations and game fixing, numbers, bingo and other forms of lotteries;

2. cara y cruz, pompiang and the like;

3. 7-11 and any game using dice;

4. black jack, lucky nine, poker and its derivatives, monte, baccarat, cuajo, pangguigue and other card games;

5. pak que, high and low, mahjong, domino and other games using plastic tiles and the like;

6. slot machines, roulette, pinball and other mechanical contraptions and devices;

7. dog racing, boat racing, car racing and other forms of races;

8. basketball, boxing, volleyball, bowling, pingpong and other forms of individual or team contests to include game fixing, point shaving and other machinations;

9. banking or percentage game, or any other game or scheme, whether upon chance or skill, wherein wagers consisting of money, articles of value or representative of value are at stake or made;

(2) Any person who shall knowingly permit any form of gambling referred to in the preceding subparagraph to be carried on in an inhabited or uninhabited place or in any building, vessel or other means of transportation owned or controlled by him.

[7] **See Appendix "A," Table of Penalties, No. 12.**
[8] **See Appendix "A," Table of Penalties, No. 21.**

(b) The penalty of *prision correccional* in its maximum period[9] or a fine of six thousand pesos shall be imposed upon:

(1) Any person who shall knowingly permit any form of gambling to be carried on in a place which has a reputation of a gambling place or that prohibited gambling is frequently carried on therein, or in a public or government building or barangay hall;

(2) The maintainer or conductor of the above gambling schemes.

(c) The penalty of *prision mayor* in its medium period with temporary absolute disqualification or a fine of P6,000 shall be imposed if the maintainer, conductor or banker of the gambling schemes is a government official, or where such government official is the player, promoter, referee, umpire, judge or coach in case of game fixing, point shaving and other machination.

(d) The penalty of *prision correccional* in its medium period or a fine ranging friom P400 to P2,000 shall be imposed upon any person who knowingly and without lawful purpose in any hour of any day, possesses any lottery list, paper or other matter containing letters, figures, signs or symbols pertaining to or in any manner used in the games of jueteng, jai-alai or horse racing bookies and similar games of lotteries and numbers which have taken place or about to take place.

(e) The penalty of temporary absolute disqualification shall be imposed upon any barangay official who, with knowledge of the existence of a gambling house or place in his jurisdiction fails to abate the same or take action in connection therewith.

(f) The penalty of *prision correccional* in its maximum period or a fine ranging from five hundred pesos to two thousand pesos shall be imposed upon any security officer, security guard, watchman, private or house detective of hotels, villages, buildings, enclosures and the like which have the reputation of a gambling place or where gambling activities are being held.

Rep. Act No. 9287 increased the penalties for illegal number games.

Rep. Act No. 9287, which was approved on April 2, 2004, increased the penalties for illegal number games, amending certain provisions of PD No. 1602.

[9] See Appendix "A," Table of Penalties, No. 13.

PRESIDENTIAL DECREE NO. 1602
Prescribing stiffer Penalties in Illegal Gambling

"Illegal number games" is any form of illegal gambling activity which uses numbers or combinations thereof as factors in giving out jackpots/ prizes/returns. (Sec. 4(a), RA 9287) It includes games such as jueteng, masiao and last two.

Penalties under Rep. Act No. 9287.

Any person who participates in any illegal numbers game shall suffer the following penalties:

a) imprisonment from 30 to 90 days — if person acts as bettor;

b) imprisonment from 6 years and 1 day to 8 years — if person (i) acts as personnel or staff of an illegal numbers game operation, or (ii) allows his vehicle, house, building or land to be used in such operation;

c) imprisonment from 8 years and 1 day to 10 years — if person acts as collector or agent;

d) imprisonment from 10 years and 1 day to 12 years if person acts as coordinator, controller or supervisor;

e) imprisonment from 12 years and 1 day to 14 years if person acts as maintainer, manager or operator;

f) imprisonment from 14 years and 1 day to 16 years if person acts as financier or capitalist;

g) imprisonment from 16 years and 1 day to 18 years if person acts as financier or coddler. (Sec. 3)

Liability of Government Officials and Employees under RA 9287.

1. If the collector, agent; coordinator, controller, supervisor; maintainer, manager, operator, financier or capitalist of any illegal numbers game is a government employee and/or public official, whether elected or appointed, he shall suffer the penalty of 12 years and 1 day to 20 years and a fine ranging from Three Million pesos (P3,000,000.00) to Five million pesos (P5,000,000.00) and perpetual absolute disqualification from public office.

2. Any local government official who, having knowledge of the existence of the operation of an illegal numbers game in his/her jurisdiction, fails to abate or to take action, or tolerates the same, shall suffer the penalty of perpetual disqualification from public office.

3. Any law enforcer who fails to apprehend perpetrators of any illegal numbers game shall suffer an administrative penalty of suspension or dismissal, to be imposed by the appropriate authority. (See Sec. 5)

PRESIDENTIAL DECREE NO. 1602
Prescribing stiffer Penalties in Illegal Gambling

Why gambling is prohibited and punished.

To repress an evil that undermines the social, moral and economic growth of the nation. (People vs. Punto, 68 Phil. 481)

Gambling is an act beyond the pale of good morals which, for the welfare of the people, should be exterminated. It has the effect of causing poverty, dishonesty, fraud and deceit. Many man has neglected his business and mortgaged his integrity to follow the fickle Goddess of the cards. Many woman has wasted her hours and squandered her substance at the gambling board while some children were forgotten. (See U.S. vs. Salaveria, 39 Phil. 102)

Must any and all games mentioned in Presidential Decree No. 1602 be played for money?

It was held that the playing of monte for money is not a necessary element. (U.S. vs. Rafael, 23 Phil. 184) It seems that when the law names the games, punishing any person who take part therein, its purpose is to prohibit absolutely those games.

"Any other game or scheme, whether upon chance or skill."

The aforequoted portion of Section 1(a) of P.D. No. 1602, makes a game or scheme punishable even if the winning depends upon skill, when "wagers consisting of money, articles or value or representative of value are at stake or made."

As regards the games of individual or team contests, like boxing or basketball, "game fixing, point-shaving and other machinations" is also penalized.

Spectators are not liable in gambling.

A mere bystander or spectator in a gambling game is not criminally liable, because *he does not take part therein, directly or indirectly.* The law does not make the mere presence in a gambling house an offense. (U.S. vs. Palma, *et al.*, 4 Phil. 547)

Definition of lottery.

It is a scheme for the distribution of prizes by *chance* among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize. (U.S. vs. Filart, *et al.*, 30 Phil. 80)

Elements of lottery:

(a) consideretion;

(b) chance; and

(c) prize, or some advantage or inequality in amount or value which is in the nature of a prize. (U.S. vs. Filiart, *et al.*, 30 Phil. 80)

Lottery embraces all schemes for distribution of prizes by chance. (U.S. vs. Baguio, 39 Phil. 962)

If the scheme is such that human reason, foresight, sagacity, or design cannot enable one to know or determine the result until the same has been accomplished, then it is lottery. (U.S. vs. Filiart, *et al.*, 30 Phil. 80)

Guessing competition constitutes lottery.

The *El Debate,* a newspaper, published an announcement that it was awarding prizes aggregating P18,000 to the winners in two guessing contests: (1) for the nearest approximate guesses as to the total number of votes that will be cast for any of the winning candidates for Carnival Queen in the provinces or in Manila, and (2) for the nearest approximate guesses as to the total number of votes that the Queen-elect will receive for the Carnival queenship. To enter the contest, one must subscribe to the *El Debate* newspaper.

Held: There was lottery. The argument that there was no consideration for the reason that each subscriber to the *El Debate* received the full value of his money by receiving the paper every day for the period he subscribed, is tenable only as respect those persons who would subscribe to the paper regardless of the inducement to win prize. The position is fallacious, as to other persons who subscribed merely to win a prize. (El Debate vs. Topacio, 44 Phil. 280)

No lottery where there is full value of money.

The accused advertised that 500 packages of cigarettes would be sold at P0.30 a package — its regular price. In one of the packages was a coupon. The person fortunate enough to buy that package with coupon would be entitled to a gold watch.

Held: Not lottery. (U.S. vs. Olsen, 36 Phil. 395) *Reason:* The player obtains full value for his money; the winning of the watch — a mere incident.

The Olsen case and the "El Debate" case compared.

The *Olsen case* is a criminal case and deals directly with the lottery as defined in the penal statute, while the El Debate case is a civil case dealing exclusively with the construction and application of the provision of Section 1954(a) of the old Administrative Code regarding "absolutely non-mailable matter."

While the Gambling Law must be interpreted strictly because it is a penal statute, the Postal Law has been interpreted liberally by our Supreme Court, following the decisions of the American Courts on the subject.

In the Revised Penal Code, the word "lottery" is associated with games which are dependent *wholly* or *chiefly* upon chance. In the Postal Law, "lottery" is classified as a scheme depending in whole or in part upon luck or chance.

Presidential Decree No. 519, which took effect on July 23, 1974, has outlawed pinball and slot machines and other similar devices and nullified all permits and/or licences to operate the same. It provides:

Any provision of existing law to the contrary notwitstanding, the operation, possession, use and importation of pinball and slot machines and other similar devices or paraphernalia used for their operation is hereby declared unlawful and any person guilty of the violation of the Decree shall suffer a fine of not less than five thousand pesos or an imprisonment ranging from *prision correccional* to *prision mayor* or both such fine and imprisonment at the discretion of the Court or military tribunal: *Provided*, That if the offender is a corporation, firm, partnership or association, the penalty shall be imposed upon the guilty officer or officers, as the case may be, and if such guilty officer or officers are aliens, in addition to the penalty prescribed, he or they shall be deported without further proceedings on the part of the Commission on Immigration and Deportation.

Knowingly permitting gambling to be carried on in a place owned or controlled by the offender.

Elements:

1. **That a gambling game was carried on in an inhabited or uninhabited place or in any building, vessel or other means of transportation.**
2. **That the place, building, vessel or other means of transportation is owned or controlled by the offender.**
3. **That the offender permitted the carrying on of such game, *knowing* that it is a gambling game.**

Maintainer or conductor in a gambling game or scheme.

The maintainer and conductor of a gambling game or scheme are likewise punished.

"Maintainer" is the person who sets up and furnishes the means with which to carry on the gambling game or scheme.

"Conductor" is the person who manages or carries on the gambling game or scheme.

Proof that game took place or is about to take place is not necessary.

Proof of the existence of a game of *jueteng* that has taken place or about to take place is not necessary. The reason is that, in the nature of things, *a jueteng* list naturally pertains to a game of *jueteng* and that the accused would not keep it in his possession but for its connection with such game of *jueteng*. The burden of the evidence is shifted to the accused to show that his possession is lawful and that the *jueteng* list is in no way connected with *jueteng* game that has taken place or about to take place. (Encarnacion vs. People, 73 Phil. 668)

But proof to the contrary is necessary when the jueteng lists pertain to games played on other dates.

But where the *jueteng*, were found in the premises of the accused during a raid by the police on August 5, 1947, and it appeared that the jueteng lists pertained to the games played from May 1 to July 23, 1947, and in 1943 and 1944, the prosecution must prove that they were used on the date of the raid or *immediately prior to or after said date.* (People vs. Tan Chin Hing, C.A., 16 O.G. 3733)

Gambling laws repealed.

The provisions of Articles 195-199 of the Revised Penal Code, as amended, Republic Act No. 3063, Presidential Decree Nos. 483, 449, 510, 1306, letters of instructions, laws, executive orders, rules and regulations, city and municipal ordinances which are inconsistent with P.D. No. 1602 are repealed.

Art. 195. ***What acts are punishable in gambling.*** — (a) The penalty of *arresto* ***menor*** or a fine not exceeding two hundred pesos, and, in case of recidivism, the penalty of ***arrestomayor***[10] of a fine ranging from two hundred to six thousand pesos, shall be imposed upon:

[10] See Appendix "A," Table of Penalties, No. 1.

1. Any person other than those referred to in subsections (b) and (c) who, in any manner, shall directly or indirectly take part in any game of *monte jueteng,* or any other form of lottery, policy, banking, or percentage game, dog races, or any other game or scheme the result of which depends wholly or chiefly upon chance or hazard; or wherein wagers consisting of money, articles of value, or representative of value are made; or in the exploitation or use of any other mechanical invention or contrivance to determine by chance the loser or winner of money or any object or representative of value.

2. Any person who shall knowingly permit any form of gambling referred to in the preceding subdivision to be carried on in any inhabited or uninhabited place or any building, vessel or other means of transportation owned or controlled by him. If the place where gambling is carried on has the reputation of a gambling place or that prohibited gambling is frequently carried on therein, the culprit shall be punished by the penalty provided for in this article in its maximum period.

(b) The penalty *of prision correccional* in its maximum degree[11] shall be imposed upon the maintainer, conductors, or banker in a game of *jueteng* or any similar game.

(c) The penalty of *prision correccional* in its medium degree[12] shall be imposed upon any person who shall knowingly and without lawful purpose, have in his possession any lottery list, paper, or other matter containing letters, figures, signs, or symbols which pertain to or are in any manner used in the game of *jueteng* or any similar game which has taken place or about to take place. *(As amended by Com. Act No. 235)*

Art. 196. *Importation, sale and possession of lottery tickets or advertisements.* — The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum

[11]See Appendix "A," Table of Penalties, No. 13.
[12]See Appendix "A," Table of Penalties, No. 12.

period [13] or a fine ranging from 200 to 2000 pesos, or both, in the discretion of the court, shall be imposed upon any person who shall import into the Philippine Islands from any foreign place or port any lottery ticket or advertisement, or, in connivance with the importer, shall sell or distribute the same.

Any person who shall knowingly and with intent to use them, have in his possession lottery tickets or advertisements, or shall sell or distribute the same without connivance with the importer of the same, shall be punished by *arresto menor* or a fine not exceeding 2000 pesos, or both, in the discretion of the court.

The possession of any lottery ticket or advertisement shall be *prima facie* evidence of an intent to sell, distribute or use the same in the Philippine Islands.

Acts punished relative to lottery tickets or advertisements.

1. By *importing* into the Philippines from any foreign place or port any lottery ticket or advertisement.
2. By *selling or distributing* the name in *connivance with the importer.*
3. By *possessing,* knowingly and with intent to use, lottery tickets or advertisements.
4. By *selling* or *distributing* the same *without connivance* with the importer.

Presumption of intent to sell, distribute, or use lottery ticket or advertisement.

The possession of any lottery ticket or advertisement is *prima facie* evidence of an intent to sell, distribute or use the same. (Art. 196, last par.)

But if the defendant can establish that he did not know of the existence of the lottery ticket within his premises, the presumption is destroyed and the defendant must be acquitted. (U.S. vs. Jose, 34 Phil. 715)

[13] See Appendix "A," Table of Penalties, No. 8.

Thus, when *A*, who is partner of *B* in running a store, placed in an envelope a Macao lottery ticket and kept it in a draw in the store, without the knowledge of *B*, the latter is not liable.

Must the lottery tickets be genuine?

It is not necessary that the lottery tickets be genuine, as it is enough that they be given the appearance of lottery tickets. In the case of *U.S. vs. Reyes*, 23 Phil. 41, it appears that the accused did not represent a lottery and that the sole purpose of the accused in printing the lottery tickets and disposing of them was to secure money by fraudulent representation.

In that case, however, the Supreme Court did not make a specific ruling on whether the tickets were genuine or counterfeit.

If the lottery tickets are counterfeit, they cannot give rise to the evil sought to be eradicated.

Art. 197. *Betting in sports contents.* — (Repealed).

BETTING, GAME-FIXING OR POINT-SHAVING AND MACHINATIONS IN SPORT CONTESTS.

Presidential Decree No. 483

Section. One. ***Definition.*** **— For purposes of this Decree, the following terms shall mean and be understood to be hereunder indicated.**

a. ***Betting*** **— betting money or any object or article of value or representative of value upon the result of any game, races and other sports contests.**

b. ***Game-fixing*** **— any arrangement, combination, scheme or agreement by which the result of any game, races or sports contests shall be predicted and/or knows other than on the basis of the honest playing skill or ability of the players or participants.**

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

d. *Game machination* — any other fraudulent, deceitful, unfair or dishonest means, method, manner or practice employed for the purpose of influencing the result of any game, races or sports contests. (Sec. 1)

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

Sec. Three. *Penalty.*[*] — Any violation of this Decree, or of the rules and regulations promulgated in accordance herewith, shall be punished in the manner following:

a. When the offender is an official, such as promoter, referee, umpire, judge, or coach in the game, race or sports contests, or the manager or sponsor of any participating team, individual or player therein, or participants or players in such games, races or other sports contests, he shall, maximum period[14] and a fine of 2,000 pesos with subsidiary imprisonment in case of insolvency, at the discretion of the court. This penalty shall also be imposed when the offenders compose a syndicate of five or more persons.

b. In case of any other offender, he shall, upon conviction, be punished by *prision correccional* in its medium period[15] and a fine of 1,000 pesos with subsidiary imprisonment in case of insolvency at the discretion of the court.

c. When the offender is an official or employee of any government office or agency concerned with the enforcement or administration of laws and regulations on sports the penalty provided for in the preceding Section 3, shall be imposed. In addition, he shall be disqualified from holding any public office or employment for life. If he is an alien, he may be deported.

[*] See P.D. No. 1602 on page 339 hereof.
[14] See Appendix "A," Table of Penalties, No. 13.
[15] See Appendix "A," Table of Penalties. No. 12.

Sec. Four. ***Clearance for arrest, detention or prosecution.*** — No person who voluntarily discloses or denounces to the President of the Philippine Amateur Athletic Federation or to the National Sports Association concerned **and/or** to any law enforcement/police authority any of the acts penalized by this Decree shall be arrested, detained and/or prosecuted except upon prior written clearance from the President of the Philippines and/or the Secretary of National Defense.

Sec. Five. ***Repealing Clause.*** — Article 197 of Act No. **3815,** otherwise known as the Revised Penal Code, as amended, all provisions of decrees, general orders, letters of instructions, **laws,** executive **orders** and rules and regulations which are inconsistent with this Decree are hereby repealed.

Sec. Six. ***Effectivity.***— This Decree shall take effect immediately upon publication thereof by the Secretary of the Department of Public Information at least once in a newspaper of general circulation.

Note: Date of the Decree is June 13, 1974.

Art. 198. ***Illegal betting on horse races.*** — The penalty of *arresto* ***menor*** or a fine not exceeding 200 pesos, or both, shall be imposed upon any person who, except during the periods allowed by law, bet on horse races. The penalty of *arresto* ***mayor***[16] or a fine ranging from 200 to 2,000 pesos, or both, shall be imposed upon any person who, under the same circumstances, shall maintain or employ a totalizer or other device or scheme for betting on horse races or realizing any profit therefrom.

For the purpose of this article, any race held on the same day and at the same place shall be held punishable as a separate offense, and if the same be committed by any partnership, corporation, or association, the president and the directors or managers thereof shall be deemed to be principals in the offense if they have consented to or knowingly tolerated its commission.

[16]See Appendix "A," Table of Penalties, No. 1.

Acts punishable in illegal betting on horse races:

1. By *betting* on horse races during the periods *not* allowed by law.
2. By *maintaining* or *employing* a totalizer or other device or scheme for betting on races or realizing profit therefrom, *during the periods not allowed by law.*

The penalty is higher for a person who employ a totalizer or other device.

Maintaining or employing a totalizer or other device or scheme for betting on horse races or realizing any profits therefrom aggravates the liability of the offenders. A totalizer is a machine for registering and indicating the number and nature of bets made on horse races.

Racing days.

Private individuals and entities duly licensed by the Commission on Races (now the Games and Amusements Board) may hold horse races on Sundays not reserved under this Act, on twenty-four Saturdays as may be determined by the said Commission, and on legal holidays, except Thursday and Friday of Holy Week, July fourth, commonly known as Independence Day, and December thirthieth, commonly known as Rizal Day. x x x. (Sec. 4, Rep. Act No. 309, as amended by Rep. Act No. 983)

Horse races not allowed by law on:

(1) July 4th of each year. (Rep. Act No. 137);

(2) Dec. 30th of each year. (Rep. Act No. 229);

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

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

The race held on the same day and at the same place is punishable as a separate offense.

The race held on the same day and at the same place, is punished as a separate offense. (Art. 198, par. 2) It would seem that the penalties respectively provided in the 1st paragraph shall be imposed.

No liability if there is no betting or use of totalizer.

Horse races may be carried on at any time or place, and prizes or gifts may be offered, given or paid, to the winner in said races, *provided it*

is not accompanied by any betting, or the use of totalizer or other devices for betting money on horse races.

Art. 199. *Illegal cockfighting.* — The penalty of *arresto menor* or a fine not exceeding 200 pesos or both, in the discretion of the court, shall be imposed upon:

1. Any person who directly or indirectly participates in cockfights, by betting money or other valuable things, or who organizes cockfights at which bets are made, on a day other than those permitted by law.

2. Any person who directly or indirectly participates in cockfights, by betting money or other valuable things, or organizes such cockfights, at a place other than a licensed cockpit.

COCKFIGHTING LAW OF 1974

(Presidential Decree No. 449)

x x x

Sec. Four. As used in this law, the following terms shall be understood, applied and construed as follows:

(a) *Cockfighting* — shall embrace and mean the commonly known game or term "cockfighting derby, pintakasi or tupada," or its equivalent terms in different Philippine localities.

(b) *Zoning Law or Ordinance* — Either or both national or local city or municipal legislation which logically arranges, prescribes, defines and apportions a given political subdivisions into specific land uses as present and future projection of needs warrant.

(c) *Bet Taker or Promoter* — A person who calls and takes care of bets from owners of both gamecocks and those of other bettors before he orders commencement to the cockfight and thereafter distributes won bets to the winners after deducting a certain commission.

(d) *Gaffer (Taga Tari)* — A person knowledgeable in the art of arming fighting cocks with gaff or gaffs on either or both legs.

(e) *Referee (Sentenciador)* — A person who watches and overseas the proper gaffing of fighting cocks, determines the physical condition of fighting cocks while cockfighting is in process, the injuries sustained by the cocks and their capability to continue fighting and decides and make known his decision by word or gestures the result of the cockfighting by announcing the winner or declaring a tie or no contest game.

(f) *Bettor* — A person who participates in cockfights and with the use of money or other things of value, bets with other bettors or through the bet taker or promoter and wins or loses his bet depending upon the result of the cockfight as announced by the Referee or Sentenciador. He may be the owner of fighting cock. (Sec. 4)

Sec. Five. *Cockpits and Cockfighting:* In General:

x x x

(d) *Holding of Cockfights.* — Except as provided in this Decree, cockfighting shall be allowed only in licensed cockpits during Sundays and legal holidays and during local fiestas for not more than three days. It may also be held during provincial, city or municipal agriculture, commercial or industrial fair, carnival or exposition for a similar period of three days upon resolution of the province, city or municipality where such fair, carnival or exposition is to be held, subject to the approval of the Chief of Constabulary or his authorized representative: *Provided,* That no cockfighting on the occasion of such a fair, carnival or exposition shall be allowed within the month of a local fiesta of for more than two occasions a year in the same city or municipality: *Provided, further,* that no cockfighting shall be held on December 30 (Rizal Day), June 12 (Philippine Independence Day), November 30 (National Heroes Day), Holy Thursday, Good Friday, Election or Referendum Day and during Registration Days for such election or referendum.

(e) *Cockfighting for Entertainment of Tourists or for Charitable Purposes.* — Subject to the preceding subsection hereof, the Chief of Constabulary or his authorized representative may also allow the holding of cockfighting for the entertainment of foreign dignitaries or for tourists, or

for returning Filipinos, commonly known as **"Balikbayan,"** or for the support of national fund-raising campaigns for charitable purposes as may be authorized by the Office of the President, upon resolution of a provincial board, city or municipal council, in licenses cockpits or in playgrounds or parks: ***Provided,*** That this privilege shall be extended for only one time, for a period not exceeding three days, within a year to a province, city, or municipality.

XXX.

Sec. Eight. ***Penal Provisions.*** — Any violation of the provisions of this Decree and of the rules and regulations promulgated by the Chief or Constabulary pursuants thereto, shall be punished as follows:

a. By *prision correccional* in its maximum **period**[17] and a fine of two thousand pesos, with subsidiary imprisonment in case of insolvency, when the offender is the financier, owner, manager or operator of a cockpit, or the gaffer, owner, manager or operator of a cockpit, or the gaffer, referee or bet taker in cockfight; or the offender is guilty of allowing, promoting or participating in any other kind of gambling in the premises of cockpits during cockfights.

b. By *prision* ***correccional***[18] or a fine of not less than six hundred pesos or more than two thousand pesos or both, such imprisonment and fine at the discretion of the court, with subsidiary imprisonment in case of insolvency, in case of any other offender.

Sec. Nine. ***Repealing Clause.*** — The provisions of Sections 2285 and 2286 of the Revised Administrative Code, as amended, Article 199 of the Revised Penal Code, Republic Act No. 946, all laws, decrees, rules and regulations, or orders which are inconsistent with this Decree are hereby repealed or modified accordingly.

Sec. Ten. ***Date of Effectivity.***- This Decree shall take effect after fifteen (15) days following the implementation of its publication in the Official Gazette.

[17]See Appendix "A," Table of Penalties, No. 13.
[18]See Appendix "A," Table of Penalties, No. 10.

Permitting gambling of any kind in cockpit is punished under the same Decree.

The owner, manager or lessee of the cockpit who shall permit gambling of any kind on the premises of the cockpit or place of cockfight during cockfights, violation of the injunction, shall be criminally liable under Section 9. (Sec. 5[f])

Spectators in a cockfight are not liable.

The Decree does not punish a person attending as a spectator in a cockfight. To be liable, he must participate in the cockfight as bettor.

Chapter Two

OFFENSES AGAINST DECENCY AND GOOD CUSTOMS

What are the offenses against decency and good customs?

They are:

1. Grave scandal. (Art. 200)
2. Immoral doctrines, obscene publications and exhibitions. (Art. 201)
3. Vagrancy and prostitution. (Art. 202)

Art. 200. *Grave scandal.* — The penalties of *arresto mayor*[1] and public censure shall be imposed upon any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this Code.

Elements:

1. That the offender performs an act or acts.
2. That such act or acts be *highly scandalous* as offending against *decency* or *good customs.*
3. That the highly scandalous conduct is not expressly falling within any other article of this Code.
4. That the act or acts complained of be committed in a public place or within the public knowledge or view. (U.S. vs. Samaniego, 16 Phil. 663)

[1]See Appendix "A," Table of Penalties, No. 1.

"Shall offend against decency or good customs."

The word "decency" means propriety of conduct; proper observance of the requirements of modesty, good taste, etc.

The word "customs" means established usage, social conventions carried on by tradition and enforced by social disapproval of any violation thereof.

Grave scandal, defined.

Grave scandal "consists of acts which are *offensive to decency and good customs* which, having been committed publicly, have given rise to public scandal to persons who have accidentally witnessed the same."

The acts must be those that can cause public scandal among the persons witnessing them.

The acts punishable by Article 200 are those which by their *publicity* and character can cause public scandal among the person witnessing them, besides being contrary to morals and good customs. (People vs. Dumlao, *et al.*, C.A., 38 O.G. 3715)

If the act or acts of the offender are punished under another article of this Code, Art. 200 is not applicable.

The highly scandalous conduct should not be "expressly falling within any other article of this Code."

Thus, if the scandalous conduct constitutes an act of lasciviousness (Art. 336 or Art. 339), even if committed publicly, the offender should not be prosecuted and punished under this article.

Where the accused scattered coconut remnants with human excrements on the stairs, doors and floor of the balcony of the public elementary school, it was held that the crime was other mischiefs under Art. 329, and not grave scandal under Art. 200. (People vs. Dumlao, C.A., 38 O.G. 3715)

The acts must be performed in a public place or within the public knowledge or view.

A married woman who habitually appeared in public places with her paramour, frequented suspicious places, vacant houses, etc. did not violate this article, because the acts were not committed in *public places* or within the public knowledge or view. (U.S. vs. Samaniego, 16 Phil. 663)

The crime penalized by this article consists of acts which are offensive to decency and good customs which, having been committed *publicly*, have

given rise to public scandals to persons who have incidentally witnessed the same. Even if the article does not so express, it is evident that as a condition precedent for the existence of this crime, the offense against decency and good customs must have been made public; if the offense does not have this element, it is clear that it does not produce the grave scandal required by the article. (Viada, 4th ed., Vol. 3, p. 130, cited in the case of U.S. vs. Catajay, 6 Phil. 399)

When the acts were performed in a private house and seen by one person, the crime was not committed.

Thus, when the act complained of was committed *at night,* in a *private house,* and at a time when no one was present except the accused, the mistress of the house, and one servant, these circumstances do not constitute the *degree* of publicity which is an essential element of the crime. (U.S. vs. Catajay, *supra)*

Art. 201. ***Immoral doctrines, obscene publications and exhibitions, and indecent shows.*** — The penalty of prision mayor[2] or a fine ranging from six thousand to twelve thousand pesos, or both such imprisonment and fine, shall be imposed upon:

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

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

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

[2]See Appendix "A," Table of Penalties, No. 11.

(5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts; and

3. Those who shall sell, give away, or exhibit films, prints, engravings, sculptures, or literature which are offensive to morals. *(As amended by PD. No. 969 which took effect on July 24, 1976)*

Publicity is essential.

This offense in any of the forms mentioned in the article is committed *only* when there *is publicity.*

Publicly expounding or proclaiming "doctrines openly contrary to public morals."

The word "moral" implies conformity with the generally accepted standards of goodness or rightness in conduct or character, sometimes, specifically, to sexual conduct.

The author of obscene literature is liable only when it is published with his knowledge.

Writing obscene literature is not punished, but the author is liable if it is published with his knowledge. In every case, the editor publishing it is liable.

The word "obscene" means something offensive to *chastity, decency* or *delicacy.* (U.S. vs. Kottinger, 45 Phil. 352)

The test of obscenity.

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

It may be conceded that nudity itself is not inherently indecent or obscene. Mere nudity in painting and sculpture is not obscenity as they may be considered pieces of art. But the artistic, the aesthetic and the pulchritude in the nude body of a living woman may readily be transformed into an indecent and obscene object, by posture and movements of such body

which produce perceptible and discernible reaction in the public or audience witnessing the same.

The reaction of the public, therefore, during the performance of the dance by the accused, who had nothing on except nylon patches over her breasts and a too abbreviated pair of nylon panties to interrupt her stark nakedness, should be made the gauge in the determination whether her dancing or exhibition was indecent or immoral. And when the spectators were howling and shouting in Tagalog: "Sige muna, sige, nakakalibog," because she was swaying to and fro with the middle portion or her body, it was clear that her dancing was indecent and erotic. (People vs. Aparici, C.A, 52 O.G. 249)

Mere nudity in pictures or paintings, not an obscenity.

Thus, displaying and offering for sale to the public, key chains with eye-appenders which consist of pictures in colors of nude women, was held to be not violative of this article, because persons of unquestioned morality acquire pictures of nude women and exhibit them freely in their house as works of art.

As regards such pictures, the proper test is whether the *motive of the picture,* as indicated by it, is *pure or impure;* or whether it is naturally calculated to excite impure imaginations. (People vs. Serrano, CA-G.R. No. 5566-R, Nov. 24, 1950)

Indecent photograph and literature published in newspaper.

In two issues of the tabloid "Weekly Tribune," there were published a photograph of a man and woman appearing as in actual sexual intercourse, accompanied by a descriptive article designed evidently to emphasize the obscenity of said photograph.

It is true that photographs portraying naked primitive forms reminiscent of those displayed by the first inhabitants of Eden may serenely depict Humanity in all its natural and structural manifestations of beauty — which may not be offensive to the public mind because they are not coupled with evident intention to demoralize and challenge the sensibilities of human nature. But when it appears that such publication is designed to stir the imagination and suggest a mental picture not to promote but rather to debase such sensibilities, the publication has ceased to be decent.

Appellant, with all subtlety, has gone as far as arguing that sexual indulgence is not in itself immoral. If he contemplates the scene from the natural promptings and privileges of human nature — within the bounds of privacy and conventionalism — he is right. The moment, however, they carry their private rights and privileges to public scrutiny, they expose

themselves to the judgment of the public conscience — in which the law may intervene. (People vs. Sarte III, C.A. 55 O.G. 7034)

Mere possession of obscene materials is not punishable.

Mere possession of obscene materials, without intention to sell, exhibit, or give them away, is not punishable under Article 201, considering the purpose of the law is to prohibit the dissemination of obscene materials to the public. The offense in any of the forms under Article 201 is committed only when there is publicity. The law does not require that a person be caught in the act of selling, giving away or exhibiting obscene materials to be liable, for as long as the said materials are offered for sale, displayed or exhibited to the public. In the present case, we find that petitioners are engaged in selling and exhibiting obscene materials. (Fernando vs. Court of Appeals, G.R. No. 169751, December 6, 2006)

The words "give away" in paragraph 3 of Art. 201 should read "distribute."

What is punished by Art. 201, par. 4 (par. 3, as amended), is the distribution of indecent literature, etc., to many people and not merely the isolated, casual or occasional act of giving such kind of literature to a single recipient. The purpose of the provision is the protection of public morals, that is, the morals of society as a whole, and not merely the morals of a single individual. Hence, giving indecent literature to one person only is not a violation of Art. 201, par. 4 (par. 3, as amended). (People vs. Tempongko, 1 C.A. Rep. 317)

The term "give away" necessarily includes the act of exhibiting obscene pictures or literature, because when one gives away obscene pictures or literature, he has the intention and purpose of exhibiting or showing the same to the recipient. (People vs. Licuden, C.A., 66 O.G. 3173)

Pictures with slight degree of obscenity, not used for art's sake but for commercial purposes, fall under this article.

Since the persons who went to see those pictures and paid entrance fees for the privilege of doing so were usually not artists or persons interested in art to satisfy and improve their artistic tastes, but rather the people desirous of satisfying their morbid curiosity, taste, and lust, and for love of excitement, including the youth who because of their immaturity are not in a position to resist and shield themselves from the ill and perverting effects of the pictures, the display of such pictures for commercial purposes is a violation of Art. 201. If those pictures were shown in art exhibits and art galleries for the cause of art to be viewed and appreciated by people

interested in art, there would be no offense committed. (People vs. Go Pin, 97 Phil. 418)

Purpose of the law in punishing obscene publications and exhibitions.

The object of the law is to protect the *morals of the public.* (People vs. Aparici, *supra)*

Disposition of prohibited articles.

The disposition of the literature, films, prints, engravings, sculptures, paintings, or other materials involved in the violation referred to in Section 1 hereof shall be governed by the following rules:

a. Upon conviction of the offender — to be forfeited in favor of the government to be destroyed.

b. Where the criminal case against the violator of the decree results in an acquittal — to be forfeited in favor of the government to be destroyed, after forfeiture proceedings conducted by the Chief of Constabulary.

c. The person aggrieved by the forfeiture action of the Chief of Constabulary may, within fifteen (15) days after his receipt of a copy of the decision, appeal the matter to the Secretary of National Defense for review. The decision of the Secretary of National Defense shall be final and unappealable. (Sec. 2, P.D. No. 969)

Additional penalties.

In case the offender is a government official or employee who allows the violations of Section 1 hereof, the penalty as provided herein shall be imposed in its maximum period and, in addition, the accessory penalties provided for in the Revised Penal Code, as amended, shall likewise be imposed. (Sec. 4, P.D. No. 969)

Obscene publications and indecent shows under Republic Act No. 7610.

Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibition and indecent shows, whether live or in video, pose, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of *prision mayor* in its medium period.

If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian or person entrusted in any capacity with care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of *prision mayor* in its medium period. (Sec. 9)

Art. 202. ***Vagrants and prostitutes— Penalty.*** **— The following are vagrants:**

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

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

3. Any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes;

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

5. Prostitutes.

For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period[3] or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

[3]See Appendix "A," Table of Penalties, No. 7.

Article 202 not applicable to minors.

Persons below eighteen (18) years of age shall be exempt from prosecution for the crimes of vagrancy and prostitution under Section 202 of the Revised Penal Code, of mendicancy under Presidential Decree No. 1563, and sniffing of rugby under Presidential Decree No. 1619, such prosecution being inconsistent with the United Nations Convention on the Rights of the Child: *Provided,* That said persons shall undergo appropriate counseling and treatment program. (Section 58, Republic Act No. 9344 otherwise known as the "Juvenile Justice and Welfare Act of 2006.")

Only paragraphs 1 and 2 of Art. 202 require absence of visible means of support.

Absence of visible means of support is an essential element of the offense of vagrancy only under the first and second paragraphs of this article.

"Apparent means of subsistence" and "visible means of support," construed.

When it appears that a person 23 years old and able bodied, makes no pretense to follow any lawful calling or occupation, spending his time in streets, cockpits and other gambling places and has no right, legal or moral, to claim upon his mother for support and that his mother is of limited means, it is clear that the support given by his mother is not the "visible means of support" or "apparent means of subsistence" contemplated by the law. (U.S. vs. Molina, 23 Phil. 471)

Loitering around saloons and gambling houses is vagrancy only when there is evidence of absence of visible means of support.

The *absence* of visible means of support or a lawful calling is necessary to convict one for loitering around saloons, dram shops, and gambling houses. (U.S. vs. Hart, 26 Phil. 149)

Note: Saloons, bars and gambling houses are public or semipublic buildings or *places* where a person may be found *loitering* (paragraph 2 of Art. 202) and, hence, the accused must appear to be without visible means of support.

Mendicancy and abetting mendicancy are punished.

Under the Mendicancy Law of 1978 (Presidential Decree No. 1563), one who has no visible and legal means of support, or lawful employment

and who is physically able to work but neglects to apply himself to some lawful calling and instead *uses begging as a means of living,* is a mendicant and, upon conviction, shall be punished by a fine not exceeding P500.00 or by imprisonment for a period not exceeding 2 years or both at the discretion of the court.

If convicted of mendicancy under P.D. No. 1563 two or more times, the offender shall be punished by a fine not exceeding P1,000.00 or by imprisonment for a period not exceeding 4 years or both at the discretion of the court.

Any person who abets mendicancy by giving alms directly to mendicants, exploited infants and minors on public roads, sidewalks, parks and bridges shall be punished by a fine not exceeding P20.00.

See Sec. 5 of P.D. No. 1563.

Note: But giving alms through organized agencies operating under the rules and regulations of the Ministry of Public Information is not a violation of the Mendicancy Law. (See Sec. 6 of P.D. No. 1563)

A vagrant without visible means of support may become a mendicant if he uses begging as a means of living.

Vagrants under paragraph 3 of Art. 202.

It will be noted that a vagrant under paragraph 3 of Art. 202, must be either —

(1) an *idle* or *dissolute* person who *lodges* in houses of ill-fame;

(2) ruffian or pimp; or

(3) one who *habitually* associates with prostitutes.

The word "dissolute" means lax, unrestrained, immoral.

A maintainer of a house of prostitution may be considered a vagrant within the meaning of the provision: "Any idle or dissolute person who lodges in houses of ill-fame." (See People vs. Mirabien, 50 Phil. 499)

Ruffians are brutal, violent, lawless persons.

A pimp is one who provides gratification for the lust of others. (U.S. vs. Cruz, 38 Phil. 677)

Prostitutes are women who habitually indulge in (1) sexual intercourse or (2) lascivious conduct, for money or profit.

As the term "prostitutes" is defined in this article, a woman is a prostitute when (1) she *habitually* indulges in (a) sexual intercourse, or (b) lascivious conduct, (2) for money or *profit.*

Hence, *one* sexual intercourse with a man for money or profit does not make a woman a prostitute. And several intercourses with different men do not make her a prostitute, if there is no evidence that she indulged in sexual intercourse for money or profit.

Note also that sexual intercourse is not absolutely necessary, as lascivious conduct is sufficient.

Republic Act No. 9208

The Anti-Trafficking in Persons Act of 2003

May 26, 2003

Trafficking in Persons.

"Trafficking in Persons" refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use o force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph. (Sec. 3)

Acts of Trafficking in Persons.

It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling

or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage.

(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;

(e) To maintain or hire a person to engage in prostitution or pornography;

(f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced-labor, slavery, involuntary servitude or debt bondage;

(g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person;

(h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad. (Sec. 4)

Acts that Promote Trafficking in Persons.

The following acts which promote or facilitate trafficking in persons, shall be unlawful:

(a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;

(b) To produce, print and issue or distribute unissued, tampered of fake counseling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirement for the purpose of promoting trafficking in persons;

(c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any moans, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;

(d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;

(e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;

(f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and

(g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery. (Sec. 5)

Qualified Trafficking in Persons.

The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

(b) When the adoption is effected through Republic Act No. 8043, otherwise known as the "Inter-Country Adoption Act of 1995" and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;

(d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;

(e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;

(f) When the offender is a member of the military or law enforcement agencies; and

(g) When by reason or on occasion of the act of trafficking in persons the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS). (Sec. 6)

Prosecution of Cases.

Any person who has personal knowledge of the commission of any offense under this Act, the trafficked person, the parents, spouse, siblings, children or legal guardian may file a complaint for trafficking. (Sec. 8)

Penalties and Sanctions.

The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

(a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);

(b) Any person found guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

(c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million (P2,000,000.00) but not more than five million pesos (P5,000,000.00);

(d) Any person who violates Section 7 hereof shall suffer the penalty of imprisonment of six (6) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

(e) If the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission;

(f) The registration with the Securities and Exchange Commission (SEC) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or estab-

lishment, or any place of entertainment shall be cancelled and revoked permanently.

The owner, president, partner or manager thereof shall not be allowed to operate similar establishment in a different name;

(g) If the offender is a foreigner, he shall be immediately deported after serving his sentence and be barred permanently from entering the country;

(h) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government official or employee shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. His/her retirement and other benefits shall likewise be forfeited and

(i) Conviction by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption. (Sec. 10)

Use of Trafficked Persons.

Any person who buys or engages the services of trafficked persons for prostitution shall be penalized as follows:

(a) First offense — six (6) months of community service as may be determined by the court and a fine of Fifty thousand pesos (P50,000.00); and

(b) Second and subsequent offenses — imprisonment of one (1) year and a fine of One hundred thousand pesos (P100,000.00). (Sec. 11)

Prescriptive Period.

Trafficking cases under this Act shall prescribe in ten (10) years: Provided, however, That trafficking cases committed by a syndicate or in a large scale as defined under Section 6 shall prescribe in twenty (20) years. *Provided, however;* That trafficking cases committed by a syndicate or in a large scale as defined under Section 6 shall prescribe in twenty (20) years.

The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage and shall be interrupted by the filing of the complaint or information and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused. (Sec. 12)

Title Seven

CRIMES COMMITTED BY PUBLIC OFFICERS

Chapter One

PRELIMINARY PROVISIONS

Art. 203. ***Who are public officers.*** **— For the purpose of applying the provisions of this and the preceding titles of the hook, any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class, shall be deemed to be a public officer.**

The term "public officers" embraces every public servant from the highest to the lowest.

The definition is quite comprehensive, embracing as it does, every public servant from the highest to the lowest. For the purposes of the Penal Code, it obliterates the standard distinction in the law of public officers between "officer" and "employee." (Maniego vs. People, 88 Phil. 494)

Requisites:

To be a *public officer,* one must be —

(1) *Taking part* in the performance of *public functions* in the Government, or

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

(2) That his authority to take part in the performance of public functions or to perform public duties must be —

a. by direct provision of the law, or

b. by popular election, or

c. by appointment by competent authority.

One appointed as laborer in the government is not a public officer.

That a government laborer is not a public officer may be inferred from the rulings of the Supreme Court in the cases of *Maniego vs. People* and *People vs. Paloma, infra.*

But temporary performance of public functions by a laborer makes him a public officer.

While it is true that the appointment of the accused was that of a laborer in the Bureau of Posts, nevertheless, his duties were that of a sorter and filer of money orders. He was appointed by the Acting Director as sorter and filer of money orders and the *sorting* and *filing of money orders is obviously a public function or duty.* (Maniego vs. People, 88 Phil. 494; People vs. Paloma, 40 O.G., Supp. 10, 2087)

A mere *emergency helper* of the Bureau of Treasury on a daily wage basis, without any appointment as janitor or messenger, is a public officer having been entrusted with the custody of official document. (People vs. Bulangao, 40 O.G. 2087; People vs. Ireneo, C.A., 53 O.G. 2827)

Chapter Two

MALFEASANCE AND MISFEASANCE IN OFFICE

What are the crimes classified under malfeasance and misfeasance in office?

The crimes classified under malfeasance and misfeasance in office are:

(1) Knowingly rendering unjust judgment. (Art. 204)

(2) Rendering judgment through negligence. (Art. 205)

(3) Rendering unjust interlocutory order. (Art. 206)

(4) Malicious delay in the administration of justice. (Art. 207)

(5) Dereliction of duty in prosecution of offenses. (Art. 208)

(6) Betrayal of trust by an attorney or solicitor — revelation of secrets. (Art. 209)

(7) Direct bribery. (Art. 210)

(8) Indirect bribery. (Art. 211)

Note:

Nos. 1, 2, 3 and 4 are misfeasances in office that a judge can commit.

Nos. 7 and 8 are malfeasances in office that a public officer can commit.

No. 5 is nonfeasance.

Misfeasance, defined.

"Misfeasance" is the improper performance of some act which might lawfully be done.

Malfeasance, defined.

"Malfeasance" is the performance of some act which ought not to be done.

Nonfeasance, defined.

"Nonfeasance" is the omission of some act which ought to be performed. (Words & Phrases, Permanent Edition, No. 27)

Crimes under dereliction of duty.

They are those defined from Art. 204 to Art. 209.

Section One. — Dereliction of duty

Art. 204. ***Knowingly rendering unjust judgment.*** **— Any judge who shall knowingly render an unjust judgment in any case submitted to him for decision, shall be punished by** *prision* ***mayor***[1] **and perpetual absolute disqualification.**

Elements:

1. That the offender is a *judge;*
2. That he renders a judgment in a case submitted to him for decision;
3. That the judgment is *unjust;*
4. That the judge *knows* that his judgment is unjust.

Judgment, defined.

A judgment is the final consideration and determination of a court of competent jurisdiction upon the matters submitted to it, in an action or proceeding. (Ruling Case Law, Vol. 15, p. 569, cited in Gotamco vs. Chan Seng, *et al.,* 46 Phil. 542)

Unjust judgment, defined.

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

When rendered knowingly.

An unjust judgment is rendered knowingly when it is made deliberately and maliciously.

[1] See Appendix "A," Table of Penalties, No. 19.

"Knowingly" means consciously, intelligently, willfully, or intentionally. (Black's Law Dictionary, Fifth ed., 784)

Source of unjust judgment.

The source of unjust judgment may be either (a) error or (b) ill-will or revenge, or (c) bribery.

Bad faith is the ground of liability.

An unjust judgment is one which is contrary to law or is not supported by the evidence, or both. The source of an unjust judgment may be error or ill-will. There is no liability at all for a mere error. It is well settled that a judicial officer, when required to exercise his judgment or discretion, is not liable criminally for any error which he commits, provided he acts in good faith. Bad faith is therefore the ground for liability. If in rendering judgment, the judge fully knew that the same was unjust in the sense aforesaid, then he acted maliciously and must have been actuated and prevailed upon by hatred, envy, revenge, greed, or some other similar motive. As interpreted by Spanish courts, the term 'knowingly' means sure knowledge, conscious and deliberate intention to do an injustice. (Heirs of Yasin vs. Felix, A.M. No. RTJ-94-1167, December 4, 1995)

There must be evidence that the judgment is unjust — it cannot be presumed.

Thus, the mere fact that the judge promised to the other party that he would decide the case against the complainant does not prove that the judgment is unjust. It is possible that such judgment is supported by the facts and the law.

Judgment must be contrary to law and not supported by the evidence.

In order that a judge may be held liable for knowingly rendering an unjust judgment, it must be shown beyond doubt that the judgment is unjust in the sense that is contrary to law, or is not supported by the evidence, and that the same was made with conscious and deliberate intent to do an injustice. (Sta. Maria vs. Ubay, 87 SCRA 179)

There must be evidence that the judge knew that the judgment is unjust.

To hold a judge liable for knowingly rendering an unjust decision, the rule requires that judgment should be rendered by the judge with conscious

and deliberate intent to do an injustice. Absence of any positive evidence on record that the respondent judge rendered the judgment in question with conscious and deliberate intent to do an injustice, the charge must fail (Sta. Maria vs. Ubay, *ibid.)*

A justice of the peace, charged with knowingly rendering unjust judgment, was acquitted because it did not appear that the decision he rendered *was unjust* and that it was *known to him* to be unjust. (U.S. vs. Gacutan, 28 Phil. 128)

Does not apply to members of a collegiate court.

Respondents should know that the provisions of Art. 204 as to "rendering knowingly unjust judgment" refer to an individual judge who does so "in any case submitted to him for decision" and even then, it is not the prosecutor who would pass judgment on the "unjustness" of the decision rendered by him but the proper appellate court with jurisdiction to review the same, either the Court of Appeals and/or the Supreme Court. Respondents should likewise know that said penal article has no application to the members of a collegiate court such as this Court or its Divisions who reach their conclusions in consultation and accordingly render their collective judgment after due deliberation. (In Re: Wenceslao Laureta, G.R. No. 68635, March 12, 1987; In Re: Joaquin T. Borromeo, AM. No. 93-7-696-0, February 21, 1995)

Art. 205. ***Judgment rendered through negligence.*** — Any judge who, by reason of inexcusable negligence or ignorance, shall render a manifestly unjust judgment in any case submitted to him for decision shall be punished by *arresto* ***mayor***[2] and temporary special **disqualification.**[3]

Elements:

1. That the offender is a *judge*.
2. That he renders a judgment in a case submitted to him for decision.
3. That the judgment is *manifestly* unjust.
4. That it is due to his *inexcusable negligence* or ignorance.

[2]See Appendix "A," Table of Penalties, No. 1.
[3]See Appendix "A," Table of Penalties, No. 40.

What is a "manifestly unjust judgment"?

It is so *manisfestly* contrary to law, that even a person having a meager knowledge of the law cannot doubt the injustice. (Albert)

Abuse of discretion or mere error of judgment, not punishable.

Although there may be abuse of discretion in issuing an order, it does not necessarily follow that there is bad faith or that said abuse of discretion signifies ignorance of the law on the part of a judge. Abuse of discretion by a trial court does not necessarily mean ulterior motive, arbitrary conduct or willful disregard of a litigant's rights. (Evangelista vs. Hon. Baes, 61 SCRA 475)

Mere error of judgment cannot serve as basis for a charge of knowingly rendering an unjust judgment, where there is no proof or even allegation of bad faith, or ill motive, or improper consideration. (Yaranon vs. Judge Rubio, 66 SCRA 67)

Art. 206. ***Unjust interlocutory order.*** **— Any judge who shall knowingly render an unjust interlocutory order or decree shall suffer the penalty of *arresto mayor* in its minimum period[4] and suspension;[5] but if he shall have acted by reason of inexcusable negligence or ignorance and the interlocutory order or decree be manifestly unjust, the penalty shall be suspension.[6]**

Elements:

1. That the offender is a *judge;*
2. That he performs any of the following acts:
   a. *knowingly* renders unjust interlocutory order or decree; or
   b. renders a *manifestly* unjust interlocutory order or decree through *inexcusable negligence* or *ignorance.*

[4] See Appendix "A," Table of Penalties, No. 2.
[5] See Appendix "A," Table of Penalties, No. 38.
[6] See Appendix "A," Table of Penalties, No. 38.

Interlocutory order, defined.

An interlocutory order is an order which is issued by the court between the commencement and the end of a suit or action and which decides some point or matter, but which, however, is not a final decision of the matter in issue. (Bouvier's Law Dictionary)

The test in determining whether an order or judgment is interlocutory or final is: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final." (Kapisanan ng mga Manggagawa sa Maynila Railroad Company vs. Yard Crew Union, *et al.*, 109 Phil. 1143, citing Moran's Comments on the Rules of Court, 1952 Ed., Vol. I, p. 41)

Example:

An order granting preliminary injunction or an order appointing a receiver is an interlocutory order.

Art. 207. ***Malicious delay in the administration of justice.*** **— The penalty of *prision correccional* in its minimum period[7] shall be imposed upon any judge guilty of malicious delay in the administration of justice.**

Elements:

1. That the offender is a *judge;*
2. That there is a proceeding in his court;
3. That he *delays* the administration of justice;
4. That the delay is *malicious,* that is, the delay is caused by the judge with deliberate intent to inflict damage on either party in the case.

Mere delay without malice is not a felony under this article.

Mere delay *without malice* in holding trials or rendering judgments does not necessarily bring the judge within the operation of this law.

[7]See Appendix "A," Table of Penalties, No. 11.

Art. 208. *Prosecution of offenses; negligence and tolerance.* — The penalty *of prision correccional* in its minimum **period**[8] and **suspension**[9] shall be imposed upon any public officers or officer of the law, who, in dereliction of the duties of his office, shall maliciously refrain from instituting prosecution for the punishment of violators of the law, or shall tolerate the commission of offenses.

Acts punishable:

1. By maliciously *refraining* from instituting prosecution against violators of the law.
2. By maliciously *tolerating* the commission of offenses.

The title of the article uses the word "negligence" which should not be understood merely as lack of foresight or skill. The word "negligence" simply means "neglect of the duties of his office by *maliciously failing* to move the prosecution and punishment of the delinquent." (U.S. vs. Mendoza, 23 Phil. 194) *Malice* is an important element in this article.

Elements of dereliction of duty in the prosecution of offenses.

1. That the offender is a *public officer* or *officer of the law* who has a duty to cause the prosecution of, or to prosecute, offenses.
2. That there is dereliction of the duties of his office; that is, *knowing* the commission of the crime, *he does not cause the prosecution of the criminal* (People vs. Rosales, G.R. No. 42648) or knowing that a crime is about to be committed, he tolerates its commission.
3. That the offender acts *with malice* and *deliberate intent* to favor the violator of the law.

Who can be the offenders in Art. 208?

The offender under Art. 208 is either (a) a *public officer,* or (b) an *officer of the law.*

The phrase "*officer of the law*" includes all those who, by reason of the position held by them, are duty-bound to cause the *prosecution and punishment of the offenders.* (Albert)

[8] See Appendix "A," Table of Penalties, No. 11.
[9] See Appendix "A," Table of Penalties, No. 38.

The term "public officer" extends to officers of the prosecution department, whose duty is to institute criminal proceedings for felonies upon being informed of their perpetration. (Albert)

There must be a duty on the part of the public officer to prosecute or to move the prosecution of the offender.

Note that Art. 208 uses the phrase "who, in dereliction of the duties of his office." Hence, the public officer liable under Art. 208 must have a duty to prosecute or to move the prosecution of the violation of the law.

Thus, the following have such duty:

1. Chief of police. (People vs. Rosales, G.R. No. 42548)
2. Barrio lieutenant. (U.S. vs. Mendoza, 23 Phil. 194)

A chief of police who, in breach of official duty, failed to prosecute a jueteng collector, in that he failed to file the corresponding criminal action against the latter who was caught possessing jueteng lists, was held liable under Art. 208. (People vs. Mina, 65 Phil. 621)

A barrio lieutenant (now barrio captain) who, in neglect of his duty, fails to move the prosecution of, and punishment for, a crime of arson, of which he is informed, would, *in case the alleged crime was afterwards duly proven,* be guilty of *prevarication.* (U.S. vs. Mendoza, 23 Phil. 194)

"Shall maliciously refrain from instituting prosecution."

Thus, a fiscal who, knowing that the evidence against the accused is more than sufficient to secure his conviction in court, drops the case, is liable and may be punishable under Art. 208.

But the fiscal or the city attorney, as prosecuting officer, is under no compulsion to file the corresponding information based upon a complaint, where he is not convinced that the evidence gathered or presented would warrant the filing of an action in court. Of course, the power of the City Attorney or prosecuting fiscal in connection with the filing and prosecution of criminal charges in court is not altogether absolute; but the remedy is the filing with the proper authorities or court of criminal or administrative charges if the alleged offended parties believe that the former maliciously refrained from instituting actions for the punishment of violators of the law. (Vda. de Bagatua, *et al.* vs. Revilla and Lombos, 104 Phil. 392)

"Shall tolerate the commission of offenses."

A approached the Chief of Police of a town and asked him not to raid his (A's) gambling house for two days. Because *A* was his friend, the Chief

of Police even instructed his policemen not to raid that house for two days. Gambling games were played in *A's* house. In this case, the Chief of Police is liable under Art. 208.

"Maliciously" signifies deliberate evil intent.

The offender must act with malice.

Thus, the municipal president who held cockfights on the days not authorized by law, to raise funds for the construction of a ward in the provincial hospital, was not liable under Art. 208 for the word "maliciously" means that the action complained of must be the result of a deliberate evil intent and does not cover a mere voluntary act. The accused was convicted only of illegal cockfighting. (People vs. Malabanan, 62 Phil. 786)

A dereliction of duty caused by poor judgment or honest mistake is not punishable.

Crime must be proved before conviction for dereliction.

The crime committed by the law-violator must be proved first. If the guilt of the law-violator is not proved, the person charged with dereliction of duty under this article is not liable. (U.S. vs. Mendoza, *supra)*

Liability of public officer who, having the duty of prosecuting the offender, harbored, concealed, or assisted in the escape of the latter, is that of the principal in the crime of dereliction of duty in the prosecution of offenses.

Such public officer is not merely an accessory. He is a principal in the crime defined and penalized in Art. 208.

Not applicable to revenue officers.

Officers, agents or employees of the Bureau of Internal Revenue who, having knowledge or information of a violation of the Internal Revenue Law, fail to report such knowledge or information to their superiors, shall be punished under that law, not under this provision.

Art. 209. ***Betrayal of trust by an attorney or solicitor — Revelation of secrets.*** — In addition to the proper administrative action, the penalty of *prision correccional* in its minimum period,[10] or a fine ranging from 200 to 1,000 pesos, or

[10] See Appendix "A," Table of Penalties, No. 11.

both, shall be imposed upon any attorney-at-law or solicitor *(procurador judicial)* who, by any malicious breach of professional duty or of inexcusable negligence or ignorance, shall prejudice his client, or reveal any of the secrets of the latter learned by him in his professional capacity.

The same penalty shall be imposed upon any attorney-at-law or solicitor *(procurador judicial)* who, having undertaken the defense of a client or having received confidential information from said client in a case, shall undertake the defense of the opposing party in the same case, without the consent of his first client.

Acts punished as betrayal of trust by attorney.

1. By *causing damage to his client,* either (1) by any malicious breach of professional duty, (2) by *inexcusable* negligence or ignorance.

   Note: When the attorney acts (1) with malicious abuse of his employment or (2) inexcusable negligence or ignorance, *there must be damage* to his client.

2. By revealing any of the *secrets* of his client *learned by him* in his *professional capacity.*

   Note: Damage is not necessary.

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

   Note: If the client consents to the attorney's taking the defense of the other party, there is no crime.

There is no solicitor or procurador judicial under the Rules of Court.

A *procurador judicial* is a person who had some practical knowledge of law and procedure, but not a lawyer, and was permitted to represent a party in a case before an inferior court.

Under the Rules of Court, in the court of a justice of the peace, a party may conduct his litigation in person, with the aid of an agent or friend or with the aid of an attorney. (Sec. 34, Rule 138)

Section Two. — Bribery

Art. 210. ***Direct bribery.*** **— Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of** ***prision mayor*** **in its medium and maximum periods**[11] **and a fine of not less than the value of the gift and not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.**

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of ***prision correccional*** **in its medium period**[12] **and a fine of not less than twice the value of such gift.**

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of ***prision correccional*** **in its maximum period**[13] **to** ***prision mayor*** **in its minimum period and a fine of not less than three times the value of such gift.**

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties. ***(As amended by B.P. Blg. 871, approved May 29, 1985)***

[11] See Appendix "A," Table of Penalties, No. 14
[12] See Appendix "A," Table of Penalties, No. 4.
[13] See Appendix "A," Table of Penalties, No. 6.

Acts punishable in direct bribery:

A public officer commits direct bribery —

1. By *agreeing* to perform, or by performing, in consideration of any offer, promise, gift or present — an act *constituting a crime,* in connection *with the performance of his official duties.*

2. By *accepting* a gift in consideration of the *execution of an act* which *does not constitute a crime,* in connection with the performance of his official duty.

3. By *agreeing* to refrain, or by refraining, from doing something which it is his official duty to do, in consideration of gift or promise.

Elements of direct bribery:

a. That the offender be a *public officer* within the scope of Art. 203.

b. That the offender *accepts* an offer or a promise or *receives* a gift or present by himself or through another.

c. That such offer or promise be accepted, or gift or present received *by the public officer* —

   (1) with a view to *committing* some *crime;* or

   (2) in consideration of the execution of an act which *does not constitute a crime,* but the act must be unjust; or

   (3) to refrain from doing something which it is his official duty to do.

d. That the act which the offender agrees to perform or which he executes be *connected with the performance of his official duties.*

First element. — The offender is a public officer.

The definition of "public officers" in Art. 203 is quite comprehensive, embracing as it does, *every public servant* from the highest to the lowest. For the purpose of the Penal Code, it obliterates the standard distinction in the law of public officers between "officer" and "employee."

For the purpose of punishing bribery, the temporary performance of public functions is sufficient *to constitute a person a public officer.* (Maniego vs. People, 88 Phil. 494; People vs. Paloma, 40 O.G., Supp. 10, 2087; People vs. Bulangao, 40 O.G. 2087)

Applicable to "assessors, arbitrators, appraisal and claim commissioners, experts."

The provisions of Art. 210 are made applicable to *assessors, arbitrators, appraisal* and *claim commissioners, experts* or any other *persons performing public duties.*

"Or any other persons performing public duties."

Does this phrase cover a private individual who, in consideration of a sum of money given to him, released a person under arrest and entrusted to his custody? It is believed that it is not applicable, because the additional penalty of special temporary disqualification for bribery has no practical application to a private person.

But a private individual may be disqualified from holding the office of assessor, arbitrator, appraisal and claim commissioner, or handwriting expert.

Second element. — Gift is received personally or thru intermediary.

The gift or present may be received by the public officer himself or through a third person.

Gift is either (1) voluntarily offered by a private person, or (2) solicited by a public officer.

Bribery exists, not only (1) when the gift is *offered voluntarily* by a private person, or (2) when the gift is *solicited* by a public officer and the private person voluntarily delivers it to the public officer, but also (3) when the gift is solicited by a public officer, as the consideration for his refraining from the performance of an official duty and the private person gives the gift for fear of the consequences which would result if the officer performs his functions. (Dec. of Nov. 3, 1879, Sup. Ct. of Spain, cited in People vs. Sope, 75 Phil. 810)

Gift or present need not be actually received by the public officer, as an accepted offer or promise of gift is sufficient.

In the 1st paragraph of Art. 210, the law uses the phrase "in consideration of any *offer, promise,"* etc. Hence, a promise of gift to a public officer who accepts such promise is sufficient.

But in the 2nd paragraph of Art. 210, the law uses the phrase "*the gift was accepted by the officer."*

The words "offer" and "promise" are not used in the 2nd paragraph.

The offer of gift or promise must be accepted by the public officer.

In case there is only an offer of gift or a promise to give something, the offer or the promise must be accepted by the public officer.

If the offer is not accepted by the public officer, only the person offering the gift or present is criminally liable for attempted corruption of public officer under Art. 212 in relation to Art. 6. The public officer is not liable.

The gift or present must have a value or be capable of pecuniary estimation.

The thing offered or accepted may be money, property, services or anything else of value. It must be of some value, but any value is sufficient.

An agreement to reinstate a friend of a mayor who was dismissed, provided the mayor would execute a *certain act in connection with his official duty, was held to be a bribe.* (People ex rel Dickinson vs. Van De Carr, 87 App. Div. 386, 84 N.Y.S. 41, 18 N.Y. Cr. 31)

But under the Revised Penal Code, the fine which is one of the penalties imposed for the commission of direct bribery is based on the value of the gift. The reinstatement of the friend of the mayor seems to be not capable of pecuniary estimation.

Third element. — The three ways of committing direct bribery.

The act to be performed by the public officer must constitute a crime in the first form of direct bribery.

Viada, volume 2, page 642, says that to constitute the crime of bribery (of the first form) as provided in this article, four things are necessary:

(1) That the defendant be a public officer according to the meaning of this term in Article 401 (Art. 203);

(2) That he has received either personally or through another gifts or presents or accepted offers or promises;

(3) That such reception of gifts or presents or acceptance of offers or promises has been for the purpose of executing a crime; and

(4) That the act constituting the crime *relates* to the *exercise of the office* which the public officer discharges.

All these must concur. (U.S. vs. Gimenea, 24 Phil. 470)

A promise to give gift to, and a promise to commit an unlawful act by, a public officer will be sufficient in direct bribery under the first paragraph of Art. 210.

It is sufficient that a promise or offer was made to the public officer to give him money if he would commit an unlawful act in connection with the

performance of his official duties and that he agreed to commit the unlawful act in consideration of the promise or offer.

Example:

The stenographer of the court accepted a promise of P100 from an individual and promised to alter the notes taken by him during the trial of a case. The act which the stenographer promised to do would constitute the crime of falsification under Art. 171 of the Code.

It is not necessary that the evidence shows an express promise. It is sufficient if from all the circumstances in the case, such promise can be implied. (U.S. vs. Richard, 6 Phil. 545)

The public officer to suffer "the penalty corresponding to the crime agreed upon, if the same shall have been committed."

Thus, if the stenographer of the court who had accepted a promise of P100 from an individual altered the notes in accordance with the agreement, he shall suffer, in addition to the penalty corresponding to the crime of bribery, the penalty for the crime of falsification by a public officer or employee under Art. 171 of the Code.

The act which the public officer agrees to perform must be connected with the performance of official duties.

The act which the public officer agreed to perform must be an act in discharge of his legal duty. For example, a municipal president who ordered the release of a prisoner upon receiving from the latter the sum of P20, instead of obeying the orders of the provincial governor requiring him to send the prisoner to the provincial capital, is guilty of direct bribery, because, "having the prisoner under his charge, it was part of his official duty to obey the orders of the provincial governor in this respect." (U.S. vs. Valdehueza, 4 Phil. 470)

The act need not, however, be statutory duty; it is sufficient if the action to be affected by the bribe be part of the established procedure of a governmental agency. (Cohen vs. United States, 144 F. [2d] 984, 323 U.S. 797, 89 L. Ed. 636, 65 S. Ct. 440; 342 U.S. 885, 89 L. Ed. 1435 S. Ct. 586)

It is not bribery if the act is in discharge of a mere moral duty. (See Dishon vs. Smith, 10 Iowa 212, 221)

The fact that the act agreed to be performed by the public officer is in excess of his power, jurisdiction, or authority is no defense. (Glover vs. State, 109 Ind. 391, 10 N.E. 282) *But if the act agreed to be performed is so foreign to the duties of the office as to lack even color of authority, there is*

no bribery. (Gunning vs. People, 189 Ill. 165, 59 N.E. 494, 82 Am. St. Rep 443)

Direct bribery under the 2nd par. of Art. 210 has the same elements as those of direct bribery under the 1st par., but the act intended by the public officer does not amount to a crime.

In the crime of direct bribery defined in the second paragraph, there appear the same elements as those of the offense defined in the first paragraph, *with the sole exception that the act intended by the officer, although unjust, does not amount to crime.*

Examples of second form of direct bribery.

1. The treasurer who, in consideration of money or present, awards certain stalls in the public market to a Chinaman, in spite of the fact that there are Filipinos who have better rights. This act of the treasurer is not a crime but *it is unjust.*
2. In the case of *U.S. vs. Gacutan,* 28 Phil. 100, the bribery committed by the justice of the peace falls under this form of bribery, because when he decided the case in favor of the party who gave him a female carabao worth P80, without regard to the evidence, he executed an act which is not criminal, for there was no evidence that the decision was unjust and that he knew it to be unjust. The act he executed was unjust, for it certainly was an act of injustice to convict a person charged with a crime without regard to what the evidence in the case may be.

Act does not amount to a crime, and is connected with the performance of his official duty.

Thus, direct bribery is committed when a police officer directly received the bribe money in exchange for the recovery of stolen cylinder tanks, which was an act not constituting a crime, and his act of receiving money was connected with his duty as a police officer. (Marifosque vs. People, G.R. No. 156685, July 27, 2004)

In direct bribery under the 2nd paragraph, is the mere promise to give a gift and a mere promise to execute an act not constituting a crime sufficient?

Under the 2nd paragraph of Sec. 210, if the gift was *accepted* by the public officer in consideration of the execution of an act which does not constitute a crime, there are two penalties provided:

(1) *prision correccional* in its minimum and medium periods and a fine of not less than the value of the gift and not more than *three times* such value — if the offender *executed* said act;

(2) *arresto mayor* in its maximum period and a fine of not less than the value of the gift and not more than twice such value — if said act shall not have been *accomplished.*

The word "accomplish" presupposes an overt act, an outward act done in pursuance and in manifestation of an intent or design, brought to completeness. The act is not accomplished when the *overt act* is not brought to completeness. Hence, a mere agreement or promise on the part of the public officer to execute an act nor constituting a crime is not a violation of the provision in the 2nd paragraph of Art. 210.

Likewise, a mere promise to give a gift is not sufficient. The 2nd paragraph of Art. 210 was taken from Art. 382 of the old Penal Code, which punished any public officer "who shall agree to commit any act of injustice not constituting a crime in connection with the exercise of the powers of his office in consideration of an offer or promise or of any gift or present." The elimination of the phrase "shall agree" and the words "of any offer or promise" in the second paragraph of Art. 210 is not devoid of significance.

If the information does not allege whether the public officer executed the act or not, the case would fall under paragraph 2 of Art. 210 which distinguishes between the act *which was executed* and that *which was not accomplished.* (People vs. Abesamis, 93 Phil. 712)

Direct bribery under the 3rd paragraph of Art. 210.

In this kind of direct bribery, the object for which the gifts is received or promised is to make the public officer *refrain* from doing something *which it is his official duty to do.*

Example of the third form of direct bribery.

A sanitary inspector who accepts a gift from the tenant of an unsanitary building and in consideration thereof refrains from performing his duty to report its condition to his superiors, is guilty under the third paragraph of Art. 210. (U.S. vs. Navarro, 3 Phil. 633)

The public officer who, instead of reporting on the derogatory information he has gathered against a suspect whom he had been spying on for communistic leanings, agrees to refrain from doing his official duty in consideration of a sum of money, is liable for bribery under paragraph 3, Article 210, of the Revised Penal Code. (People vs. Marco, 12 C.A. Rep. 377)

First form of direct bribery is committed if by refraining from doing an act the public officer commits a crime.

It must be noted that if the act of refraining from doing something, which is the official duty of the officer, constitutes a crime in itself, the bribery should not be punished under this paragraph but under paragraph 1 of Art. 210.

Such would happen if a public officer, in violation of the duties of his office, would, for a gift or promise, abstain from instituting an action for the punishment of an offense. Note that the refraining constitutes the crime of *prevarication* (Art. 208) and should, therefore, be punished not under the third paragraph but under the first paragraph of Art. 210. (Albert)

Prevaricacion distinguished from bribery.

The third form of direct bribery (Art. 210) is committed by refraining from doing something which pertains to the official duty of the officer. Prevaricacion (Art. 208) is committed in the same way.

In this regard, the two felonies are similar.

But they differ in that in bribery, the offender refrained from doing his official duty *in consideration* of a gift received or promised. This element is not necessary in the crime of *prevaricacion.*

In bribery, the gift or present must be given to the public officer to corrupt him.

A, a *cabeza de barangay* and barrio lieutenant, accepted cocks, hens, bamboo, and other articles under *promise* to relieve the persons from whom he had obtained them of the obligation to perform certain duties.

Held: This is not bribery, but estafa (by means of deceit), because the things were given to him by the taxpayers *not to corrupt* him and *to induce him to omit the performance of his duty,* but were demanded by him. (U.S. vs. Jader, 1 Phil. 297)

Note: It is estafa, because by promising the people that they would be relieved of the obligation to perform certain duties, the accused pretended to possess authority to do so.

Direct Bribery is a crime involving moral turpitude.

Moral turpitude can be inferred from the third element. The fact that the offender agrees to accept a promise or gift and deliberately commits an unjust act or refrains from performing an official duty in exchange for some favors, denotes a malicious intent on the part of the offender to renege on

the duties which he owes his fellowmen and society in general. Also, the fact that the offender takes advantage of his office and position is a betrayal of the trust reposed on him by the public. It is a conduct clearly contrary to the accepted rules of right and duty, justice, honesty and good morals. In all respects, direct bribery is a crime involving moral turpitude. (Magno vs. Commission on Elections, et al., G.R. No. 147904, October 4, 2002)

Art. 211. *Indirect bribery.* — The penalties of *arresto mayor*,[14] suspension in its minimum and medium periods,[15] and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

Elements:

1. That the offender is a *public officer.*
2. That he *accepts gifts.*
3. That the said gifts are *offered* to him *by reason of his office*.

Gift is usually given to the public officer in anticipation of future favor from the public officer.

A public officer should not accept any gift offered to him, because such gift is offered in anticipation of future favor from him. Such gift received now will in the future corrupt him or make him omit the performance of his official duty.

Example of indirect bribery.

A veterinarian of the Board of Health, entrusted with the duty of examining mules which were offered for sale to the Government, received a certain amount of money from the vendor of mules after the latter had received from the Government the purchase price of the mules sold. There was no evidence to the effect that the money was given for the purpose of preventing the veterinarian from doing or inducing him to do something pertaining to his officer. (U.S. vs. Richards, 6 Phil. 545) He accepted the gift offered to him by reason of his office.

[14] See Appendix "A," Table of Penalties, No. 1.
[15] See Appendix "A," Table of Penalties, No. 39.

"Who shall accept gifts offered to him."

Will there be indirect bribery, if a public officer accepts a *promise* of gifts made to him by reason of his office?

Art. 211 does not use the word "promise," but the phrase "*shall accept gifts.*"

The essential ingredient of direct bribery as defined on Article 211 of the Revised Penal Code is that the public officer concerned must have accepted the gift or material consideration. There must be a clear intention on the part of the public officer to take the gift so offered and consider the same as his own property from then on, such as putting away the gift for safekeeping or pocketing the same. Mere physical receipt unaccompanied by any other sign, circumstance or act to show such *acceptance is not sufficient to lead* the court to conclude that the crime of indirect bribery has been committed. To hold otherwise will encourage unscrupulous individuals to frame up public officers by simply putting within their physical custody some gift, money or other property. (Formilleza vs. Sandiganbayan, 159 SCRA 1)

There is no attempted or frustrated indirect bribery.

Indirect bribery has no attempted or frustrated stage of execution, because it is committed by accepting gifts offered to the public officer by reason of his office. If he does not accept the gifts; he does not commit the crime. If he accepts the gifts, it is consummated.

Direct bribery distinguished from indirect bribery.

1. In both crimes, the public officer receives gift.
2. While in direct bribery there is an *agreement* between the public officer and the giver of the gift or present, in indirect bribery, usually, no such agreement exists.
3. In direct bribery, the offender *agrees* to perform or *performs* an act or refrains from doing something, because of the gift or promise; in indirect bribery, it is *not necessary* that the officer should do any particular act or even promise to do an act, as it is enough that he accepts gifts offered to him by reason of *his office*. (cited in Pozar vs. Court of Appeals, 132 SCRA 729)

Considered indirect bribery, even if there was a sort of an agreement between public officer and giver of gift.

P was an employee of the Manila Health Department assigned to prepare and follow up vouchers of the employees who were laid off. Knowing that *B* was to be laid off, *P* offered *B* to prepare his voucher for accumulated

and terminal leave pay, on condition that the latter would give the former P50, *to which B agreed.* When *B* received his pay, he gave *P* the sum of P50.

Held: P was without any right whatsoever to receive P50 for his services, because he was an employee of the government assigned to do the work he performed for *B.* (People vs. Pamplona, C.A., 51 O.G. 4116) The accused was found guilty of indirect bribery.

Distinguish indirect bribery from direct bribery under the 2nd par. of Art. 210.

The case of *People vs. Pamplona,* C.A., 51 O.G. 4116, might be mistaken for a case of direct bribery under the 2nd paragraph of Art. 210, because there was an agreement between the public officer and the giver of the gift and that the act which the public officer executed did not constitute a crime. But in direct bribery under the 2nd paragraph of Art. 210, the act executed must be *unjust.* In the Pamplona case, the act executed by the accused (preparing the voucher) was not unjust.

Receiving of gifts by public officials and employees, and giving of gifts by private persons, on any occasion, including Christmas is punishable.

The President of the Philippines has made it punishable for any public official or employee, whether of the national or local governments, to receive, directly or indirectly, and for private persons to give, or offer to give, any gift, present or other valuable thing on any occasion, including Christmas, when such gift, present or other valuable thing is given by reason of his official position, regardless of whether or not the same is for past favor or favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions. Included within the prohibition is the throwing of parties or entertainments in honor of the official or employee or of his immediate relatives.

For violation of this Decree, the penalty of imprisonment for not less than one (1) year nor more than five (5) years and perpetual disqualification from public office shall be imposed. The official or employee concerned shall likewise be subject to administrative disciplinary action and, if found guilty, shall be meted out the penalty of suspension or removal, depending on the seriousness of the offense.

Any provision of law, executive order, rule or regulation or circular inconsistent with this Decree is hereby repealed or modified accordingly.

(Presidential Decree No. 46 which took effect on November 10, 1972)

Criminal penalty of imprisonment is distinct from the administrative penalty of separation from the judicial service.

The Court is constrained to disapprove the recommendation as to the first charge of indirect bribery which is fully supported by the evidence that respondent Judge "be suspended from office for 2 years and 4 months, taking into consideration the penalty prescribed in the Revised Penal Code." The penalty of 2 years and 4 months imprisonment provided for the criminal offense of indirect bribery may not be equated with the penalty of separation from the judicial service which is the proper applicable administrative penalty by virtue of respondent Judge's serious misconduct prejudicial to the judiciary and the public interest. (Cabrera vs. Pajares, 142 SCRA 127)

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

If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of death. ***(As added by Republic Act No. 7659)***

Elements:

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

Art. 212. ***Corruption of public officials.*** — The same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person who shall have made the offers or promises or given the gifts or presents as described in the preceding articles.

Elements:

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

The offender in corruption of public officer is the giver of gift or offeror of promise.

The offender is *the giver* of gifts or *offeror* of promise.

The public officer sought to be bribed is not criminally liable, unless he accepts the gift or consents to the offer of the offender.

Art. 212 punishes the person who made the offer or promise or gave the gift, even if the gift *was demanded* by the public officer and the offer was *not made voluntarily* prior to the said demand by the public officer.

Bribery is usually proved by evidence acquired in entrapment.

In view of the fact that it is hard to prove bribery, for the briber himself is punished by law and he is usually the only one who could give direct evidence, ways and means are resorted to, to catch the public officer while he is in the act of obtaining bribes. This is known as entrapment.

Thus, an NBI agent who, posing as one interested in expediting the approval of license for firearm, gave P50 to the public officer who had hinted that he was not averse to receiving some money for expediting the approval of licenses, merely resorted to ways and means to catch the public officer, it appearing that there was a ground of suspicion or belief of the existence of official graft in that office. (People vs. Vinzol, C.A., 47 O.G. 294)

Presidential Decree No. 749, approved on July 18, 1975, which grants immunity from prosecution to givers of bribes and other gifts and to their accomplices in bribery and other graft cases against public officers, provides:

Section 1. Any person who voluntarily gives information about any violation of Articles 210, 211 and 212 of the Revised Penal Code; Republic Act Numbered Three Thousand Nineteen, as amended; Section 345 of the Internal Revenue Code and Section 3604 of the Tariff and Customs Code and other provisions of the said Codes penalizing abuse or dishonesty on the part of the public officials concerned; and other laws, rules and regulations punishing acts of grafts, corruption and other forms of official

abuse; and who willingly testifies against public official or employee for such violation shall be exempt from prosecution or punishment for the offense with reference to which his information and testimony were given, and may plead or prove the giving of such information and testimony in bar of such prosecution; *Provided,* That this immunity may be enjoyed even in cases where the information and testimony are given against a person who is not a public official but who is a principal, or accomplice, or accessory in the commission of any of the above-mentioned violations; *Provided, further,* That this immunity may be enjoyed by such informant or witness notwithstanding that he offered or gave the bribe or gift to the public official or is an accomplice for such gift or bribe-giving; *And provided, finally,* That the following conditions concur:

1. The information must refer to consummated violations of any of the above-mentioned provisions of law, rules and regulations;
2. The information and testimony are necessary for the conviction of the accused public officer;
3. Such information and testimony are not yet in the possession of the State;
4. Such information and testimony can be corroborated on its material points; and
5. The informant or witness has not been previously convicted of a crime involving moral turpitude.

Sec. 2. The immunity granted hereunder shall not attach should it turn out subsequently that the information and/or testimony is false and malicious or made only for the purpose of harassing, molesting or in any way prejudicing the public officer denounced. In such a case, the public officer so denounced shall be entitled to any action, civil or criminal, against said informant or witness.

x x x.

ANTI-GRAFT AND CORRUPT PRACTICES ACT

(R.A.No. 3019 as amended by R.A. No. 3047, P.D. No. 77 and B.P. Blg. 195)

SECTION 1. *Statement of policy.* — It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft and corrupt practices or which may lead thereto.

Purpose of the Anti-Graft Law.

The Anti-Graft Law was enacted under the police power of the State to promote morality in the public service. (Morfe vs. Mutuc, 22 SCRA 424)

Policy behind the enactment of the Anti-Graft and Corrupt Practices Act.

This Act (Rep. Act No. 3019) was enacted to deter public officials and employees from committing acts of dishonesty and improve the tone of morality in public service. It was declared to be a state policy "in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto." (Morfe vs. Mutuc, *supra)*

SEC. 2. *Definition of terms.* — As used in this Act, the term —

(a) **"Government"** includes the national government, the local government, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exemption service receiving compensation, even nominal, from the government as defined in the sub-paragraph.

(c) "Receiving any gift" includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is under the circumstances manifestly excessive.

(d) "Person" includes natural and juridical persons unless the context indicates otherwise.

SEC. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt

practices of any public officer and are hereby declared to be unlawful:

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

The persons liable under this provision are (1) the public officer who *persuades, induces* or *influences* another public officer to perform an act constituting a *violation* of rules and regulations or an *offense* in connection with the official duties of the latter, and (2) the public officer who *allows himself* to be so persuaded, induced or influenced.

Requesting or receiving any gift, present, or benefit is *not required* in this provision.

Is it necessary that the accused acted for a consideration and had intended to obtain personal gain or advantage?

The Court of Appeals held that in the absence of any allegation or proof that the accused so acted for a consideration, payment or remuneration and that he intended to obtain personal gain, enrichment or advantage, the accused may not be convicted of violating Par. (a), Sec. 3 of Republic Act No. 3019, known as the Anti-Graft and Corrupt Practices Act. (People vs. Bornales, 13 C.A. Rep. 972; 67 O.G. 8316)

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

The person liable under this provision is the public officer who, in his official capacity, *has to intervene* under the law *in any contract or transaction* between the Government and any other party.

The act constituting the crime is directly or indirectly, *requesting* or *receiving* any *gift, present, share, percentage,* or *benefit,* for *himself* or for *any other person,* in connection with that contract or transaction.

Preliminary investigation by a fiscal is not a contract or bansaction.

A preliminary investigation of a criminal complaint conducted by a fiscal is not a "contract or transaction" so as to bring it within the ambit of Section 3(b) of R.A. No. 3019. A transaction, like a contract, is one which involves some consideration as in credit transactions and the element of consideration is absent in a preliminary investigation of a case. (Soriano vs. Sandiganbayan, 131 SCRA 184)

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

The person liable under this provision is the public officer who, in *any manner* or *capacity,* has *secured* or *obtained,* or will secure or obtain, any Government permit or license for another person.

The act constituting the crime is directly or indirectly *requesting* or *receiving* any *gift, present* or *other pecuniary* or *material benefit,* for *himself* or for *another* in consideration for the help given or to be given.

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

The person liable under this provision is a public officer who had or has pending official business with a *private enterprise.*

The act constituting the crime is accepting or having any member of his (public officer's) family *accept employment* in that private enterprise (1) during the pendency of the official business with him or (2) *within one year* after its termination.

It will be noted that the prohibition refers to *employment in a private enterprise.* Hence, if the public officer or a member of his family accepted employment in a Government department or agency, like a public corporation, the prohibition does not apply, even if such department or agency had or has pending official business with him.

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted

benefits, advantage or preference in the discharge of his official, administrative orjudicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

To be liable under this provision, the public officer must act thru manifest *partiality, evident bad faith* or *gross inexcusable negligence.*

The act constituting the crime is *causing* any *undue injury to any party,* including the Government, or *giving* any *private party* any *unwarranted benefits, advantage or preference* in the discharge of the official administrative or judicial functions of the offending public officer.

Interpretation of last sentence of Sec. 3(e).

Section 3 enumerates in eleven subsections the corrupt practices of any public officer declared unlawful. Its reference to "any public officer" is without distinction or qualification and it specifies the acts declared unlawful. We agree with the view adopted by the Solicitor General that the last sentence of paragraph (e) is intended to make clear the inclusion of officers and employees of offices or government corporations which, under the ordinary concept of "public officers" may not come within the term. It is a strained construction of the provision to read it as applying exclusively to public officers charged with the duty of granting license or permits or other concessions. (Mejorada vs. Sandiganbayan, 151 SCRA 399)

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

(g) Entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The person liable under this provision is any public officer who has the duty *under* the law to *enter,* on behalf of the Government, *into any contract or transaction* with any person.

The act constituting the crime is entering into such contract or transaction *manifestly* and grossly *disadvantageous* to the Government.

It is not necessary that the public officer profited or will profit thereby.

Under Section 3(g) of R.A. No. 3019, it is enough to prove that the accused is a public officer; that he entered into a contract or transaction on behalf of the government; and that such contract or transaction is grossly and manifestly disadvantageous to that government. In other words, the act treated thereunder partakes of the nature of a *malum prohibitum*, it is the commission of that act as defined by law, not the character or effect thereof, that determines whether or not the provision has been violated. (Luciano vs. Estrella, 34 SCRA 769)

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

The person liable under this provision is any public officer who *intervenes* or *takes part* in his *official capacity* in any business, contract or transaction, or any public officer who is *prohibited* by the Constitution or by any law from having any interest.

The act constituting the crime is *directly or indirectly* having *financial* or *pecuniary* interest in that business, contract or transaction.

Actual intervention required.

What is contemplated in Section 3(h) of the anti-graft law is the actual intervention in the transaction in which one has financial or pecuniary interest in order that liability may attach. (Opinion No. 306, Series 1961 and Opinion No. 94, Series 1972 of the Secretary of Justice) The official need not dispose his shares in the corporation as long as he does not do anything for the firm in its contract with the office. For the law aims to prevent the dominant use of influence, authority and power. (Trieste, Sr. vs. Sandiganbayan, 145 SCRA 508)

(i) Directly or indirectly becoming interested, for personal gain, or having material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board; committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong.

The person liable under this provision is any public officer who is a member of a board, panel or group which exercises *discretion* in the approval of any transaction or act.

The act constituting the crime is directly or indirectly *becoming interested,* for *personal gain,* or having *material interest* in any transaction or act requiring the approval of such board, panel or group.

The public officer is liable under this provision even if he votes against the same or does not participate in the action of the board, committee, panel or group.

The public officers *responsible for the approval* of manifestly unlawful, inequitable or irregular transactions or acts by the board, panel or group to which they belong are presumed to have acquired interest for personal gain.

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

The person liable under this provision is the public officer who has the *duty of approving* or *granting* any *license, permit, privilege* or benefit.

The act constituting the crime is knowingly approving or granting the license, permit or benefit in favor of any person *not qualified for or not legally entitled* to such license, permit or privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

Requesting or receiving any gift, present or benefit is *not required* in this provision.

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

The person liable under this provision is any public officer who, on account of his official position, or whose office, *acquired valuable* information of a *confidential character.*

The acts constituting the crime are (1) *divulging* such valuable information to *unauthorized persons,* or (2) *releasing* such information *in advance* of its authorized release date.

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this Section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government.

SEC. 4. ***Prohibition on private individuals.*** **—**

(a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word **"close** personal **relation"** shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

Taking advantage of family or close personal relation with public official is punished.

The offender under this provision is any person who has *family* or *close personal relation* with any public official who has *to intervene* in some business, transaction, application, request or contract *of the government* with any other person.

The act constituting the crime is *capitalizing* or *exploiting* or *taking advantage* of such family or close personal relation by *directly* or *indirectly requesting* or *receiving* any present, gift, or material or pecuniary advantage from the person having the business, transaction, application, request or contract with the government.

(b) It shall be **unlawful** for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

SEC. 5. ***Prohibition on certain relatives.*** — It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government: ***Provided,*** That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to **whom** he is related, **has** been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law, nor to any act lawfully performed in an official capacity or in the exercise of a profession.

Section 5 prohibits certain relatives of the President, Vice-President, Senate President and Speaker to intervene in any business, etc. with the Government.

Exceptions to the provisions of Section 5 —

1. **Any person who, prior to the assumption of office of any of those officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office;**
2. **Any application filed by him, the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with the requisites provided by law, or rules or regulations issued pursuant to law;**
3. **Any act lawfully performed in an official capacity or in the exercise of a profession.**

SEC. 6. ***Prohibition on Members of Congress.*** **— It shall be unlawful hereafter for any Member of the Congress, during the term for which he has been elected to acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.**

The provision of this Section shall apply to any other public officer who recommended the initiation in Congress of the enactment or adoption of any law or resolution, and acquires or receives any such interest during his incumbency.

It shall likewise be unlawful for such member of Congress or other public officer, who, having such interest prior to the approval of such law or resolutions authored or recommended by him, continues for thirty days after such approval to retain his interest.

SEC. 7. ***Statement of Assets and Liabilities.*** **— Every public officer within thirty days after assuming office, and thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department of our Chief of an independent office, with the Office of the President, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income taxes parid for the next preceding calendar year:** ***Provided,*** **That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year.** ***(As amended by RA. No. 3047, P.D. No. 677 and 1288, January 24, 1978)***

The accuracy of entries in statements of assets and liabilities becomes material in criminal or administrative proceedings for violation of Sec. 7 of R.A. No. 3019. (Republic vs. Intermediate Appellate Court, 172 SCRA 296)

SEC. 8. ***Prima facie evidence of and dismissal due to unexplained wealth.*** **— If in accordance with the provisions of Republic Act Numbered One thousand three hundred and seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and other dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activity in any club or association or any ostentations display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income shall likewise be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.** ***(As amended by B.P. Blg. 195, March 16, 1982)***

SEC. 9. ***Penalties for violations.*** **—**

(a) Any public officer or private person committing any of the unlawful acts or omission enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month not more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint, the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government,

the amount of money or the thing he may have given to the accused, or the fair value of such thing.

(b) Any public official violating any of the provisions of Section 7 of this Act shall be punished by a fine of not less than one thousand pesos nor more than five thousand pesos, or by imprisonment not exceeding one year and six months, or by both such fine and imprisonment, at the discretion of the Court.

The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him. *(As amended by* ***B.P. Blg.*** *195)*

Are all the penalties prescribed in Sec. 9 of Rep. Act No. 3019 imposable on a private person?

Sec. 9 mentions the penalties with which "any public officer or private person" may be punished for committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of Rep. Act No. 3019. However, "perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth" can hardly be imposed on a private person.

It is believed that as regards a private person, only the penalty of imprisonment "for not less than six years and one month or fifteen years" may be imposed.

Imprisonment for not less than six years and one month or fifteen years.

It is believed that the intent of the law-making authority was for the punishment to be "imprisonment for not less than six years and one month nor more than fifteen years."

SEC. 10. *Competent court.* — Until otherwise provided by law, all prosecution under this Act shall be within the original jurisdiction of the Sandiganbayan. *(As amended by* ***B.P. Blg.*** *195)*

SEC. 11. *Prescription of* ***offenses.*** — All offenses punishable under this Act shall prescribe in fifteen years. *(As amended by* ***B.P. Blg.*** *195)*

SEC. 12. *Termination of office.* — No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, or for any offense under this Act or under the provisions of the Revised Penal Code on bribery.

SEC. 13. *Suspension and loss of benefits.* — Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to restitute the same to the Government. *(As amended by B.P. Blg. 195)*

Public officer to be suspended.

The public officer against whom any criminal prosecution under a valid information under this Act or under the Revised Penal Code on crimes committed by public officers or for any offense involving fraud upon government or public funds or property is pending in court shall be suspended from office.

Regional Trial Court (now Sandiganbayan) should exercise the mandatory act of suspension under Section 13 of Rep. Act No. 3019.

There is in Section 13 (Rep. Act 3019) a recognition that once a case is filed in court, all other acts connected with the discharge of court functions — which here include suspension — should be left to the Court of First Instance. It is without doubt that Congress has power to authorize courts to suspend public officers pending court proceedings for removal and that the congressional grant is not violative of the separation of powers. For, our

Constitution being silent, we are not to say that from Congress is withheld the power to decide the mode or procedure of suspension and removal of public officers. (Luciano vs. Provincial Governor, 28 SCRA 517)

The suspension spoken of (in Section 13 of Rep. Act 3019) follows the pendency in court of a criminal prosecution under a "valid information." Adherence to this rigoristic requirement funnels us down to no other conclusion than that there must, first of all, be a determination that the information filed is valid before suspension can be effected. This circumstance militates strongly against the notion that suspension under Section 13 is automatic. Suspension is, however, mandatory. The word "shall" used in Section 13 is an express index of this conclusion. (Noromor vs. Mun. of Oras, Samar, 7 SCRA 405) In other words, the suspension envisioned in Section 13 of Republic Act 3019 is mandatory but is not self-operative. That is to say, that there must be someone who shall exercise the act of suspension. (Luciano vs. Provincial Governor, *supra)*

Suspension cannot be automatic.

The Court has previously ruled that, under Sec. 14, Rep. Act 3019, suspension of a public officer is mandatory. However, suspension cannot be automatic, the reason being that "hearing on the validity of the information appears conformable to the spirit of the law, taking into account the serious and far reaching consequences of a suspension of an elective public official even before his conviction and that public interest demands a speedy determination of the issues involved in the cases." Thus, before a suspension order can be issued, a hearing on the issue of the validity of the information must first be had. This pre-suspension hearing is conducted to determine basically the validity of the information, from which the court can have a basis to either suspend the accused, and proceed with the trial on the merits of the case, or withhold the suspension of the latter and dismiss the case, or correct any part of the proceeding which impairs its validity. (People vs. Albano, 163 SCRA 511)

Maximum duration of preventive suspension is ninety days.

The preventive suspension of an elective public official under Sec. 13 of R.A. No. 3019 should be limited to ninety days under Sec. 42 of P.D. No. 807, the Civil Service Decree. (Deloso vs. Sandiganbayan, 173 SCRA 409)

The injunction against preventive suspension for an unreasonable period of time applies to elective officials facing criminal charges under the Anti-Graft Law. (Deloso vs. Sandiganbayan, *supra)*

Meaning of the word "acquitted" in Sec. 13.

It is obvious that when the statute speaks of the suspended official being "acquitted," it means that after due hearing and consideration of the evidence against him, the court is of the opinion that his guilt has not been proven beyond reasonable doubt. Dismissal of the case against the suspended officer will not suffice because dismissal does not amount to acquittal. (Malanyaon vs. Lising, 106 SCRA 237)

SEC. 14. *Exception.* — Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this Act.

Nothing in this Act shall be interpreted to prejudice or prohibit the practice of any profession, lawful trade or occupation by any private persons or by any public officer who under the law may legitimately practice his profession, trade or occupation, during his incumbency, except where the practice of such profession, trade or occupation involves conspiracy with any other person or public official to commit any of the violations penalized in this Act.

SEC. 15. *Separability clause.* — If any of this Act or the application of such provision to any person or circumstances is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SEC. 16. *Effectivity.* — This Act shall take effect on its approval, but for the purpose of determining unexplained wealth all property acquired by a public officer since he assumed office shall be taken into consideration.

PROCEDURE UNDER THE ANTI-GRAFT LAW TO DECLARE FORFEITED IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY A PUBLIC OFFICER OR EMPLOYEE. (REPUBLIC ACT NO. 1379) Date of effectivity: June 18, 1955

XXX

SEC. 2. *Filing of petition.* — Whenever any public officer or employee has acquired during his incumbency an amount

of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: ***Provided,*** That no such petition shall be filed within one year before any general election or within three months before any special election.

The resignation, dismissal or separation of the officer or employee from his office or employment in the Government or in the Government owned or controlled corporation shall not be a bar to the filing of the petition: ***Provided, however,*** That the right to file such petition shall prescribe after four years from the date of the resignation, dismissal or separation or expiration of the term of the officer or employee concerned, except as to those who have ceased to hold office within ten years prior to the approval of this Act, in which case the proceedings shall prescribe after four years from the approval hereof.

XXX

SEC. 5. ***Hearing.*** — The court shall set a date for a hearing, which may be open to the public, and during which the respondent shall be given ample opportunity to explain, to the satisfaction of the court, how he has acquired the property in question.

The courts are not bound by the statement of assets and liabilities filed.

In determining whether or not there is unexplained wealth within the purview of R.A. No. 1379, the courts are not bound by the statement of assets and liabilities filed by the respondent. On the contrary, this statute affords the respondent every opportunity to explain, to the satisfaction of the court, how he had acquired the property in question. (Republic vs. Intermediate Appellate Court, 172 SCRA 296)

SEC. 6. ***Judgment.*** **— If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property, forfeited in favor of the State, and by virtue of such judgment the property, aforesaid shall become property of the State.** ***Provided,*** **That no judgment shall be rendered within six months before any general election or within three months before any special election. The court may, in addition, refer this case to the corresponding Executive Department for administrative or criminal action, or both.**

XXX

SEC. 10. ***Effect of record of title.*** **- The fact that any real property has been recorded in the Registry of Property or office of the Register of Deeds in the name of the respondent or of any person mentioned in paragraphs (1) and (2) of subsection (b) of section one hereof shall not prevent the rendering of the judgment referred to in section six of this Act.**

PROVISIONS OF THE ANTI-GRAFT LAW ON SELF-INCRIMINATION, IMMUNITY, LAWS ON PRESCRIPTION AND PENALTIES FOR TRANSFERRING UNLAWFULLY ACQUIRED PROPERTY.

XXX

SEC. 8. ***Protection against self-incrimination.*** **— Neither the respondent nor any other person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise,**

required of him may tend to incriminate him or subject him to prosecution, but no individual shall be prosecuted criminally for on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and conviction for perjury or false testimony committed in so testifying or from administrative proceedings.

SEC. 9. ***Immunity.***— The Solicitor General may grant immunity from criminal prosecution to any person who testifies to the unlawful manner in which the respondent has acquired any of the property in question in cases where such testimony is necessary to prove violation of this Act.

XXX

SEC. 11. ***Laws on prescription.*** — The laws concerning acquisitive prescription and limitation of actions cannot be invoked by, nor shall they benefit the respondent, in respect of any property unlawfully acquired by him.

SEC. 12. ***Penalties.*** — Any public officer or employee who shall after the effective date of this Act, transfer or convey any unlawfully acquired property shall be repressed with imprisonment for a term not exceeding five years, or a fine not exceeding ten thousand pesos, or both such imprisonment and fine. The same repression shall be imposed upon any person who shall knowingly accept such transfer or conveyance.

Is the proceeding criminal or civil?

The proceeding under Republic Act No. 1379, otherwise known as the Anti-Graft Law, is not a criminal proceeding, because it does not terminate in the imposition of penalty but merely in the forfeiture of the properties illegally acquired in favor of the State (Section 6) and, because the procedure outlined therein leading to forfeiture is that provided for in civil action. (Almeda, Sr. vs. Perez, etc. and Republic, 5 SCRA 970)

Such forfeiture has been held, however, to partake of the nature of a penalty. (Cabal vs. Kapunan, Jr., 6 SCRA 1059: Katigbak vs. Solicitor General, 180 SCRA 540)

Forfeiture proceedings may be civil or criminal, *in rem* or *in personam.* (Almeda, Sr. vs. Perez, *supra)*

Penalty of forfeiture cannot be applied retroactively.

Penalty of forfeiture prescribed by R.A. No. 1379 cannot be applied to acquisitions made prior to its passage without running afoul of the Constitutional provision condemning *ex post facto* laws or bills of attainder. (Katigbak vs. Solicitor General, *supra)*

Chapter Three

FRAUDS AND ILLEGAL EXACTIONS AND TRANSACTIONS

Art. 213. ***Frauds against the public treasury and similar offenses.*** **— The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period,[1] or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:**

1. In his official capacity, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds, shall enter into an agreement with any interested party or speculator or make use of any other scheme, to defraud the Government;

2. Being entrusted with the collection of taxes, licenses, fees, and other imposts, shall be guilty of any of the following acts or omissions:

(a) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law;

(b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially;

(c) Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

When the culprit is an officer or employee of the Bureau of Internal Revenue or the Bureau of Customs, the provisions of the Administrative Code shall be applied.

[1] See Appendix "A," Table of Penalties, No. 16.

Acts punishable as frauds against public treasury and illegal exactions:

1. By entering into an *agreement with* any *interested party* or *speculator* or making use of any *other scheme, to defraud* the Government, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds.
2. By demanding, directly or indirectly, the payment of sums *different from* or *larger than* those authorized by law, in the collection of taxes, licenses, fees, and other imposts.
3. By failing *voluntarily* to issue a receipt, as provided by law, for any sum of money collected by him *officially,* in the collection of taxes, licenses, fees, and other imposts.
4. By collecting or receiving, directly or indirectly, by way of payment or *otherwise,* things or objects of a nature different from that provided by law, in the collection of taxes, licenses, fees, and other imposts.

Elements of frauds against public treasury (Art. 213, par. 1):

a. That the offender be a public officer.

b. That he should have *taken advantage* of his office, that is, he intervened in the transaction in his official capacity.

c. That he entered into an agreement with any interested party or speculator or made use of any other scheme with regard to (1) *furnishing supplies,* (2) the making of contracts, or (3) the adjustment or *settlement of accounts relating to public property* or *funds.*

d. That the accused had *intent to defraud* the Government.

The public officer must act in his official capacity.

The offender must have the *duty* as public officer to deal with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds.

The crime of frauds against public treasury is consummated by merely entering into an agreement with any interested party or speculator or by merely making use of any other scheme to defraud the Government.

It is not necessary that the Government is actually defrauded by reason of the transaction. It is sufficient that the public officer who acted in his official capacity had the intent to defraud the Government.

Elements of illegal exactions:

a. The offender is a public officer *entrusted* with the collection of taxes, licenses, fees and other imposts.

b. He is guilty of any of the following acts or omissions:

(1) Demanding, directly or indirectly, the payment of sums *different from* or larger than those authorized by law; or

(2) *Failing voluntarily* to issue a receipt, as provided by law, for any sum of money collected by him officially; or

(3) *Collecting* or *receiving,* directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

Mere demand for larger or different amount is sufficient to consummate the crime.

Note the word "demanding" in paragraph (a) of subdivision No. 2 of Art. 213. It would seem that it is not necessary that the taxpayer should actually pay an amount larger than or different from that fixed by law.

Collecting officer must issue official receipts.

Where the deputy sheriff received certain amounts in connection with the performance of his duties without issuing the corresponding official receipts thereof, he is guilty of illegal exaction penalized by paragraph 2(b) of Article 213 of the Revised Penal Code. He likewise violates Section 113 of Article III, Chapter V of the National Accounting and Auditing Manual which provides that no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt thereof. (Ganaden vs. Bolasco, 64 SCRA 50)

When there is deceit in demanding greater fees than those prescribed by law, the crime committed is estafa and not illegal exaction.

Thus, when the municipal treasurer, *by means of deceit,* collected from several residents of the municipality greater fees than those prescribed by Act No. 1147 for branding and registering of cattle, with prejudice to the owners, to the amount of P174.50, these facts constitute the crime of estafa and not that of illegal exaction. (VII Viada, 394, cited in U.S. vs. Lopez, *et al.*, 10 Phil. 480)

Tax collector need not account for tax collected.

When a public officer, whose official duty is to collect taxes, receives a payment in said concept, he makes himself directly accountable to the Government for the money so collected and received inasmuch as thereafter said money *acquires* the character or *forms part of the public funds.* If the money is misappropriated, it is the Government which suffers the damage. (People vs. Policher, 60 Phil. 771)

Hence, a tax collector who collected a sum larger than that authorized by law and spent all of them is guilty of two crimes, namely: (1) illegal exaction, for demanding a greater amount; and (2) malversation, for misappropriating the amount collected.

The difference between the amount fixed by law and the amount actually collected, having been paid in the concept of tax and received as such by the tax collector, forms part of the public funds. The Government may refund the difference.

Officer or employee of Bureau of Internal Revenue or Bureau of Customs not covered by this article.

Art. 213 is not applicable if the offender is an officer or employee of the *Bureau of Internal Revenue* or *Bureau of Customs.* The National Internal Revenue Code or the Administrative Code applies. (Art. 213, last par.)

Art. 214. ***Other frauds.*** **— In addition to the penalties prescribed in the provisions of Chapter Six, Title Ten, Book Two of this Code, the penalty of temporary special disqualification in its maximum period to perpetual special disqualification[2] shall be imposed upon any public officer who, taking advantage of his official position, shall commit any of the frauds or deceits enumerated in said provisions.**

Elements:

1. That the offender is a *public officer.*
2. That he *takes advantage of his official position.*
3. That he commits any of the frauds or deceits enumerated in Arts. 315 to 318.

[2]See Appendix "A," Table of Penalties, No. 43.

The public officer must take advantage of his official position.

Since the councilor committed the crime of estafa as a private individual, it is not proper to impose on him the penalty provided by Article 399 (now Art. 214) of the Code for public officers, because he received the money not on the exercise of his functions as councilor. (U.S. vs. Dacuycuy, 9 Phil. 88) But when the councilor takes advantage of his official position in committing estafa, the disqualification mentioned in Article 399 (now Art. 214) is a part of the penalty to be imposed. (U.S. vs. Torrida, 23 Phil. 193)

"Any of the frauds or deceits enumerated" in "the provisions of Chapter Six, Title Ten, Book Two, of this Code."

Arts. 315 to 318, which cover the provisions referred to, define and penalize (1) estafa, (2) other forms of swindling, (3) swindling a minor, and (4) other deceits.

The Regional Trial Court has jurisdiction when this article is involved.

The cases falling under this article are cognizable by the regional trial court regardless of the amount or penalty involved, because the municipal trial courts have no jurisdiction to impose the penalty of disqualification. Under this article, the penalty of disqualification is imposed as a principal penalty.

Art. 215. *Prohibited transactions.* — The penalty of *prision correccional* in its minimum **period**[3] or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any appointive public officer who, during his incumbency, shall directly or indirectly become interested in any transaction of exchange or speculation within the territory subject to his jurisdiction.

Elements:

1. That the offender is an *appointive* public officer.
2. That he becomes *interested, directly* or *indirectly,* in any transaction of *exchange or speculation.*

[3]See Appendix "A," Table of Penalties, No. 11.

3. That the transaction takes place *within* the territory *subject to his jurisdiction.*

4. That he becomes interested in the transaction during his incumbency.

The transaction must be one of exchange or speculation.

It is sufficient under this article that the appointive officer has an interest in any transaction of *exchange* or *speculation,* such as, *buying* and *selling* stocks, commodities, land, etc., hoping to take advantage of an expected rise or fall in price.

Purchasing of stocks or shares in a company is simply an investment and is not a violation of the article.

An appointive public officer may, within the territory subject to his jurisdiction, engage in the purchase of stocks or shares in any company, because to do so does not mean taking part in a business for gain or profit, but simply to invest funds at a legal interest.

But buying regularly securities for resale is speculation.

What he may not do is to buy regularly securities for the purpose of profiting by a resale thereof.

In a word, the appointive public officer should not devote himself to *commerce.* (Albert)

Examples of appointive public officer.

Under Art. 14 of the Code of Commerce, the following (among others) may not engage in the commercial profession either in person or by proxy:

1. Justices, judges or fiscals.

2. Employees engaged in the collection and administration of public funds.

Thus, a fiscal of Manila who engages in commerce in Manila is guilty under this article.

Art. 216. ***Possession*** ***of prohibited interest by a public officer.*** — The penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum **period,**[4] or a fine

[4]See Appendix "A," Table of Penalties, No. 7.

ranging from 200 to 1,000 pesos, or both, shall be imposed upon a public officer who, directly or indirectly, shall become interested in any contract or business in which it is his official duty to intervene.

This provision is applicable to experts, arbitrators and private accountants who, in like manner, shall take part in any contract or transaction connected with the estate or property in appraisal, distribution, or adjudication of which they shall have acted, and to the guardians and executors with respect to the property belonging to their wards or estate.

Who are liable for possession of prohibited interest?

1. *Public officer* who, directly or indirectly, became interested in any contract or business in which it was his *official duty* to intervene.
2. *Experts, arbitrators,* and *private accountants* who, in like manner, took part in any contract or transaction connected with the estate or property in the *appraisal, distribution* or *adjudication* of which they had acted.
3. *Guardians* and *executors* with respect to the property belonging to their wards or the estate.

Example of No. 1.

A municipal mayor who took direct part in the lease of the municipal fishponds to himself may be held liable under the first paragraph of Art. 216, it being his official duty to intervene in behalf of the municipality in the contract of lease of the fishponds. (See U.S. vs. Udarbe, 28 Phil. 382)

Actual fraud is not necessary.

Actual fraud is not necessary; the act is punished because of the possibility that fraud may be committed or that the officer may place his own interest above that of the government or party which he represents. (U.S. vs. Udarbe, 28 Phil. 383)

Intervention must be by virtue of public office held.

V mortgaged his property to the Pension Board. Later, V transferred the properties with the encumbrance to O. The accused was the secretary and executive officer of the Pension Board. He acquired the properties

from O and assumed the obligation concerning the mortgage originally constituted by V.

Held: The accused did not intervene in his capacity as secretary of the Pension Board. He assumed the obligation of O in his personal capacity.

Hence, the official who intervenes in contracts or transactions which have no connection with his office cannot commit the crime defined in Art. 216. (People vs. Meneses, C.A., 40 O.G., Supp. 11, 134)

Sec. 14, Article VI of the 1987 Constitution provides:

No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including any government-owned or -controlled corporation or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the government for his pecuniary benefit or where he may be called upon to act on account of his office.

Sec. 13, Article VII of the 1987 Constitution provides:

The President, Vice-President, the Members of the Cabinet and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

Sec. 2, Art. IX-A of the 1987 Constitution provides:

No member of a Constitutional Commission shall, during his tenure, hold any office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or -controlled corporations or their subsidiaries.

Chapter Four

MALVERSATION OF PUBLIC FUNDS OR PROPERTY

What are the crimes called malversation of public funds or property?

They are:

1. Malversation by appropriating, misappropriating or permitting any other person to take public funds or property. (Art. 217)
2. Failure of accountable officer to render accounts. (Art. 218)
3. Failure of a responsible public officer to render accounts before leaving the country. (Art. 219)
4. Illegal use of public funds or property. (Art. 220)
5. Failure to make delivery of public funds or property. (Art. 221)

Art. 217. ***Malversation of public funds or property — Presumption of malversation.*** — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum **periods,**[1] if the amount involved in the misappropriation or malversation does not exceed 200 pesos.

[1]See Appendix "A," Table of Penalties, No. 15.

2. The penalty of *prision mayor* in its minimum and medium periods,[2] if the amount involved is more than 200 pesos but does not exceed 6,000 pesos.

3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period,[3] if the amount involved is more than 6,000 pesos but is less than 12,000 pesos.

4. The penalty of *reclusion temporal* in its medium and maximum periods,[4] if the amount involved is more than 12,000 pesos but is less than 22,000 pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.[5]

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal uses. *(As amended by Rep. Act No. 1060)*

What is embezzlement?

Malversation is otherwise called embezzlement. Note the word "embezzled" in the phrase "or equal to the total value of the property embezzled" in the penultimate paragraph of Art. 217.

Acts punishable in malversation.

1. By *appropriating* public funds or property.
2. By *taking* or *misappropriating* the same.
3. By *consenting,* or through *abandonment* or *negligence, permitting* any other person to take such public funds or property.

[2]See Appendix "A," Table of Penalties, No. 23.
[3]See Appendix "A," Table of Penalties, No. 26.
[4]See Appendix "A," Table of Penalties, No. 31.
[5]See Appendix "A," Table of Penalties, No. 34.

4. By being *otherwise* guilty of the misappropriation or malversation of such funds or property.

The penalty for malversation is the same whether committed with malice or through negligence or imprudence.

This is the exception to the provisions of Art. 67 which provides penalties similar to those provided in Art. 366, defining and penalizing with lower penalties, culpable felony or criminal imprudence.

Elements common to all acts of malversation under Art. 217.

(a) That the offender be a public officer.

(b) That he had the *custody* or *control* of funds or property by *reason of the duties of his office.*

(c) That those funds or property were public funds or property *for which he was accountable.*

(d) That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

The offender in malversation under Art. 217 must be a public officer.

The offender in malversation under Art. 217 must be a public officer, as the term is defined in Art. 203 of the Revised Penal Code.

Nature of the duties of the public officer, not name of office, is controlling.

Note the phrase in the law: "*who, by reason of the duties of his office,* is accountable for public funds or property."

That the person accused is a *mere clerk and not a bonded officer* is of no legal consequence. The vital fact is that he is an employee of, or in some way connected with, the government and that, in the course of his employment, he receives money or property belonging to the government for which he is bound to account. It is *the nature of the duties,* not the relatively important name given to the office, *which is the controlling factor* in determining whether or not the accused is an accountable public officer. (U.S. vs. Velasquez, 32 Phil. 157) An emergency employee entrusted with the collection and/or custody of public funds may be held liable for malversation, if he misappropriates such funds.

Certain officials held guilty of malversation.

1. *Municipal president* who spent for himself P60 which he had received of the superintendent of schools, as rent for a house owned by the municipality, was declared guilty of malversation, said amount having been received by him by reason of his office. (U.S. vs. Togonon, 12 Phil. 516)

2. *Justice of the peace* who was found short after examination of his accounts for fees, fines and costs, collected by him during certain month of a year, was declared guilty of malversation. (U.S. vs. Sagun, 15 Phil. 178)

3. *Municipal secretary* acted as secretary of a committee composed of the municipal president, treasurer, secretary and a councilor, which conducted a public auction for the sale of fishing privileges. The bidders deposited the amounts of their respective bids with that secretary. He misappropriated them for himself. *Held:* Guilty of malversation. The money was deposited with him *under authority of law.* The obligation of the secretary was to safeguard the money for the Government. (U.S. vs. Lafuente, 37 Phil. 671)

Funds or property must be received in official capacity.

Thus, a municipal councilor who had received from another person P5.00 for a permit to slaughter animals under a promise to secure a receipt therefor or to account for the money, but misappropriated the same, is guilty of estafa, not malversation. (U.S. vs. Radaza, 17 Phil. 286)

The councilor did not receive the money in his *official capacity,* because he had no duty to collect or receive the slaughter fee.

When a public officer had *no authority to receive* the money for the Government and upon receipt of the same he misappropriated it, the crime committed is estafa, not malversation. (U.S. vs. Solis, 7 Phil. 195)

But when the public officer has (1) the *official custody* of public funds or property or the duty to *collect* or *receive* funds due the government, and (2) the obligation *to account* for them to the government, his misappropriation of the same constitutes malversation.

A public officer having only a qualified charge of Government property without authority to part with physical possession of it unless upon order from his immediate superior, cannot be held liable for malversation.

The defendant was forage master, having charge of Government forage in the corral in Manila, subject to the orders of the quartermaster, who was

directly responsible to the Government therefor and without whose order no forage could be issued.

Without orders from the quartermaster, the defendant sent out of the corral 186 bales of hay and 138 sacks of oats which were received by private persons not authorized to receive them.

Held: Defendant's possession of the property was not such as to render its abstraction by him malversation. He is guilty of theft. (U.S. vs. Webster, 6 Phil. 394)

The abstraction of funds from a safe by a clerk without the consent of the person charged with their custody, with the intent to convert them to his own us.e, is held to be theft and not *estafa* (embezzlement) or one of its kindred offenses, in a case wherein it appeared that while the clerk was intrusted with the combination and the key of the safe, he had no control over its contents and was not authorized to open the safe, or withdraw the contents or any part thereof except by the express direction of the person charged with the custody of the contents and responsible therefor. (U.S. vs. Wickersham, 20 Phil. 440)

Webster and Wickersham cases not applicable when the accused had authority to receive money pertaining to the Government.

It must be noted that appellant himself does not seriously dispute his accountability for the public funds received by him in custody by virtue of his office. He only argues that because he could not disburse such public funds without any order from superior authority, and therefore, had only a "qualified charge of the properties that come into his possession," the crime committed by him was theft not malversation, following the cases of *U.S. vs. Webster,* 6 Phil. 393 and *U.S. vs. Wickersham,* 20 Phil. 444. We find no merit in this contention. The vital fact is not so much the manner in which appellant could lawfully perform his duties in relation to said funds as the fact that he received money belonging to the Government for which he was bound to account. It is, hence, the nature of his duties, and not his performance of those duties, that determines the character of his offense. (U.S. vs. Velasquez, 32 Phil. 157)

Moreover, the precedents relied upon by appellant are not squarely applicable to the case at bar by reason of the fact that in said cases, the defendants, unlike appellant herein, had no authority to receive money pertaining to the Government and were, for that matter, not accountable officers. Their only responsibility was towards their immediate superiors who, in turn, were the ones directly responsible to the Government. It was in those cases where our Supreme Court ruled that because of the qualified nature of the defendants' responsibility, their conversion of Government

funds and property could only be penalized as theft and not malversation (People vs. Alban, C.A., 64 O.G. 10365)

Liability of private individuals in conspiracy with public officers guilty of malversation under Art. 217.

Both Groizard and Viada in their commentaries of the Spanish Penal Code, which is identical with the provisions of the Penal Code of the Philippines, are of the opinion that even private parties who participate as co-perpetrators in the offense of malversation could be penalized for the commission of such crime.

Thus, a janitor and five policemen who aided the municipal treasurer in the commission of malversation by taking the safe containing money from the municipal treasury and carrying it to another place and then and there taking the contents thereof, were held guilty of malversation, although they were not accountable public officers. (U.S. vs. Ponte, *et al.*, 20 Phil. 379)

The ruling in Ponte case is reiterated in *People vs. Sendaydiego,* 81 SCRA 120, where it was held that a private person conspiring with an accountable public officer in committing malversation is also guilty of malversation.

People vs. Longara and Cinco
(C.A., 52 O.G. 3613)

Facts: Bonifacio Longara, traveling deputy in the office of the Provincial Treasurer of Samar, received from the Office of the Provincial Treasurer the sum of P30,000 in bills to be used in connection with the payment of the teachers' salaries of the municipalities of Guiuan, Mercedes, Maydolong and Borongan.

The Provincial Treasurer verbally ordered Francisco Cinco, a mailing clerk, to escort Longara.

Cinco introduced Longara to a certain Henry Dan. Henry Dan lost no time in telling Longara that he could counterfeit genuine money bills and showed him five-peso notes bearing the same serial number; and that if Longara had money in paper bills they could counterfeit the same. Longara answered that he had no money but Cinco cut in and said, "That is good, if you can entertain that it is something," obviously reminding Longara of the government funds he had with him to pay the teachers.

At Tacloban City, Longara and Cinco rented a room at the Leyte Hotel. Henry Dan made his appearance in the said room. Henry Dan borrowed the money bills and assured that the government money would not be lost, because they would merely be copied. Henry Dan never showed up. All the money was gone.

Cinco, as mailing clerk, is not an accountable public officer.

Held: **When a private person induces a public officer or by necessary acts aids a public officer in consenting or permitting such public funds to fall into the hands of a swindler, he must be held equally liable with such public officer for malversation, for "when the law clearly defines a crime, as it has here defined the crime of malversation, those who in any way participate therein must be principals, accomplices or abettors thereof." (U.S. vs. Ponte, 20 Phil. 379, citing Groizard and Viada)**

Under Art. 222, private individuals are liable for malversation.

The provisions of Art. 217 shall apply to (1) private individuals who, in any capacity whatsoever, have charge of national, provincial or municipal funds, revenues or property, and to (2) any administrator or depository of funds or property attached, seized or deposited by public authority. (Art. 222)

Government funds include revenue funds and trust funds.

Government funds include not only revenue funds but also trust funds. (People vs. Ramos, C.A., 38 O.G. 817)

Considered public funds:

1. **Red Cross, Anti-Tuberculosis Society and Boy Scouts funds received by an assistant cashier of the provincial treasurer by virtue of his official position, for custody, acquire the character of public funds. (People vs. Velasquez, 72 Phil. 98)** ***Reason:*** **Although Red Cross funds, etc., are not strictly public funds, it is the intention of the law to make such funds partake of some of the characteristics of public funds, in that *they are trust funds* placed in the custody of accountable public officer for the purpose for which they are contributed by the public. (People vs. De la Serna, C.A., 40 O.G., Supp. 12, 159)**

2. ***Postal money orders,*** **being in the nature of public funds. (People vs. Villanueva, 58 Phil. 671)**

3. **Money received by the sheriff as *redemption price* (People vs. Benito, CA., 36 O.G. 27), because it partakes of the nature of public funds.**

4. **Money received by the sheriff to *indemnify* him against any claim for damages that might arise in connection with the levy made by him upon property belonging to a judgment debtor, is a government fund. (People vs. Ramos, C.A., 38 O.G. 817)**

5. ***NARIC funds*** **received by a municipal treasurer as *ex oficio* in charge of the funds of the NARIC in the municipality. Although not public**

funds, NARIC funds become impressed with that character when they are entrusted to a public officer for his official custody. (People vs. Aquino, 94 Phil. 805)

6. Proceeds of sale of sweepstakes tickets. Travelling sales agent of the Philippine Charity Sweepstakes Office, who misappropriated the proceeds of sale of sweepstakes tickets, is liable for malversation. (People vs. Angco, 103 Phil. 33)

7. Funds of the Metropolitan Water District. Officers and employees of Metropolitan Water District are public officers and its funds are public funds. Since the Metropolitan Water District is a public or government entity, its officers and employees are public officers as that phrase is used under Article 203 of the Revised Penal Code, and it is of no moment, for purposes of determining criminal liability under the Code, whether one's position therein was a minor one. (Maniego vs. People, G.R. No. L-2971, April 20, 1951) Likewise its funds, although not strictly public funds, become impressed with the character of public funds when they are received by public officers with the obligation to account for them. (People vs. Aquino, G.R. No. L-6063, April 26, 1954)

The Metropolitan Water District is a creation of the Philippine Legislature. The law creating this entity classifies it as a public corporation, for the purpose of furnishing an adequate water supply and sewerage service to the inhabitants of Manila and suburbs. (Section 1, Act No. 2832, as amended by Act No. 4079, cited in People vs. Bustillo, C.A., 52 O.G. 3598)

Public property.

Firearms or explosives seized from persons not authorized to possess the same, which are in the custody of peace officers, are public property. (See People vs. Magsino, C.A, 50 O.G. 675)

Materials, chiefly timber, of the Bureau of Commerce and Industry, which are in the custody of a bonded warehouseman, are public property. (People vs. Marino, 55 Phil. 537)

But from the moment the accused, a municipal treasurer, drew government funds corresponding to the face value of the check which was previously endorsed by the complainant, as payee of said check, the funds became private property of the complainant which the accused was under obligation to deliver to her. His non-delivery of the money resulted, not in the commission of the crime of malversation, but in the commission of the crime of estafa under par. 1(b) of Article 315 of the Revised Penal Code. (People vs. Concepcion, 2 C.A. Rep. 1019)

Private property may be involved in malversation.

The provisions of Art. 217 apply to administrator or depository of funds or property attached, seized, or deposited by public authority, *"even if such property belongs to a private individual."* (Art. 222)

Such phrase denotes the express intention of the Penal Code to make accountable public officers guilty of malversation not only of national, provincial or municipal funds, revenues or property, but also of other funds or property, even if they belong to private individuals, *as long as such funds or property are placed in their custody.* (People vs. De la Serna, C.A., 40 O.G. Supp. 12, 159)

Different acts of malversation punished under Art. 217.

1. *Appropriating public funds or property.*

To appropriate public funds or property includes every attempt to dispose of the same without right.

U.S. vs. Calimag
(12 Phil. 687)

Facts: **The accused was municipal treasurer of the town of Solana, Province of Cagayan, and also deputy provincial treasurer, receiving as salary, for the former position, P25 per month and for the latter, P10 per month. On December 2, 1907, the auditor for that district examined the books and cash of the accused, and informed him that there was a difference of P49.04 between the amount for which the accused was responsible and the amount counted by said auditor. The auditor asked the accused how this occurred, and he said that it was for the reason that he had to advance his salary of P10 a month from July to November, or a total amount of P50.**

It was proven at the trial that the accused had no authority to pay himself his salary of P10 a month as deputy to the provincial treasurer.

Held: **It must be considered that he had made personal use of the fund of the Government.**

2. *Taking or misappropriating public funds or property.*

What is the meaning of "taking" as an act of malversation? Is it the same as the meaning of the word "taking" in theft or robbery with violence against or intimidation of persons?

Suppose, A, a teller in the office of the city treasurer, was leaving the office of the treasurer with public funds which had been collected by him from certain taxpayers, and then and there an NBI agent, who had been informed of the plan of A to take public funds, arrested and searched him

and found the money in his pocket, is A guilty of frustrated or consummated malversation?

It is believed that A is guilty of consummated malversation. The public funds or property taken need not be misappropriated, as the word "take" is separated by the word "or" from the word "misappropriation."

Misappropriating public funds or property was committed by the treasurer of a municipality who spent for his personal benefit certain amount of money which formed part of the funds under his charge.

3. *Consenting or permitting, through abandonment or negligence, any other person to take public funds or property.*

When a public officer, accountable for public funds or property, violates regulations of his office, that violation is evidence of negligence. Thus, a municipal treasurer who cashed with public funds private checks drawn in favor of his wife, the drawer not having enough cash in the drawee bank, was held liable for malversation through negligence, the cashing of private checks with public funds being a violation of standing regulations. (People vs. Luntao, C.A. 50 O.G. 1182)

But in malversation, the negligence of the accountable public officer must be positively and clearly shown to be inexcusable, approximating malice or fraud.

People vs. Bernas
(C.A., 53 O.G. 1106)

Facts: The defendant municipal treasurer requisitioned from the Office of the Provincial Treasurer of Romblon for 200 large sacks of Naric rice. As the rice was late in coming and the people were clamoring for the same, the defendant personally went to Romblon to follow up his requisition, but was able to obtain only 85 small sacks of the local variety. The sale of these sacks of rice to the public was brisk but before the same were sold, the 200 big sacks of Naric rice previously requisitioned arrived. The defendant then had a big quantity of Naric rice in stock in addition to the remaining local rice still undisposed. The harvest season in Romblon was close at hand which impending event would inevitably cause the prices to go considerably down. Apprehensive of the possibility of being left with an unusually large stock of rice unsold, the defendant wired the Provincial Treasurer, offering to return the 200 big sacks of Naric rice; the latter, however, advised the defendant to get in touch with other municipal treasurers in Sibuyan Islands and to try to dispose the surplus stocks to them.

To effect a swifter disposal of the large stock of rice, defendant in a trip to the provincial capital, requested authority from his superiors to sell the rice on credit; the latter, however, warned him that such practice was

not sanctioned by existing regulations and to do so would be defendant's own risk. At that time, he had no safe place to keep the rice, and there was an impending typhoon. Faced with no better alternative, the defendant decided to sell the rice on credit to the municipal employees whose wages and salaries he himself had to disburse. This measure was adopted as it was easy for him to collect whatever accounts were receivable from said vendees on credit.

He admits that the sale of the rice on credit was done not in accordance with existing rules and regulations, but he seeks exculpation from criminal liability in that he did so under extreme necessity and in good faith.

Held: The defendant cannot be reasonably accused of having consented, or through abandonment or negligence, permitted other persons to take public funds or property in his custody simply because in selling the rice on credit, he disposed of the cereal for valuable consideration as above explained. This fact negatives negligence or criminal abandonment. But assuming, *arguendo,* that his conduct in selling the rice on credit before the advent of the typhoon constitutes negligence, we opine that to render such element a basis for conviction under this article, the negligence involved must be positively and clearly shown to be inexcusable, approximating malice or fraud. (Viada, Vol. IV, pp. 498-499, 5th ed.; Cuello Calon, Vol. II, Derecho Penal, p. 369) If there was any negligence exhibited by the defendant in the instant case, we believe that the same is excusable and attaches no criminal liability whatsoever. Nonetheless, as the sales on credit were admittedly made in violation of existing regulations, said transactions are deemed to have been undertaken at the defendant's own risk and personal responsibility and he may be held civilly accountable for the unpaid accounts in favor of the municipal government of San Fernando, Romblon.

Malversation through abandonment or negligence.

People vs. Pili
(C.A., 53 O.G. 4535)

Facts: The defendant, Benjamin Pili, was the postmaster of Coron, Palawan. As such postmaster, he was accountable for public funds, consisting of collections from telegraphic transfers, money orders, postal savings bank deposits and proceeds from the sales of stamps. His cash accountability, upon examination, was found short of P24,476.34.

For his defense, the defendant Pili claims that on the night of April 21, 1953, the drawer of his table was forced open and the cash, warrants and checks which he kept in said drawer were stolen. Explaining the reason why the cash, warrants and checks were in his table drawer instead of in his

iron safe with which he was provided, the defendant ventured the following: At around 3 o'clock in the afternoon, the municipal treasurer requested him to deposit the money which he (defendant) had in his possession, as the municipal treasurer would need to pay the teachers the following morning. Since it was already late in the afternoon when the request was made, the defendant decided to work overtime so as to put his books in order and prepare the money for the necessary deposit. He used a petromax lamp to provide him the necessary light in his work that night. At about half past 10 o'clock in the evening, the petromax light went out due to lack of kerosene. Because he had no more light, the cash, checks, and warrants, which he was then listing and which were on the top of his table, had to be placed inside the drawer which he placed under lock. Total darkness, caused by the extinction of the petromax light, prevented him (defendant) from returning the money to the combination safe, claiming that after he had taken the cash, checks, and warrants from the safe, he closed the same. At around 8:05 the next morning, the defendant, as usual, reported for work and found out that the checks, money orders, and cash which he placed inside his drawer were gone and the lock of the said drawer was forcibly opened.

Held: The accused was negligent in the performance of his duties as an accountable officer. This negligence consisted in his failure to take the necessary precaution or zeal, in returning the warrants, cash, and checks in the combination safe in order to safeguard them. If he were not negligent, at the time that the light of the petromax went out, he could have asked the policeman on duty to furnish him the necessary light so that the *money* which he claimed to have been counting and listing, could have been properly *returned to the safe where they rightfully belonged and should be kept.* Even on this score alone, the accused is already liable for the offense charged.

Test to determine negligence.

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do. The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinary prudent person would have used in the same situation? If not, he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman Law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The Law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability to that. (Leaño vs. Domingo, G.R. No. 84378, July 4, 1991, citing Layugan vs. Intermediate Appellate Court, 167 SCRA 363, 372-373 [1998])

The measure of negligence is the standard of care commensurate with the occasion.

To measure the negligence which pervades a particular act or omission, we must first determine upon a standard of care commensurate with the occasion, and then endeavor to ascertain how far short of this standard falls the act or omission in question.

Thus, where a municipal treasurer, to whom was entrusted for safekeeping an opium pipe confiscated by the authorities, put the said pipe in the drawer of an *aparador* in his office and the office was kept locked, it cannot be said that he abandoned the property when it was stolen from the *aparador.* (U.S. vs. Garces, 31 Phil. 637)

Note: **The Supreme Court believes that the treasurer took steps to guard the opium pipe which *its value warranted.***

Even if he had a safe, the treasurer cannot be expected to keep the opium pipe there.

People vs. Torres
(C.A., 53 O.G. 4850)

Facts: **Defendant Jose A. Torres was a First Lieutenant in the Philippine Army and was assigned as special disbursing officer of the 22nd Battalion Combat Team. As such disbursing officer, it was his duty to collect the insurance premiums and salary loans by deducting them from the base pay of the personnel of the battallion, and remit this collection to the Government Service Insurance System at the end of every month. Under Torres performing clerical duties were Sergeants Juan de la Cruz and Antonio Llado.**

The first and second remittances were made personally by Lieutenant Torres in June and August, 1951. However, subsequent remittances from September, 1951, up to September, 1953, were exclusively made by Sergeant De la Cruz upon orders issued by Lieutenant Torres who said that "due to the volume of my work and the trust I have on him, I gave him authority to make payments."

The total of the remittances made from June, 1951, up to September, 1953, amounted to P72,265.51, and the total amount actually received by the Government Service Insurance System was only P15,807.47, thus making P56,458.04 the total amount malversed.

As a finance officer of the Armed Forces of the Philippines, the defendant knew that the meager pay of a sergeant in the Philippine Army is barely enough to modestly maintain a family. He also knew that Sergeant De la Cruz was sporting a car and had another woman aside from his lawful wife. Yet, the defendant did not even bother to investigate or verify from

the Government Service Insurance System if Sergeant De la Cruz faithfully delivered the amounts entrusted to him. Instead, the defendant continued to entrust to De la Cruz large amounts of insurance premiums for more than one year until the abstraction was discovered when Sergeant Leonilo Quiambao, who had been punctually paying his premiums, complained to the defendant that he (Quiambao) could not secure a loan from the System because, according to the System, Quiambao was not paying his insurance premiums regularly.

Held: The fact that he ordered his trusted driver to accompany Sergeant De la Cruz to the offices of the Government Service Insurance System whenever the latter delivered the insurance premiums, cannot exonerate the defendant of his criminal liability. To entrust to a mere driver the delicate task of supervising the proper delivery of big sums of money is, to say the least, a proof of negligence and abandonment of his duties as a finance officer rather than of diligence expected of an officer of the Armed Forces of the Philippines. It is indeed regrettable that the defendant now has to suffer the consequence of his subordinate's wrongdoing. The defendant did not enjoy even a single centavo of the amount malversed. But Article 217 of the Penal Code is very clear and definite and we cannot do otherwise but apply its provisions.

In malversation not committed through negligence, lack of criminal intent or good faith is a defense.

When an accountable public officer makes a wrong payment through honest mistake as to the law or to the facts concerning his duties, he is not liable for malversation. He is only civilly liable.

Thus, a municipal officer who in *good faith* paid out of public funds, persons who in accordance with the resolution of the municipal council, but the payments were made in violation of the law, because of insufficient vouchers or improper evidence, is only civilly liable, there being no criminal intent. (See People vs. Elvina 24 Phil. 230; U.S. vs. Catolico, 18 Phil. 504)

Presumption from failure to have duly forthcoming public funds or property upon demand.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall *be prima facie* evidence that he has put such missing funds or property to personal uses.

Thus, the failure or inability of the accused who was in custody of public funds to refund the shortage *upon demand* by the duly authorized offices constitutes *prima facie* evidence of malversation, notwithstanding

the fact that such demand had been merely made verbally. (U.S. vs. Kalingo, 46 Phil. 651)

The disappearance of public funds in the hands of an accountable public officer is *prime facie* evidence of their conversion. (People vs. Velasco, CA-G.R. No. 2546-R, Nov. 8, 1948)

An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his accounts which he has not been able to explain satisfactorily. (People vs. Mingoa, 92 Phil. 856; De Guzman vs. People, 119 SCRA 337; Quizo vs. Sandiganbayan, 149 SCRA 108)

The presumption may be rebutted.

If the accused has adduced evidence showing that he did not put the missing funds or property to personal uses, then that presumption is at an end and the *prime facie* case is destroyed. (People vs. Bernas, C.A., 53 O.G. 1105, citing Supreme Court Cases; See Quizo vs. Sandiganbayan, *supra)*

Petitioner was able to nullify the inference that he did put the missing funds to his personal use. After it was allegedly discovered that petitioner received advance rentals of P20,700.00, he presented resolutions passed by the Barangay Council appropriating a total of P8,400.00 to be paid to suppliers of materials for the water system of the barangay hall and for the barangay police uniforms. Notably, the lease agreement between Barangay Pahina Central represented by petitioner as the barangay captain thereof, and Mrs. Dora M. Lim, was executed for the purpose of raising funds for the operations of the Barangay Tanods and the installation of a water system in the barangay hall.

Petitioner did not also receive the P20,700.00 all in cash owing to the deduction from the rentals due of P12,300.00 by Mrs. Lim to cover the cost of medicines advanced to the barangay residents and tanods. Collection notices were even in fact sent to those with unpaid accounts. Verily, petitioner cannot be faulted, much less convicted, in consequence. Petitioner's act of guaranteeing the payment thereof in order to assist his constituents who are in dire need of medicines but lack financial capacity to pay therefore was done in good faith under the belief that he was acting correctly for the good of the residents in his community. (Madarang vs. People, G.R. No. 112314, March 28, 2001)

The presumption could be overcome by satisfactory evidence of loss or robbery committed by a person other than the accused. (U.S. vs. Kalingo, *supra)*

The burden of defense rests upon the accused who should show that he did not misapply or misappropriate such funds or that he had not allowed,

through his negligence or abandonment, someone to misappropriate or make personal use of the same. (People vs. Hernandez, C.A., 45 O.G. 2206)

The return of the funds malversed is only mitigating, not exempting, circumstance.

When his books were examined by the auditor, the assistant cashier in the provincial treasury could not produce the amount. Later, the assistant cashier offered to and did actually return the money. *Held:* The return of the money was merely a mitigating circumstance. It cannot exempt him from criminal liability. (People vs. Velasquez, 72 Phil. 98)

Where the partial restitution or restoration of the shortage was made seven (7) years after the swindling took place and after one of the accused was already convicted, there is no prompt refund of the shortage, and the accused can not be credited with a mitigating circumstance similar and analogous to voluntary surrender. There must be "prompt refund of the shortage." (People vs. Amante, C.A., 65 O.G. 5628)

When the shortage is paid by the public officer from his pocket, he is not liable for malversation.

But if at the very moment when the shortage is discovered, the accountable officer is notified thereof and he *at once presents the money*, no *prima facie* evidence of the crime of malversation can be established.

A deputy auditor testified that on the 20th of May, 1908 he went to the municipality of San Pedro, Macati for the purpose of making an inspection of the office, cash, and accounts of the municipal treasury of said town, of which Mariano Feliciano was the treasurer; that there resulted from the examination a shortage of P53.05 in the cash of the municipal treasury; that at the moment when the difference was discovered he notified the treasurer of it, and the *latter took the sum of* P53.05 *from his pocket and paid it,* but he did not remember, however, whether he had questioned the treasurer as to why the amount was not in the safe; and that, at the time when the examination was made, there were other persons present, to wit, the municipal president and the municipal secretary.

Held: If, according to the officer who made the examination of the accounts, at the very moment when the shortage of P53.05 was discovered and the treasurer was notified he at once presented the money, no *prima facie* evidence of the crime of misappropriation can be established, nor any proof whatever that there was such misappropriation. (U.S. vs. Feliciano, 15 Phil. 147)

Borrowing money to replace missing funds — when not malversation.

The fact that the amount in cash which a municipal treasurer should have in his cafe was fully covered by an amount *borrowed from one of his clerks* does not relieve the said treasurer from criminal responsibility. As he did not explain satisfactorily why the amount which should be in his hands was in his clerk's possession, the presumption is that he misappropriated the missing amount. (People vs. Divino, CA-G.R. No. 428, Oct. 13, 1938)

But when the accountable officer is obliged *to go out* of his office *and borrow* the sum alleged to be the shortage and later the *missing amount is found* in some unaccustomed place in his office, he is not liable for malversation. (U.S. vs. Pascual, 26 Phil. 234)

Demand not necessary in malversation.

Previous demand is not necessary in spite of the last paragraph of Article 217.

The last paragraph of Art. 217 provides only for a rule of procedural law, a rule of evidence and no more. (People vs. Tolentino, 69 Phil. 715)

Demand merely raises a prima facie presumption that missing funds have been put to personal use. The demand itself, however, is not an element of, and not indispensable to constitute malversation. (Morong Water District vs. Office of the Deputy Ombudsman, G.R. No. 116754, March 17, 2000, citing Nizurtada vs. Sandiganbayan, 239 SCRA 33)

May a person whose negligence made possible by the commission of malversation by another be held liable as principal by indispensable cooperation in the complex crime of malversation through falsification of a public document by reckless negligence?

The Supreme Court in the case of Javier, *et al.* vs. People, 105 Phil. 1294, ruled in the affirmative. In that case, the charge against certain audit clerks was that, through their recklessly negligent participation in the preparation of the falsified payrolls, they had, in effect, cooperated with their co-defendant paymaster in the commission of the crime of malversation of public funds. It was held that the defendant audit clerks who initialed the payrolls in question were guilty of reckless negligence in not verifying the correctness of the payrolls, thereby cooperating with their said negligence in the falsification of said public documents and the misappropriation of public funds that was made possible thereby.

Damage to the Government, not necessary.

At most, lack of proof to that effect would affect the civil liability only (People vs. Chavez, CA-G.R. No. 44398, Oct. 16, 1936)

Art. 217 states only, "the amount involved in the misappropriation or malversation." The penalty for malversation in that article is based on the amount involved, not on the amount of the damage caused to the Government.

Thus, when the collections which the appellant failed to account for amounted to P17,730.68, even if the amount of P11,800 was recovered, he should be sentenced under par. 4, not under par. 3, of Art. 217. (Bacsarpa, *et al.* vs. Court of Appeals, 99 Phil. 112)

Art. 218. ***Failure of accountable officer to render accounts.*** — Any public officer, whether in the service or separated therefrom by resignation or any other cause, who is required by law or regulation to render accounts to the Insular Auditor (now Commission on Audit), or to a provincial auditor and who fails to do so for a period of two months after such accounts should be rendered, shall be punished by *prision correccional* in its minimum **period,**[1] or by a fine ranging from 200 to 6,000 pesos, or both.

Elements:

1. That the offender is a public officer, whether in the service or separated therefrom.
2. That he must be an *accountable officer* for public funds or property.
3. That he is required by law or regulation to render accounts to the Commission on Audit, or to a provincial auditor.
4. That he fails to do so for a period of *two months* after such accounts should be rendered.

Demand for accounting is not necessary.

Art. 218 does not require that there be a demand by the Commission on Audit or provincial auditor that the public officer should render an

[1] See Appendix "A," Table of Penalties, No. 11.

account. It is sufficient that there is a law or regulation requiring him to render account.

Reason why mere failure to render account by an accountable public officer is punished.

The reason for this is that the law does not so much contemplate the possibility of malversation as the need of enforcing by a penal provision the performance of the duty incumbent upon every public employee who handles government funds to render an account of all he receives or has in his charge by reason of his employment. (U.S. vs. Saberon, 19 Phil. 391)

Misappropriation is not necessary.

It is not essential that there be misappropriation. If there is misappropriation, he would be liable also for malversation under Art. 217.

Art. 219. ***Failure of a responsible public officer to render accounts before leaving the country.*** **— Any public officer who unlawfully leaves or attempts to leave the Philippine Islands without securing a certificate from the Insular Auditor (now Commission on Audit), showing that his accounts have been finally settled, shall be punished by** *arresto* ***mayor,***[7] **or a fine ranging from 200 to 1,000 pesos, or both.**

Elements:

(a) That the offender is a public officer.

(b) That he must be an accountable officer for public funds or property.

(c) That he must have *unlawfully* left (or be on the point of leaving) the Philippines without securing from the Commission on Audit a certificate showing that his accounts have been finally settled.

The act of leaving the country must be unauthorized or not permitted by law.

This article begins with the phrase "any public officer who *unlawfully* leaves," meaning that the act of leaving the Philippines is not authorized or permitted by law.

[7] See Appendix "A," Table of Penalties, No. 1.

Art. 220. ***Illegal use of public funds or property.*** — Any public officer who shall apply any public funds or property under his administration to any public use other than that for which such funds or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period[8] or a fine ranging from one-half to the total value of the sum misapplied, if by reason of such misapplication, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.[9]

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied.

Elements:

1. That the offender is a public officer.
2. That there is public fund or property under his administration.
3. That such public fund or property has been appropriated by law or ordinance.
4. That he applies the same to a *public* use other than that for which such fund or property has been appropriated by law or ordinance.

There is no technical malversation if there is no law or ordinance appropriating public funds or property for a particular purpose.

The Court has unequivocably ruled in Parungao vs. Sandiganbayan G.R. No. 96025, May 15,1991 that in the absence of a law or ordinance appropriating the public fund allegedly technically malversed (in that case, the absence of any law or ordinance appropriating the CRBI fund for the concreting of Barangay Jalung Road), the use thereof for another public purpose (there, for the payment of wages of laborers working on projects other than the Barangay Jalung Road) will not make the accused guilty of

[8]See Appendix "A," Table of Penalties, No. 11.
[9]See Appendix "A," Table of Penalties, No. 40.

violation of Article 220 of the Revised Penal Code. (Abdulla vs. People, G.R. No. 150129, April 6, 2005)

The public funds or property must be appropriated by law or ordinance for a particular purpose.

The resolution of the authorities of the Mindanao Agricultural college, a public entity, that the amounts paid by the students, to answer for the payment of the instruments or equipment broken by them, should be later refunded, nowhere implied that the repayment was to be made precisely out of the money received, and as the refund could be made out of any available funds of the college, there was no appropriation for a particular response that was violated by the accused. (People vs. Montemayor, *et al.*, G.R. No. L-17449, Aug. 30, 1962)

Can the accused be held liable for malversation under Art. 217, if the funds applied to a public use are not appropriated by law or ordinance?

Yes. That is appropriating public funds under Art. 217, because he disposed of the same without right.

Example of illegal use of public funds.

When the school teachers and other municipal officers were unable to receive their salaries because the treasurer applied the funds, *appropriated from the payment of said* salaries, to another public use, there is detriment and hindrance to the public service. (U.S. vs. Ejercito, 6 Phil. 80)

Illegal use of public funds or property distinguished from malversation under Art. 217.

(1) The offenders are accountable public officers in both crimes.

(2) The offender in illegal use of public funds or property does not derive any personal gain or profit; in malversation, the offender in certain cases profits from the proceeds of the crime.

(3) In illegal use, the public fund or property is applied to another *public use;* in malversation, the public fund or property is applied to the personal use and benefit of the offender or of another person.

Technical malversation is not included in nor does it necessarily include the crime of malversation of public funds.

A comparison of Art. 217 and Art. 220 reveals that their elements are entirely distinct and different from the other. In malversation of public funds, the offender misappropriates public funds for his own personal

use or allows any other person to tale such public funds for the latter's personal use. In technical malversation, the public officer applies public funds under his administration not for his or another's personal use, but to a public use other than that for which the fund was appropriated by law or ordinance. Technical malversation is, therefore, not included in nor does it necessarily include the crime of malversation of public funds charged in the information. Since the acts constituting the crime of technical malversation were not alleged in the information, and since technical malversation does not include, or is not necessarily included in the crime of malversation of public funds, he cannot resultantly be convicted of technical malversation. (Parungao vs. Sandiganbayan, *et al.*, G.R. No. 96025, May 15, 1991)

Art. 221. ***Failure to make delivery of public funds or property.*** — Any public officer under obligation to make payment from Government funds in his possession, who shall fail to make such payment, shall be punished by *arresto mayor*[10] and a fine of from 5 to 25 per cent of the sum which he failed to pay.

This provision shall apply to any public officer who, being ordered by competent authority to deliver any property in his custody or under his administration, shall refuse to make such delivery.

The fine shall be graduated in such case by the value of the thing, provided that it shall not be less than 50 pesos.

Acts punishable under Art. 221.

1. By *failing to make payment* by a public officer who is under obligation to make such payment from Government funds in his possession.
2. By *refusing to make delivery* by a public officer who has been ordered by competent authority to deliver any *property* in his custody or under his administration.

Elements of failure to make payment.

a. That the public officer *has Government funds in his possession.*

[10] See Appendix "A," Table of Penalties, No. 1.

b. That he is *under obligation* to make payment from such *funds.*

c. That he fails to make the payment *maliciously.*

Refusal to make delivery of property must be malicious.

Under No. 2 (refusal to make delivery of property), the refusal must be malicious also. Thus, a stenographer of the provincial board who retains in his possession the stenographic notes taken by him for the purpose of transcribing the same does not commit a violation of this article. Moreover, the prosecution did not prove damage to public interest. (People vs. Jubila, C.A., 38 O.G. 1796)

Art. 222. ***Officers included in the preceding provisions.*** **— The provisions of this chapter shall apply to private individuals who in any capacity whatever, have charge of any insular (now national), provincial, or municipal funds, revenues, or property or to any administrator or depository of funds or property attached, seized, or deposited by public authority, even if such property belongs to a private individual.**

Private individuals who may be liable under Arts. 217 to 221.

1. *Private individuals* who, *in any capacity whatever,* have charge of any national, provincial or municipal funds, revenue, or property.
2. Administrator or depository of funds or property, *attached, seized or deposited by public authority,* even if such property belongs to a private individual.

Purpose of Art. 222.

The purpose of Article 222 of the Revised Penal Code is to extend the provisions of the Code on malversation to private individuals. (People vs. Escalante, C.A., 49 O.G. 4397)

Private individual liable for malversation.

U.S. vs. Rastrollo
(1 Phil. 22)

Facts: In civil proceedings to obtain a preventive attachment to secure a debt contracted by accused Rastrollo, then a defendant, 1121 ft. of hose, among other properties belonging to said Rastrollo, was attached. The attached property remained in the possession of Rastrollo who, with the consent of the attorney for the plaintiff, sold the same to the Manila Fire Department. Rastrollo failed to deliver the proceeds of the sale to the attorney for the plaintiff immediately after selling the hose, and deposited the proceeds of the sale in court after four (4) months following the day the complaint was filed against him for embezzlement. *(estafa)*

Held: If the acts with which the accused is charged constitute a crime whatever, it would be that of malversation of property attached by judicial order. The act could not be regarded as constituting estafa, because the property alleged to have been misapplied was not the subject of a mere private bailment but of a judicial deposit. This gives the depository a character equivalent to that of a public official, and breach of his obligation is similar to the violation of the obligations imposed by public office.

Sheriffs and receivers fall under the term "administrator."

The words "administrator" and "depository" include the *sheriffs* and *receivers.* Thus, if they misappropriate money or property under their custody, they are liable for malversation.

Judicial administrator not covered by this article.

The word "administrator" here used does not include judicial administrator appointed to administer the estate of a deceased person, because he is not in charge of any property *attached, impounded or placed in deposit by public authority.*

Conversion of effects in his trust makes him liable for estafa.

Private property is included, provided it is (1) attached, (2) seized, or (3) deposited by public authority.

The expression, "even if such property belongs to a private individual," is a sweeping and all embracing statement so as to include a case where private funds or property are involved, as long as such funds or property are placed in the custody of accountable public officers. (People vs. De la Serna, C.A., 40 O.G., Supp. 12, 159)

Chapter Five

INFIDELITY OF PUBLIC OFFICERS

What are the crimes classified under infidelity of public officers?

They are:

1. Infidelity in the custody of prisoners. (Arts. 223 and 224)
2. Infidelity in the custody of documents. (Arts. 226 to 228)
3. Revelation of secrets. (Arts. 229 and 230)

Section One. — Infidelity in the custody of prisoners

What are the crimes under infidelity in the custody of prisoners?

They are:

1. Conniving with or consenting to evasion. (Art. 223)
2. Evasion through negligence. (Art. 224)
3. Escape of prisoner under the custody of a person not a public officer. (Art. 225)

Art. 223. ***Conniving with or consenting to evasion.*** **— Any public officer who shall consent to the escape of a prisoner in his custody or charge, shall be punished:**

1. By *prision correccional* in its medium and maximum periods[1] and temporary special disqualification in its maximum period to perpetual special disqualification,[2] if the fugitive shall have been sentenced by final judgment to any penalty.

[1]See Appendix "A," Table of Penalties, No. 15.
[2]See Appendix "A," Table of Penalties, No. 43.

2. By *prision correccional* in its minimum **period**[3] and temporary special **disqualification,**[4] in case the fugitive shall not have been finally convicted but only held as a detention prisoner for any crime or violation of law or municipal ordinance.

Elements:

1. That the offender is a public officer.
2. That he had in his custody or charge, a prisoner, either detention prisoner or prisoner by final judgment.
3. That such prisoner escaped from his custody.
4. That he was in *connivance* with the prisoner in the latter's escape. (U.S. vs. Bandino, 29 Phil. 459)

Act constituting the crime.

Art. 223 punishes any public officer who *shall consent to* the *escape* of a prisoner in his custody or charge. *Connivance* with the prisoner (agreement between the prisoner and the public officer) in his escape is an *indispensable element* of the offense. (U.S. vs. Bandino, 29 Phil. 459)

A policeman who allowed a prisoner under his guard to go and buy some cigarettes at a nearby store, thereby making possible the escape of the prisoner, is not in connivance with the latter, the policeman not knowing that he would escape.

Classes of prisoners involved.

a. If the fugitive has been sentenced by *final judgment* to any penalty.
b. If the fugitive is held only as *detention prisoner* for any crime or violation of law or municipal ordinance.

A detention prisoner is a person in legal custody, arrested for, and charged with, some crime or public offense.

Thus, where a driver of a truck, driving without license, met an accident and was taken to the hospital and, while being guarded by a policeman, he

[3]See Appendix "A," Table of Penalties, No. 11.
[4]See Appendix "A," Table of Penalties, No. 1.

escaped, the policeman is not liable for infidelity in the custody of prisoner, because the driver who was *not actually arrested* was not a detention prisoner. The information against the driver for driving without license was filed in the Baguio municipal court two days *after* his escape. (People vs. Liong, C.A., 47 O.G. 1321)

Release of detention prisoner who could not be delivered to the judicial authority within the time fixed by law, is not infidelity in the custody of prisoner.

Thus, where the chief of police released the detention prisoners, because he could not file a complaint against them within the time fixed in Art. 125, due to the absence of the justice of the peace, he is not guilty of infidelity in the custody of prisoners. (People vs. Lancanan, 95 Phil. 375)

Leniency or laxity is not infidelity.

During his detention, the prisoner was allowed to eat in a restaurant near the municipal building. During the town *fiesta,* the municipal president acceded to the prisoner's request for permission to eat better meals in his house. On all these occasions, the prisoner was duly guarded.

Held: This is only leniency or laxity in the performance of duty, not in excess of his duties. (People vs. Evangelista, C.A., 38 O.G. 158)

Relaxation of imprisonment is considered infidelity.

There is *real* and *actual evasion of service of a sentence* when the custodian *permits the prisoner to obtain a relaxation of his imprisonment* and to escape the punishment of being deprived of his liberty, thus making the penalty ineffectual, although the convict *may not have fled.* (U.S. vs. Bandino, 29 Phil. 459)

The offense defined in Art. 223 includes a case where the guard allowed the prisoner, serving a 6-day sentence in the municipal jail, to sleep in his house and eat there because the municipality had no outlay for the food of prisoners. (See People vs. Revilla, C.A., 37 O.G. 1896)

The mayor is guilty under Art. 223, if he utilized the prisoner's services for domestic chores in his house, including that of working as a cook. (See People vs. Evangelista, C.A., 38 O.G. 158)

Infidelity in the Custody of Detained Persons under RA No. 9372.

Any public officer who has direct custody of a detained person or under the provisions of RA No. 9372 and who by deliberate act, misconduct, or inexcusable negligence causes or allows the escape of such detained person

shall be guilty of an offense and shall suffer the penalty of (a) 12 years and 1 day to 20 years of imprisonment, if the detained person has already been convicted and sentenced in a final judgment of a competent court; and (b) 6 years and 1 day to 12 years imprisonment, if the detained person has not been convicted and sentenced in a final judgment of a competent Court. (Sec. 44)

Art. 224. ***Evasion through negligence.*** — If the evasion of the prisoner shall have taken place through the negligence of the officer charged with the conveyance or custody of the escaping prisoner, said officer shall suffer the penalties of *arresto* ***mayor*** in its maximum period to *prision correccional* in its minimum **period**[5] and temporary special **disqualification.**[6]

Elements:

1. That the offender is a *public officer.*
2. That he is charged with the *conveyance or custody* of a prisoner, either *detention prisoner* or *prisoner* by *final judgment.*
3. That such prisoner escapes through his negligence.

Illustration of absence of 2nd element:

C was detailed as prison guard from 9:00 to 11:00 in the evening. S was to succeed C from 11:00 of the same evening until 1:00 the following morning. When the time came for S to take over his duty at 11:00, he was sleeping; so *C* woke him up to deliver the post to him. S did not pay attention, refused to be bothered and continued to sleep. A prisoner escaped while C was the one in the guard post. Is S liable? No, the custody of the prisoner was *not yet transferred* to him by *C* when the evasion took place. (People vs. Silvosa, CA-G.R. No. 12736-R, April 30, 1955)

Illustration of absence of 3rd element:

A policeman was on guard duty. He unlocked the door of the jail to let a detention prisoner go out to clean the premises of the police headquarters.

[5]See Appendix "A," Table of Penalties, No. 8.
[6]See Appendix "A," Table of Penalties, No. 40.

The prisoner went to a nearby faucet to wash the rags. Upon his third trip to the faucet, he walked behind the police headquarters, climbed over the wall and escaped. Is the policeman liable? No, the policeman was not negligent. Not every little mistake or distraction of a guard leading to prisoner's escape is negligence under Art. 224. (People vs. Solis, C.A., 43 O.G. 580)

Also, a policeman who was to escort a detention prisoner and left his charge to the patron of the boat to get certain papers, but the boat left with the prisoner who later escaped, is not liable under Art. 224. (People vs. Flosa, C.A., 47 O.G. 2452)

"If the evasion of the prisoner shall have taken place."

The opening sentence of Art. 224 states "If the evasion of the *prisoner* shall have taken place." Under Art. 157, defining and penalizing evasion of service of sentence, the prisoner must be a convict by final judgment.

Is the detention prisoner included in the word "prisoner" in Art. 224?

Yes. In the cases of *People vs. Solis, supra,* and *People vs. Flosa, supra,* the persons who escaped were merely detention prisoners.

What is punished in evasion thru negligence is such a definite laxity as all but amounts to deliberate non-performance of duty on the part of the guard.

Not every negligence or distraction of a guard is penalized; it is only that *positive carelessness* that is short of deliberate non-performance of his duties as guard that is the *gravamen* of the crime of infidelity under Art. 224. (People vs. Reyes, *et al.*, C.A., 59 O.G. 6664)

People vs. Nava
(C.A., 36 O.G. 316)

Facts: A policeman permitted a prisoner under his guard to answer a call of nature in a hidden shed outside of the building. The policeman remained near the prisoner by the door. The prisoner escaped through the back of the bath which was in a tumbledown condition.

Held: Not every little mistake or distraction of a guard leading to prisoner's taking advantage of a dilapidated condition of the building he finds in, is negligence under Art. 224. This *neglect* may be dealt with *administratively only.*

Note: But if the guard left the toilet, where a prisoner was answering a call of nature, and went to the front door of the municipal building where he stayed for about five minutes, when the prisoner escaped, the guard is liable for infidelity in the custody of prisoner through negligence. As a

guard, his duty was to see that the prisoner was safely returned to the jail and not to be in any other place. (People vs. Gutierrez, Vol. 8, Appellate Court Reports, p. 989)

Examples of infidelity thru negligence:

1. A policeman who, assigned to guard a prisoner, *falls asleep,* with the result that the prisoner escapes, is guilty of negligence in the custody of a prisoner. (People vs. Guiab, G.R. No. 39631, May 6, 1934)
2. The guard in permitting the prisoner, who later escaped, to go to the nursery to gather *gabi,* considering that the place was grassy and tall *talahib* was growing therein, was liable for infidelity in the custody of prisoners thru *negligence* because the guard *must have seen immediately that it was as it had been a choice place for any prisoner* who may want to escape. (People vs. Lagata, 83 Phil. 159)
3. The accused contended that his order to the prisoner to keep close to him while he was answering the telephone call was sufficient precaution under the circumstances. *Held:* Untenable. The adequate precaution which should have been taken by him was to lock up the prisoner before answering the telephone call. (Remocal vs. People, 71 Phil. 429)

There is only one penalty in Art. 224.

If the prisoner escapes through the negligence of the public officer, the latter suffers the same penalty regardless of whether the prisoner is a convict or merely a detention prisoner.

The fact that the public officer recaptured the prisoner who had escaped from his custody does not afford complete exculpation.

The circumstance that the appellant by himself and without help from other peace officers immediately went in pursuit of the escapee and did not rest until he recaptured him three days later is not such a circumstance as to afford complete exculpation. (People vs. Quisel, C.A., 52 O.G. 6975)

Liability of escaping prisoner:

1. If the fugitive is serving sentence by reason of final judgment, he is liable for evasion of the service of the sentence under Art. 157.
2. If the fugitive is only a detention prisoner, he does not incur criminal liability.

ESCAPE OF PRISONER UNDER THE CUSTODY OF PRIVATE PERSON

Art. 225. ***Escape of prisoner under the custody of a person not a public officer.*** **— Any private person to whom the conveyance or custody of a prisoner or person under arrest shall have been confided, who shall commit any of the offenses mentioned in the two preceding articles, shall suffer the penalty next lower in degree than that prescribed for the public officer.**

Elements:

1. That the offender is a *private person.*
2. That the conveyance or custody of a *prisoner or person under arrest* is confided to him.
3. That the prisoner or person under arrest escapes.
4. That the offender *consents* to the escape of the prisoner or person under arrest, or that the escape takes place *through his negligence.*

Escape of person under arrest while in the custody of private individual.

While in infidelity in the custody of prisoners committed by public officers (Arts. 223 and 224) the Code speaks of "prisoner," in the escape of prisoner under the custody of a person not a public officer (Art. 225), the Code mentions also "person under arrest" whose conveyance or custody must be confided to the offender.

Art. 225 is not applicable if a private person was the one who made the arrest and he consented to the escape of the person he arrested.

The penalty for a private person liable under Art. 225 is only imprisonment one degree lower than that prescribed for the public officer in Art. 223 or Art. 224.

There is no penalty "next lower in degree than" *perpetual* or *temporary special disqualification,* prescribed for public officer, in Scale No. 2 in Art. 71.

Section Two. — Infidelity in the custody of documents

What are the crimes under infidelity in the custody of documents?

They are:

1. Removal, concealment or destruction of documents. (Art. 226)
2. Officer breaking seal. (Art. 227)
3. Opening of closed documents. (Art. 228)

Art. 226. ***Removal, concealment or destruction of documents.*** — Any public officer who shall remove, destroy, or conceal documents or papers officially entrusted to him, shall suffer:

1. The penalty of *prision mayor*[7] and a fine not exceeding 1,000 pesos, whenever serious damage shall have been caused thereby to a third party or to the public interest.

2. The penalty of *prision correccional* in its minimum and medium period[8] and a fine not exceeding 1,000 pesos, whenever the damage caused to a third party or to the public interests shall not have been serious.

In either case, the additional penalty of temporary special disqualification in its maximum period to perpetual special disqualification[9] shall be imposed.

Elements:

1. That the offender be a *public officer.*
2. That he *abstracts, destroys or conceals* documents or papers.
3. That the said documents or papers should have been *entrusted* to such public officer *by reason of his office.*
4. That damage, whether serious or not, to a third party or to the public interest should have been caused.

[7]See Appendix "A," Table of Penalties, No. 19.
[8]See Appendix "A," Table of Penalties, No. 14.
[9]See Appendix "A," Table of Penalties, No. 43.

If any of these circumstances be not present, the crime disappears, or rather, does not arise. (Groizard, Penal Code of 1870, Vol. IV, 146, edition of 1891, cited in People vs. Lineses, C.A., 40 O.G., Supp. 14, 4773)

The public officer must be officially entrusted with the documents or papers.

Only public officers *who have been officially entrusted* with the documents or papers can be held liable under Art. 226.

Thus, the stenographer who removes or destroys the record of a case kept by the clerk of court is not guilty of a violation of Art. 226, because the stenographer is not officially entrusted with the record.

The public officer who is officially entrusted with the record is the clerk of court.

The document must be complete and one by which a right could be established or an obligation could be extinguished.

Thus, the municipal president who, in a fit of anger, *mutilated* the payroll of the town, is not guilty of infidelity in the custody of document by destroying it, it appearing that said payroll had not yet been approved and signed by him, as required by law. (People vs. Camacho, 44 Phil. 484)

Books, periodicals, pamphlets, etc., are not documents.

A package containing a book, sent through mail by C.O.D. system, is not a *document,* so that a postmaster who removes the same does not violate this provision. A document is a written instrument by which something is proven or made of record. (People vs. Agnis, 47 Phil. 945)

"Or papers officially entrusted to him."

Under this article, not only documents but also *papers* may be involved. The word "papers" includes checks, promissory notes, and paper money. (Webster's Dictionary)

Thus, a postmaster to whom a *letter* containing paper money was delivered to be forwarded by registered mail, opened said letter and abstracted *money orders,* or the *money bills* enclosed therein, was held guilty of faithlessness in the custody of papers. (U.S. vs. Gorospe, 31 Phil. 285; U.S. vs. Filoteo, 14 Phil. 73; U.S. vs. De Toro, 15 Phil. 181; U.S. vs. Misola, 14 Phil. 142; U.S. vs. Marino, 10 Phil. 652)

Post office official who retained the mail without forwarding the letters to their destination is guilty of infidelity in the custody of papers.

The simple act of retaining the mail without forwarding the letters to their destination, even though without opening them or taking the moneys they contained, already constitutes infidelity on the part of the post office official. (U.S. vs. Marino, 10 Phil. 652; U.S. vs. Peña, 12 Phil. 362)

Infidelity in the custody of document, distinguished from malversation and falsification.

When the postmaster received *money orders*, signed the signatures of the payees thereon, collected and appropriated the respective amounts thereof, the postmaster is guilty of malversation and falsification, the latter crime having been committed to conceal the malversation. (People vs. Villanueva, 58 Phil. 672; People vs. Garalde, 52 Phil. 1000) But when the postmaster receives *letters* or *envelopes* containing money orders *for transmission,* and the money orders are not sent to the addressees, the postmaster cashing the same for his own benefit, he is guilty of infidelity in the custody of papers.

Reason why taking contents of mail by postmaster is infidelity in the custody of documents or papers.

In addition to the actual injury done to the owner, the uncertainty as to the safety of such letters arising from thefts of their contents amounts to a real and positive injury to the postal service and, hence, to the public interests. (U.S. vs. Marino, 10 Phil. 652)

Liability of person other than an officer or employee of the Bureau of Posts.

Sec. 2756 of the Revised Administrative Code punishes the *unlawful opening or detention of mail matter* by any person other than an officer or employee of the Bureau of Posts, by a fine of not more than P1,000 or by imprisonment for not more than one year, or both.

If the culprit is an officer or employee of the Bureau of Posts, Art. 226 is applicable. (U.S. vs. Santos, 37 Phil. 453)

Money bills received as exhibits in court are papers.

A deputy clerk of court who, having received in his official capacity several notes or paper money as exhibits in a case, afterward took away the

said money is guilty of this crime, because the money bills are papers used as exhibits. (People vs. Abraham, G.R. No. 17628, Feb. 17, 1922)

Acts punishable in infidelity in the custody of documents:

1. By removing, or
2. By destroying, or
3. By concealing, *documents* or *papers* officially entrusted to the offending public officer.

It is not necessary that the act of removal must be coupled with proof of intention to conceal. The word "or" is a disassociation and independence of one thing from each of the other things mentioned. While in the interpretation of statutes, "or" may be read "and" and vice versa, it is so only when the context so requires. (Kataniag vs. People, 74 Phil. 45)

Accordingly, *removal, destruction,* and *concealment* must be viewed as distinct modes of committing the offense.

The removal must be for illicit purpose.

To warrant a finding of guilt for the crime of infidelity in the custody of documents, the act of removal, as a mode of committing the offense, should be coupled with criminal intent or illicit purpose. (Manzanaris vs. People, 127 SCRA 201)

Thus, where the act of removal is actuated with lawful or commendable motives, as when documents are removed from their usual place to secure them from imminent danger of loss or destruction, there would be no crime committed.

The removal is for an illicit purpose when the intention of the offender is —

(a) to tamper with it, or

(b) to profit by it, or

(c) to commit an act constituting *a breach of trust* in the official care thereof. (Kataniag vs. People, *supra)*

When deemed consummated.

The crime of *removal* of public document in breach of official trust is *consummated upon its removal* or secreting away from its *usual place* in the office and after the offender had gone out and locked the door, it being immaterial whether he has or has not actually accomplished the illicit purpose for which he removed said document. (Kataniag vs. People, *supra)*

Infidelity in the custody of document by destroying or concealing it, does not require proof of illicit purpose.

The reason for this opinion is that while in the removal of documents, the accused may have a lawful or commendable motive, in destroying or concealing them, the offender could not have a good motive.

Delivering document to the wrong party is infidelity in the custody thereof.

Thus, an emergency helper on a daily wage basis in the Bureau of Treasury, who, being entrusted with the delivery of official papers to the different sections and divisions of the bureau, delivered a backpay certificate to a wrong party, instead of returning it to the releasing clerk after it was signed by the Treasurer, with the result that the owner thereof could not make withdrawal on his backpay certificate, is guilty of infidelity in the custody of document. He betrayed public faith and trust in his custody of public documents. (People vs. Irineo, C.A., 53 O.G. 2827)

There must be damage, great or small.

The *fourth element exists* —

1. Whenever *serious* damage is caused thereby to a third party or to the public interest.
2. Whenever the damage caused to a third party or to the public interest is *not serious*.

Damage in this article may consist in mere *alarm* to the public or in the *alienation of its confidence* in any branch of the government service. (Kataniag vs. People, *supra)*

Damage caused to a third party or to the public interest.

In a case where the accused, employee of the Bureau of Posts, *returned the money bills which he had stolen* after opening the letters, to avoid prosecution, it was held that although there was no damage caused to third parties (owners of the letters), there was damage to the public interest caused by the accused. He was convicted of infidelity in the custody of documents. (U.S. vs. Marino, 10 Phil. 652)

Illustration of damage to the public interest.

A sorter and filer of money orders cashed in the office, who tore a money order which had been falsified is guilty of infidelity in the custody of a document, for by the destruction of that money order, the prosecution

of the party who falsified it was rendered difficult, which indisputably is a damage to the public interest. (People vs. Paloma, C.A., 40 O.G. 2087)

Art. 227. *Officer breaking seal.* — Any public officer charged with the custody of papers or property sealed by proper authority, who shall break the seals or permit them to be broken, shall suffer the penalties of *prision correccional* in its minimum and medium **periods,**[10] temporary special **disqualification,**[11] and a fine not exceeding 2,000 pesos.

Elements:

1. That the offender is a *public officer.*
2. That he is *charged with the custody* of papers or property.
3. That these papers or property are *sealed by proper authority.*
4. That he *breaks the seals* or *permits* them to be broken.

Crime is committed by breaking or permitting seals to be broken.

It is the breaking of seals, not the opening of a closed envelope, which is punished under this article.

The opening of public papers by breaking seals should be done only by the proper authority. Hence, the public officer liable under this article must be the one who breaks the seals without authority to do so.

Damage or intent to cause damage is not necessary.

Where documents are sealed by competent authorities, it is evident that the purpose thereof is to insure their *preservation.*

It is sufficient that the seal is broken, even if the contents are not tampered with. Art. 227 does not require that there be damage caused or that there be intent to cause damage.

[10]See Appendix "A," Table of Penalties, No. 14.
[11]See Appendix "A," Table of Penalties, No. 40.

Art. 228. *Opening of closed documents.* — Any public officer not included in the provisions of the next preceding article who, without proper authority, shall open or shall permit to be opened any closed papers, documents or objects entrusted to his custody, shall suffer the penalties of *arresto mayor*,[12] temporary special disqualification[13] and a fine not exceeding 2,000 pesos.

Elements:

1. That the offender is a *public officer.*
2. That any closed papers, documents, or objects are *entrusted to his custody.*
3. That he *opens* or *permits* to be opened said closed papers, documents or objects.
4. That he *does not have* proper authority.

Meaning of the word "custody."

The word "custody" means a guarding or keeping safe; care.

(See People vs. Irineo, C.A., 53 O.G. 2827. Art. 226 uses the phrase "officially entrusted to him," not to his custody.)

Closed documents must be entrusted to the custody of the accused by reason of his office.

Three envelopes containing election returns and addressed to the provincial treasurer were handed by the P.C. sergeant to the municipal treasurer who put thereon sealing wax. The municipal treasurer was accused of opening the envelopes, taking out the election returns contained therein and later returning them inside their respective envelopes.

Held: The accused did not actually become the custodian of three envelopes turned over to him by the P.C. sergeant and redelivered by the accused to said sergeant after having applied sealing wax to the same. The envelopes were not addressed to the accused. They were addressed to the Provincial Treasurer and were on the desk of the accused just for the period of time necessary to put thereon the sealing wax. Under Art. 228, the closed

[12]See Appendix "A," Table of Penalties, No. 1.
[13]See Appendix "A," Table of Penalties, No. 40.

documents must be entrusted to (the custody of) the accused by reason of his office. (People vs. Lineses, C.A., 40 O.G., Supp. 14, 4773)

The act should not fall under Art. 227.

What would be the offense committed if, in opening closed papers or object, the public officer broke the seal?

The offense would be breaking seal, and not the crime of opening a closed document, because the offender must be a public officer "not included in the provisions of the next preceding article."

Damage or intent to cause damage is not an element of the offense.

Art. 228 does not require that there be damage or intent to cause damage.

Section Three. — Revelation of secrets

What are the crimes under revelation of secrets by public officers?

They are:

1. Revelation of secrets by an officer. (Art. 229)
2. Public officer revealing secrets of private individual. (Art. 230)

Art. 229. ***Revelation of secrets by an officer.*** — **Any public officer who shall reveal any secret known to him by reason of his official capacity, or shall wrongfully deliver papers or copies of papers of which he may have charge and which should not be published, shall suffer the penalties of *prision correccional* in its medium and maximum periods,**[14] **perpetual special disqualification, and a fine not exceeding 2,000 pesos if the revelation of such secrets or the delivery of such papers shall have caused serious damage to the public interest; otherwise, the penalties of *prision correccional* in**

[14] See Appendix "A," Table of Penalties, No. 15.

its minimum **period,**[15] temporary special **disqualification,**[16] and a fine not exceeding 500 pesos shall be imposed.

Acts punishable as revelation of secrets by an officer.

1. By revealing any *secrets* known to the offending public officer by *reason* of his *official capacity*.
2. By delivering wrongfully *papers* or copies of papers of which he may *have charge* and which should not be *published.*

Elements of No. 1:

a. That the offender is a *public officer.*

b. That he knows of a secret by *reason of his official capacity.*

c. That he reveals such secret *without authority* or *justifiable reasons.*

d. That *damage,* great or small, be caused to the *public* interest.

Secrets must affect public interests.

If the secret revealed does not affect public interest, the revelation would constitute *no crime* at all. (Albert)

Espionage is not contemplated in this article.

This article does not include the revelation of secrets of the State to a belligerent nation, because such acts are already defined and punished as espionage in Art. 117 or Commonwealth Act No. 616.

This article punishes *minor official betrayals, infidelities of little consequence,* affecting usually the administration of justice, executive or official duties, or the general interest of the public order. (Albert)

Secrets of private persons not included.

The secrets here are not secrets of private individuals.

Elements of No. 2.

1. That the offender is a *public officer.*

[15]See Appendix "A," Table of Penalties, No. 11.
[16]See Appendix "A," Table of Penalties, No. 40.

2. That he has *charge* of papers.
3. That those papers should not be published.
4. That he delivers those papers or copies thereof to a third person.
5. That the delivery is wrongful.
6. That damage be caused to public interest.

The offender must have charge of papers or copies of paper.

The word "charge" means control or custody. It seems that if the public officer is merely entrusted with the papers but not with the custody of the papers, he is not liable under this provision.

Distinguished from infidelity in the custody of document or papers by removing the same.

If the papers contain *secrets* and therefore should not be published, and the public officer having charge thereof removes and delivers them wrongfully to a third person, the crime is revelation of secrets by a public officer.

If the papers do not contain secrets, their removal for an illicit purpose is infidelity in the custody of documents.

Damage is an element of the offenses defined in Art. 229.

This article provides a higher penalty, if the act "shall have caused serious damage to the *public interest; otherwise,"* a lesser penalty is imposed. The use of the word "serious" modifying "damage" indicates that the lesser penalty refers to causing damage which is not serious.

It would seem that *material damage* to third person is *not* necessary.

Examples of secrets revealed by public officer:

(a) Peace officers who published instructions received by them for the arrest of the culprit, thereby enabling him to escape and resulting in the failure of the law and authority.
(b) Provincial fiscal who revealed the records of all investigation conducted by him to the defendant who thereby learned of the evidence of the prosecution.

Art. 230. ***Public officer revealing secrets of private individual.*** — Any public officer to whom the secrets of any private individual shall become known by reason of his office who shall reveal such secrets, shall suffer the penalties of *arresto mayor*[17] and a fine not exceeding 1,000 pesos.

Elements:

1. That the offender is a *public officer.*
2. That he knows of the *secrets of a private individual by reason of his office.*
3. That he reveals such secrets *without authority* or *justifiable reason.*

"Shall reveal such secrets."

Revelation to one person is sufficient, for *public* revelation is *not* required.

When the offender is an attorney-at-law or a solicitor, Art. 230 is not applicable.

If the offender is an attorney-at-law or a solicitor and he reveals the secrets of his client learned by him in his professional capacity, he is not liable under this article, but under Art. 209.

Damage to private individuals not necessary.

It is *not necessary* that *damage* is suffered by the private individual.

The reason for this provision is to *uphold* faith and *trust* in public service.

[17] See Appendix "A," Table of Penalties No. 1.

Chapter Six

OTHER OFFENSES OR IRREGULARITIES BY PUBLIC OFFICERS

Section One. — Disobedience, refusal of assistance, and maltreatment of prisoners

Art. 231. *Open disobedience.* — Any judicial or executive officer who shall openly refuse to execute the judgment, decision or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities, shall suffer the penalties of *arresto mayor* in its medium period to *prision correccional* in its minimum period,[1] temporary special disqualification in its maximum period,[2] and a fine not exceeding 1,000 pesos.

Elements:

1. That the offender is a *judicial* or *executive officer.*
2. That there is a judgment, decision or order of a superior authority.
3. That such judgment, decision or order was made within the scope of the jurisdiction of the superior authority and issued with all the legal formalities.
4. That the offender without any legal justification openly refuses to execute the said judgment, decision or order, which he is duty bound to obey. (2 Viada 575)

Act constituting the crime.

Open disobedience is committed by any *judicial or executive* officer who shall *openly refuse* to *execute* the judgment, decision, or order of any superior authority.

[1]See Appendix "A," Table of Penalties, No. 7.
[2]See Appendix "A," Table of Penalties, No. 42.

Examples of open disobedience:

(a) A municipal secretary who openly refuses to deliver to the mayor, after having been repeatedly requested to do so, the keys of the doors of the municipal building and the seal under his custody. (Guevara)

There is in this case an open refusal to obey an *order.*

(b) *Mandamus* by Supreme Court ordering lower court to receive certain evidence. If the lower court openly refuses to obey said judicial order, there is a violation of this article.

Art. 232. ***Disobedience to order of superior officer, when said order was suspended by inferior officer.*** — Any public officer who, having for any reason suspended the execution of the orders of his superiors, shall disobey such superiors after the latter have disapproved the suspension, shall suffer the penalties of ***prision correccional*** in its minimum and medium **periods**[3] and perpetual special disqualification.

Elements:

1. That the offender is a *public officer.*
2. That an order is issued by his superior for execution.
3. That he has for any reason *suspended* the *execution* of such order.
4. That his superior *disapproves* the suspension of the execution of the order.
5. That the offender *disobeys* his superior *despite* the *disapproval* of the suspension.

Reason for the provision.

The law has taken into account that a superior officer may sometimes err, and that orders issued by him may proceed from a mistaken judgment.

For this reason, it entitles a subordinate to suspend in such cases the order issued, to submit his reason to his superior in order that the latter may give them proper weight, if they are entitled to any. So far there is no crime.

[3]See Appendix "A," Table of Penalties, No. 14.

But if the superior disapproves the suspension of his order and reiterates it to his subordinate, the latter must obey it at once and refusal to do so constitutes contempt, for by his resistance and refusal to do so, he undertakes to dictate to his superior. (Albert)

This article does not apply if the order of the superior is illegal.

Thus, if the order of the superior is illegal, the subordinate has a legal right to refuse to execute such order, for under the law, obedience to an order which is illegal is not justified and the subordinate who obeys such order may be held criminally liable. (See Art. 11, par. 6)

Art. 233. *Refusal of assistance.* — The penalties of ***arresto mayor*** in its medium period to ***prision correccional*** in its minimum **period,**[4] perpetual special disqualification and a fine not exceeding 1,000 pesos, shall be imposed upon a public officer **who,** upon demand from competent authority, shall fail to lend his cooperation towards the administration of justice or other public service, if such failure shall result in serious damage to the public interest, or to a third party; otherwise, ***arresto mayor*** in its medium and maximum **periods**[5] and a fine not exceeding 500 pesos shall be imposed.

Elements:

1. That the offender is a *public officer.*
2. That a *competent authority* demands from the offender that he lend his cooperation towards the *administration* of *justice* or other *public service.*
3. That the offender fails to do so *maliciously.*

"Upon demand from competent authority."

There must be a demand from competent authority. Hence, if the chief of police received from a private party a subpoena, issued by a fiscal, with a request to serve it upon a person to be a witness, and the chief of police maliciously refused to do so, the latter is not liable.

[4]See Appendix "A," Table of Penalties, No. 7.
[5]See Appendix "A," Table of Penalties, No. 6.

Example of refusal of assistance.

A chief of police who flatly and insolently refuses to serve summons of a provincial fiscal, after having been duly requested to do so by the latter official, is guilty of a violation of this article. (See People vs. Castro, G.R. No. 19273, March 16, 1923)

Is damage to public interest essential?

Yes, there must be damage to the public interest or to a third party, great or small.

If the failure to lend cooperation results in "serious damage to the public interest or to a third party," the penalty is higher; "otherwise" (meaning if the damage is not serious), the penalty is lower.

Art. 234. ***Refusal to discharge elective office.*** **— The penalty of** ***arresto mayor***[6] **or a fine not exceeding 1,000 pesos, or both, shall be imposed upon any person who, having been elected by popular election to a public office, shall refuse without legal motive to be sworn in or to discharge the duties of said office.**

Elements:

1. That the offender is *elected by* popular election to a public office.
2. That he refuses to be *sworn in* or to *discharge the duties* of said office.
3. That there is *no legal motive* for such refusal to be sworn in or to discharge the duties of said office.

"Shall refuse without legal motive."

The refusal must be without legal motive. If the elected person is underage, or otherwise disqualified, his refusal to be sworn in or to discharge the duties of the office is justified.

[6] See Appendix "A," Table of Penalties, No. 1.

Reason why refusal to discharge elective office is punished.

The reason is that once an individual is elected to an office by the will of the people, the discharge of the duties of said office becomes a matter of duty, not only a right.

Art. 234 not applicable to appointive officer.

Note that this Article penalizes refusal to discharge the duties of an elective office. Hence, refusal to discharge the duties of an appointive office is not covered by this Article.

Art. 235. *Maltreatment of prisoners.* — The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum **period,**[7] in addition to his liability for the physical injuries or damage caused, shall be imposed upon any public officer or employee who shall overdo himself in the correction or handling of a prisoner or detention prisoner under his charge by the imposition of punishments not authorized by the regulations, or by inflicting such punishments in a cruel and humiliating manner.

If the purpose of the maltreatment is to extort a confession, or to obtain some information from the prisoner, the offender shall be punished by *prision mayor* in its minimum **period,**[8] temporary special **disqualification**[9] and a fine not exceeding six thousand (P6,000) pesos, in addition to his liability for the physical injuries or damage caused. *(As amended by E.O. No. 62, Nov. 7, 1986)*

Elements:

1. That the offender is a public officer or employee.
2. That he has *under his charge a prisoner* or *detention* prisoner.
3. That he maltreats such prisoner in either of the following manners:

[7]See Appendix "A," Table of Penalties, No. 7.
[8]See Appendix "A," Table of Penalties, No. 11.
[9]See Appendix "A," Table of Penalties, No. 40.

a. By overdoing himself in the *correction* or *handling* of a prisoner or detention prisoner under his charge either —

(1) by the imposition of punishments *not authorized* by the regulations, or

(2) by inflicting such punishments (those authorized) in a cruel and *humiliating manner;* or

b. By maltreating such prisoner to extort a confession or to obtain some information from the prisoner.

The public officer must have actual charge of the prisoner to hold him liable for maltreatment of prisoner.

The Mayor of the municipality of Tiaong, Quezon, was accused of maltreatment of a prisoner, Moises Escueta, by assaulting, beating and striking the abdomen, face, breast and arms of the latter with an automatic pistol and his fists, for the purpose of extorting confession from him.

It was held that under Art. 235, it is necessary that the maltreated prisoner be under the charge of the officer maltreating him. The prisoners, Moises Escueta and Isidro Capino, according to the information, were simply kept in the Camp of the Philippine Ground Force in the municipality of Tiaong; but it was not alleged therein that they were under the charge of Punzalan as Mayor of Tiaong. Hence, one of the essential elements of the offense under Article 235 was lacking. (Punzalan vs. People, 99 Phil. 259)

The mayor is not liable for maltreatment of prisoner if the latter is in the custody of the police. Art. 235 contemplates *actual* charge of the prisoner, not one which is so merely by legal fiction. (People vs. Javier, C.A., 54 O.G. 6622)

Offended party must be a convict or detention prisoner.

The offended party is either —

(1) a *convict* by final judgment; or

(2) a *detention* prisoner.

Note that Art. 235 mentions "a *prisoner* or *detention prisoner"* under the charge of the public officer who maltreated him.

To be detention prisoner, the person arrested must be placed in jail even for a short while.

A person was suspected of having committed a crime and taken to a cemetery and maltreated there by the policemen. Since he is not yet booked

in the office of the police and placed in jail even for a moment, he is not a *detention prisoner* and, therefore, the policemen may be guilty only of physical injuries. (People vs. Baring, C.A., 37 O.G. 1366)

The maltreatment (1) must relate to the correction or handling of the prisoner, or (2) must be for the purpose of extorting a confession or of obtaining some information from the prisoner.

Thus, if the jailer inflicted physical injuries on the prisoner because of personal grudge against the prisoner, the jailer is liable for physical injuries only. (People vs. Javier, *supra)*

Art. 235 was not applied, because there was no clear evidence that the maltreatment was for the purpose of extorting confession or information. (People vs. Oliva, G.R. L-6033, Sept. 30, 1954)

Offender may also be liable for physical injuries or damage caused.

The offender is also liable for *physical injuries* or damage caused, if any is caused by his maltreating the prisoner. Art. 235 states that the penalty to be imposed upon the offender for maltreatment of prisoners is "in addition to his liability for the physical injuries or damage caused."

In view of this provision, there is no complex crime of maltreatment of prisoners with serious or less serious physical injuries, as defined in Art. 48.

Section Two. — Anticipation, prolongation, and abandonment of the duties and powers of public office

Art. 236. ***Anticipation of duties of a public office.*** **— Any person who shall assume the performance of the duties and powers of any public office or employment without first being sworn in or having given the bond required by law, shall be suspended from such office or employment until he shall have complied with the respective formalities and shall be fined from 200 to 500 pesos.**

Elements:

1. That the offender is *entitled* to hold a public office or employment, either by *election* or *appointment.*
2. That the *law requires* that he should first be *sworn in* and/or should first *give a bond.*
3. That he *assumes* the performance of the duties and powers of such office.
4. That he *has not* taken his oath of office and/or given the bond required by law.

Art. 237. ***Prolonging performance of duties and powers.*** — Any public officer who shall continue to exercise the duties and powers of his office, employment, or commission, beyond the period provided by law, regulations or special provisions applicable to the case, shall suffer the penalties of *prision correccional* in its minimum **period,**[10] special temporary disqualification in its minimum **period**[11] and a fine not exceeding 500 pesos.

Elements:

1. That the offender is holding a public office.
2. That the *period* provided by law, regulations or special provisions for holding such office, has *already expired.*
3. That he *continues* to exercise the duties and powers of such office.

Officers contemplated.

A public officer who has been *suspended, separated,* declared *overaged,* or *dismissed* cannot continue to perform the duties of his office. (Albert)

[10]See Appendix "A," Table of Penalties, No. 11.
[11]See Appendix "A," Table of Penalties, No. 41.

Art. 238. *Abandonment of office or position.*— Any public officer who, before the acceptance of his resignation, shall abandon his office to the detriment of the public service, shall suffer the penalty of *arresto mayor.*[12]

If such office shall have been abandoned in order to evade the discharge of the duties of preventing, prosecuting, or punishing any of the crimes falling within Title One, and Chapter One of Title Three of Book Two of this Code, the offender shall be punished by *prision correccional* in its minimum and medium **periods,**[13] and by *arresto mayor*[14] if the purpose of such abandonment is to evade the duty of preventing, prosecuting, or punishing any other crime.

Elements:

1. That the offender is a public officer.
2. That he *formally resigns* from his position.
3. That his resignation has *not yet been accepted.*
4. That he *abandons* his office to the *detriment* of the *public service.*

There must be a written or formal resignation.

A verbal statement made by the accused to the Collector of Internal Revenue that he was resigning is not the form of resignation contemplated by the set-up of our civil service system. The resignation has to pass to various officials of the offices concerned for appropriate action. Herein accused was an employee of the Bureau of Internal Revenue and he was appointed therein by the department head concerned (Secretary of Finance) upon recommendation of the Collector of Internal Revenue. For this reason, no other official has to approve accused's resignation, but the one who appointed him — a power that is an adjunct to his appointing power. This goes to show that a written or formal resignation is indispensable to a resigning employee. (People vs. Santos, C.A., 55 O.G. 5566)

[12]See Appendix "A," Table of Penalties, No. 1.
[13]See Appendix "A," Table of Penalties, No. 14
[14]See Appendix "A," Table of Penalties, No. 1.

When is the offense qualified?

If the abandonment of the office has for its purpose to evade the discharge of the duties of *preventing, prosecuting* or *punishing* any of the crimes falling within Title One, and Chapter One of Title Three of Book Two of this Code, the penalty is higher. (Art. 238, par. 2)

"Title One, and Chapter One of Title Three of Book Two of this Code" refer to the crimes of (1) treason, (2) conspiracy and proposal to commit treason, (3) *misprision* of treason, (4) espionage, (5) inciting to war or giving motives for reprisal, (6) violation of neutrality, (7) correspondence with hostile country, (8) flight to enemy country, (9) piracy and mutiny, (10) rebellion, *(11) coup d'etat, (12)* conspiracy and proposal to commit *coup d'etat* or rebellion, (13) disloyalty of public officers, (14) inciting to rebellion, (15) sedition, (16) conspiracy to commit sedition, and (17) inciting to sedition.

Abandonment of office (Art. 238), distinguished from negligence and tolerance in prosecution of offenses (Art. 208).

1. Abandonment of office or position is committed by *any* public officer; negligence and tolerance in the prosecution of offenses is committed only by public officers *who have the duty to institute prosecution* for the punishment of violations of the law.
2. In abandonment of office or position, the public officer abandons his office to evade the discharge of his duty; in negligence and tolerance in the prosecution of offenses, the public officer does not abandon his office but he fails to prosecute an offense by dereliction of duty or by malicious tolerance of the commission of offenses.

Section Three. — Usurpation of powers and unlawful appointments

Art. 239. *Usurpatioof legislative powers.* — The penalties of ***prision correccional*** in its minimum **period,**[15] temporary special **disqualification,**[16] and a fine not exceeding 1,000 pesos, shall be imposed upon any public officer who shall encroach upon the powers of the legislative branch of the Government, either by making general rules or regulations

[15]See Appendix "A," Table of Penalties, No. 11.
[16]See Appendix "A," Table of Penalties, No. 40.

beyond the scope of his authority, or by attempting to repeal a law or suspending the execution thereof.

Elements:

1. That the offender is an *executive* or *judicial* officer.
2. That he (a) makes general rules or regulations *beyond* the scope of his authority, or (b) attempts to repeal a law or (c) suspends the execution thereof.

Art. 240. ***Usurpation of executive functions.*** — Any judge who shall assume any power pertaining to the executive authorities, or shall obstruct the latter in the lawful exercise of their powers, shall suffer the penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period.[17]

Elements:

1. That the offender is *a judge.*
2. That he (a) assumes a power pertaining to the executive authorities, or (b) obstructs the executive authorities in the lawful exercise of their powers.

Legislative officers are not liable for usurpation of powers.

Thus, a councilor who assumes a power pertaining to the mayor or obstructs him in the lawful exercise of his power is not liable under Art. 240, because only a judge can commit usurpation of executive functions. The councilor is liable under Art. 177 of the Code, if he assumes the power of the mayor. (See People vs. Hilvano, 99 Phil. 655)

Art. 241. ***Usurpation of judicial functions.*** — The penalty of *arresto mayor* in its medium period to *prision correccional*

[17] See Appendix "A." Table of Penalties. No. 7.

in its minimum **period**[18] shall be imposed upon any officer of the executive branch of the Government who shall assume judicial powers or shall obstruct the execution of any order or decision rendered by any judge within his jurisdiction.

Elements:

1. That the offender is an officer of the executive branch of the Government.
2. That he (a) assumes judicial powers, or (b) obstructs the execution of any order or decision rendered by any judge within his jurisdiction.

Mayor is guilty under this article if he investigates a case while justice of the peace is in the municipality.

But a municipal president who received a complaint signed by the chief of police, and afterwards tried the case, even though the justice of the peace was discharging his office in the municipality is guilty under this article. (People vs. Valdehuesa, G.R. No. 17720, Jan. 21, 1922)

Arts. 239-241 punish interference by officers of one of the three departments of government with functions of officers of another department.

Arts. 239-241 punish interference by the officers of one of the three departments of the government (legislative, executive and judicial) with the functions of the officers of another department. (People vs. Hilvano, 99 Phil. 655)

The purpose is to maintain the separation and independence of the three departments of the government and to keep the three branches within the legitimate confines of their respective jurisdictions and the officers thereof within the scope of their lawful authority. (See Angara vs. Electoral Commission, 63 Phil. 139)

Art. 242. ***Disobeying request for disqualification.*** — Any public officer who, before the question of jurisdiction is decided, shall continue any proceeding after having been

[18]See Appendix "A," Table of Penalties, No. 7.

lawfully required to refrain from so doing, shall be punished by *arresto mayor*[19] and a fine not exceeding 500 pesos.

Elements:

1. That the offender is a public officer.
2. That a proceeding is pending before such public officer.
3. That there is a *question brought* before the *proper authority* regarding his jurisdiction, which is *not yet decided.*
4. That he has been *lawfully required to refrain* from continuing the proceeding.
5. That he *continues* the proceeding.

Example:

The Mayor of Manila suspended a market administrator for alleged irregularity. Then he caused an administrative investigation of the market administrator. The latter filed a petition for prohibition in the Court of First Instance which issued a preliminary writ of injunction pending the resolution of the question of jurisdiction raised by the petitioner. But the Mayor continued the investigation. In this case, the Mayor may be held liable under this article.

The disobedient public officer is liable, even if the jurisdictional question is resolved by the proper authority in his favor. (11 Cuello Calon, Codigo Penal, 10th ed., p. 388)

Art. 243. ***Orders or requests by executive officers to any judicial authority.*** — Any executive officer who shall address any order or suggestion to any judicial authority with respect to any case or business coming within the exclusive jurisdiction of the courts of justice, shall suffer the penalty of *arresto mayor*[20] and a fine not exceeding 500 pesos.

[19] See Appendix "A," Table of Penalties, No. 1.
[20] See Appendix "A," Table of Penalties, No. 1.

Elements:

1. That the offender is an *executive* officer.
2. That he addresses *any order* or *suggestion* to any judicial authority.
3. That the order or suggestion relates to any case or business coming within the *exclusive jurisdiction* of the *courts of justice.*

Purpose of the provision is to maintain the independence of the judiciary.

The judicial branch is intended to be free and secure from executive dictations. Courts cannot, under their duty to their creator, the sovereign power, permit themselves to be subordinated to any person or official to which their creator did not itself subordinate them. (Borromeo vs. Mariano, 41 Phil. 322)

Legislative or judicial officers are not liable under Art. 243.

Thus, a congressman who wrote a letter to a judge, requesting the latter to decide the case pending before him one way or the other, or a judge who made a suggestion to another judge, is not liable under this Article.

Art. 244. ***Unlawful appointments.*** — Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of *arresto* ***mayor***[21] and a fine not exceeding 1,000 pesos.

Elements:

1. That the offender is a public officer.
2. That he *nominates* or *appoints* a person to a public office.
3. That such person lacks the *legal qualifications* therefor.
4. That the offender *knows* that his *nominee* or *appointee lacks the qualifications at the time* he made the nomination or appointment.

[21] See Appendix "A," Table of Penalties, No. 1.

The offense is committed by "nominating" or by "appointing."

"Nominate" is different from "recommend." Recommending, knowing that the recommendee has no qualification, is not a crime.

"Person lacking the legal qualifications therefor."

There must be a law providing for the qualifications of a person to be nominated or appointed to a public office.

Appointments of non-eligibles "continue only for such period *not exceeding three months* as may be necessary to make appointment through certification of eligibles, and in no case shall extend beyond thirty days from receipt by the chief of the bureau or office of the Commissioner's certification of eligibles." (Ferrer vs. Hon. De Leon, etc., 109 Phil. 202, citing Section 682 of the Revised Administrative Code)

Section Four. — Abuses against chastity

Art. 245. ***Abuses against chastity — Penalties.*** **— The penalties of** ***prision correccional*** **in its medium and maximum periods[22] and temporary special disqualification[23] shall be imposed:**

1. Upon any public officer who shall solicit or make immoral or indecent advances to a woman interested in matters pending before such officer for decision, or with respect to which he is required to submit a report to, or consult with a superior officer;

2. Any warden or other public officer directly charged with the care and custody of prisoners or persons under arrest who shall solicit or make immoral or indecent advances to a woman under his custody.

If the person solicited be the wife, daughter, sister, or relative within the same degree by affinity of any person in the custody of such warden or officer, the penalties shall be

[22] See Appendix "A," Table of Penalties, No. 15.
[23] See Appendix "A," Table of Penalties, No. 40.

prision correccional in its minimum and medium periods[24] and temporary special disqualification.

Ways of committing abuses against chastity:

1. By *soliciting* or *making immoral* or *indecent advances* to a woman interested in matters pending before the offending officer *for decision,* or with respect to which he is required to *submit* a *report to* or *consult with a* superior officer.
2. By *soliciting* or *making immoral* or *indecent advances* to a woman under the offender's custody.
3. By *soliciting* or *making immoral* or indecent advances to the *wife, daughter, sister* or *relative* within the same degree by affinity of any person in the custody of the offending warden or officer.

Elements of the offense:

a. That the offender is a public officer.

b. That he solicits or makes *immoral or indecent advances* to a woman.

c. That such woman must be —

(1) interested in matters pending before the offender for decision, or with respect to which he is required to submit a report to or consult with a superior officer; or

(2) under the custody of the offender who is a warden or other public officer *directly charged* with the *care* and *custody* of *prisoners* or *persons under arrest;* or

(3) the wife, daughter, sister or relative within the same degree by affinity of the person in the custody of the offender.

Note: The *mother* of the person in the custody of the offender is not *included.*

Meaning of "solicit."

The word "solicit" means to *propose earnestly* and *persistently* something unchaste and immoral to a woman.

[24]See Appendix "A," Table of Penalties, No. 14.

The advances must be immoral or indecent.

And note that the law uses the words *"immoral or indecent advances."*

The crime of abuses against chastity is consummated by mere proposal.

This crime is consummated by mere proposal, because it is sufficient that there is soliciting or making immoral or indecent advances to the woman.

It is not necessary that the woman solicited should have yielded to the solicitation of the offender.

Proof of solicitation is not necessary when there is sexual intercourse.

The appellant was in charge of the prisoners, among them a woman, in the Tondo police station. He entered the cell of the woman and had illicit relations with her.

The appellant argues that the proof fails to show that he solicited a woman in his custody. It was proven, however, that his illicit relations were consummated. It would be a strange interpretation to place upon said law, that a failure in the proof to show a "solicitation" was sufficient to relieve the defendant from responsibility, when the act solicited was consummated. (U.S. vs. Morelos, 29 Phil. 572)

Title Eight

CRIMES AGAINST PERSONS

What are the crimes against persons?

They are:

(1) Parricide. (Art. 246)

(2) Murder. (Art. 248)

(3) Homicide. (Art. 249)

(4) Death caused in a tumultuous affray. (Art. 251)

(5) Physical injuries inflicted in a tumultuous affray. (Art. 252)

(6) Giving assistance to suicide. (Art. 253)

(7) Discharge of firearms. (Art. 254)

(8) Infanticide. (Art. 255)

(9) Intentional abortion. (Art. 256)

(10) Unintentional abortion. (Art. 257)

(11) Abortion practiced by the woman herself or by her parents. (Art. 258)

(12) Abortion practiced by a physician or midwife and dispensing of abortives. (Art. 259)

(13) Duel. (Art. 260)

(14) Challenging to a duel. (Art. 261)

(15) Mutilation. (Art. 262)

(16) Serious physical injuries. (Art. 263)

(17) Administering injurious substances or beverages. (Art. 264)

(18) Less serious physical injuries. (Art. 265)

(19) Slight physical injuries and maltreatment. (Art. 266)

(20) Rape. (Art. 266-A)

Chapter One

DESTRUCTION OF LIFE

Section One. — Parricide, murder, homicide

Art. 246. ***Parricide.*** **— Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of** ***reclusion perpetua*** **to death.**[1] ***(As amended by RA. No. 7659)***

Elements:

1. That a person is killed.
2. That the deceased is killed *by the accused.*
3. That the deceased is the father, mother, or child, whether legitimate or illegitimate, or a *legitimate other* ascendant or *other* descendant, or the *legitimate spouse,* of the accused.

Essential element of parricide.

Relationship **of the offender with the victim is the essential element of this crime.**

Parents and children are not included in the term "ascendants" or "descendants."

The ascendants and descendants referred to in this article exclude parents and children.

The law should read "or any *other* ascendant or descendant." This is the correct translation from the Spanish text of Art. 246.

[1]See Appendix "A," Table of Penalties, No. 37.

The other ascendant or descendant must be legitimate.

He who kills an *illegitimate* grandfather or an *illegitimate* grandson is not guilty of parricide, but of simple homicide or murder as the case may be.

A is the *natural* son of *B*. *C* is the *legitimate* father of *B*. *A* killed *C*. Is A guilty of parricide? No, because C is an *illegitimate* grandfather of A. The crime committed is only homicide.

The term "*illegitimate*" embraces all children *born out of wedlock.* Thus, (a) adulterine, (b) incestuous, and (c) sacrilegious children are included under the term "illegitimate."

The father, mother or child may be legitimate or illegitimate.

The law is clear on this point. It says: "any person who shall kill his father, mother, or child, whether *legitimate* or *illegitimate,* x x x shall be guilty of parricide x x x."

If the deceased is either the *father, mother* or the *child,* of the accused, *proof of legitimacy is not required.* (People vs. Embalido, 58 Phil. 154)

The child should not be less than three days old.

If the child killed by his parent *is less than three (3) days old,* the crime is infanticide. (Art. 255)

Only relatives by blood and in direct line, except spouse, are considered in parricide.

Note that Art. 246 mentions "*father, mother or child,*" the first two being the ascendants of the latter and the latter being the descendant of the former, "whether legitimate or illegitimate." Only relatives by blood may be legitimate or illegitimate. On the other hand, the "ascendants or descendants" must be legitimate. They, too, must be relatives by blood.

Therefore, an adopted father or adopted son, or father-in-law or son-in-law is not included in this provision for parricide.

The spouse must be legitimate.

Thus, when a Moro has three wives, and he killed his third wife, he cannot be held liable for parricide. (People vs. Subano, 73 Phil. 692) His marriages with his second and third wives are null and void.

In a case of parricide of spouse, the best proof of the relationship between the accused and the deceased is the marriage certificate. If, however, the oral evidence presented to prove the fact of marriage is not

objected to, the said evidence may be considered by the court. (People vs. Cruz, 109 Phil. 288)

The testimony of the accused that he was married to the deceased was an admission against his penal interest. It was a confirmation of the *semper praesumitur matrimonio* and the presumption "that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage." (Sec. 5[bb], Rule 131; People vs. Majuri, 96 SCRA 472)

Killing illegitimate spouse and illegitimate daughter.

The accused killed the woman with whom he lived maritally and their daughter. It was held that there being *no clear evidence of* marriage between the accused and the woman, he was liable for homicide only and for parricide for killing his daughter. (People vs. Berang, 69 Phil. 83)

Marriages among Muslims or among members of the ethnic cultural communities performed in accordance with their customs, rites or practices are valid.

Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without the necessity of a marriage license provided they are solemnized in accordance with their customs, rites or practices. (Art. 33, Family Code)

Relationship must be alleged.

Wife of victim cannot be convicted of parricide if charged only with murder. However, relationship must be considered aggravating even if not alleged in the information. (People vs. Jumawan, 116 SCRA 739)

Parricide through reckless imprudence.

The husband, who, while struggling for the possession of the gun with his children, without intent to kill anyone, pulled the trigger of the gun which exploded and hit his wife who was approaching them, is guilty of parricide through reckless imprudence. (People vs. Recote, 96 Phil. 980)

Note: Parricide through reckless imprudence is punished by *arresto mayor* in its maximum period to *prision correccional* in its medium period. If committed through simple imprudence or negligence, the penalty is *arresto mayor* in its medium and maximum periods. (Art. 365 in relation to Art. 246)

Parricide by mistake.

If a person wanted to kill a stranger but by mistake killed his own father, will it be parricide? Yes, but Art. 49 applies as regards the proper penalty to be imposed.

If a person killed another, not knowing that the latter was his son, will he be guilty of parricide? Yes, because the law does not require knowledge of relationship between them.

Indemnity in parricide cases.

A husband who killed his wife was ordered to indemnify his wife's heirs P50,000.00. (People vs. Dela Cruz, 276 SCRA 352)

But in a case where the natural father killed his child, no indemnity was imposed, "considering that the accused, as the father, is the presumptive heir of the deceased." (People vs. Berang, 69 Phil. 83)

Liability of stranger cooperating in parricide.

A stranger who cooperates and takes part in the commission of the crime of parricide, is not guilty of parricide but only homicide or murder, as the case may be. (People vs. Patricio, 46 Phil. 875; People vs. Echaluce, 66 SCRA 2221)

Art. 247. ***Death or physical injuries inflicted under exceptional circumstances.*** — Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of ***destierro.***[2]

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.

[2]See Appendix "A," Table of Penalties, No. 10.

Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article.

Requisites for the application of Art. 247:

1. That a *legally married person* or a parent *surprises* his spouse or his daughter, the latter under 18 years of age and living with him, *in the act of committing sexual intercourse* with another person.
2. That he or she kills *any or both,* of them or inflicts upon any or both of them any *serious* physical injury *in the act* or *immediately thereafter.*
3. That he *has not* promoted or facilitated the prostitution of his wife or daughter, or that he or she has not consented to the infidelity of the other spouse.

Art. 247 does not define and penalize a felony.

This article does not define a felony, for if the killing of, or the inflicting of the serious physical injuries on, the spouse and/or the paramour is done under the circumstances mentioned in this article, the accused shall be sentenced to *destierro,* instead of the severe penalty for parricide, homicide, or serious physical injuries provided for in Arts. 246, 249, or 263. (People vs. Araquel, 57 O.G. 6229)

The requisites of Art. 247 must be established by the evidence of the defense, because the prosecution will have to charge the defendant with parricide and/or homicide, in case death results; or serious physical injuries in the other case.

Since Art. 247 does not charge a distinct crime, the accused charged with killing his wife's paramour, cannot enter into a conditional plea of guilty and be sentenced immediately to *destierro.* The court must receive evidence on the circumstances surrounding the killing. (People vs. Sabilul, 49 O.G. 2743)

The accused must be a legally married person.

Hence, a man who surprised his common-law wife in the act of sexual intercourse with another man and killed her or both of them in the act, is not entitled to the benefits of Art. 247. The law requires that he must be legally married.

The wife is entitled to the benefits of Art. 247.

The wife who kills or inflicts serious physical injuries on her husband and/or his concubine, under the circumstances mentioned in Art. 247, is entitled to the benefits of said article. (People vs. Corazon Cortez, 59 Phil. 568)

The phrase "any legally married person" and the word "spouse" include the wife.

Must the parent be legitimate?

This article does not seem to require it. It requires only: (1) that the daughter be under 18 years old, and (2) that she is living with her parents.

If those circumstances concur and her parent surprises her in the act of sexual intercourse with a man and kills or inflicts serious physical injuries on her or both of them, Art. 247 applies.

Does this article apply even if the daughter is married?

It would seem that although the law does not use the word "unmarried" in relation to daughter, *this article applies only when the daughter is single* because while under 18 years old and single, she is under parental authority. If she is married, her husband alone can claim the benefits of Art. 247.

Meaning of the word "surprise" in the phrase "having surprised his spouse in the act of committing sexual intercourse with another person."

The word "surprise" means "to come upon *suddenly* and *unexpectedly*."

But in the case *of People vs. Gabriel* (37 O.G. 2939; 63 Phil. 1063), the accused, peeping through a hole near the kitchen door, saw his wife and her paramour kissing each other; that after a few moments, he saw the paramour trying to lift the skirt of his wife; that she at first objected but later consented and herself lowered her drawers; that the paramour unbuttoned his drawers; and that they commenced the act of sexual intercourse. It was only then when he attacked them. The accused was not held liable for the injuries suffered by the paramour.

Surprising the spouse or young daughter in the act of sexual intercourse, indispensable requisite.

The person claiming the benefits of Art. 247 must surprise his spouse or daughter under 18 years old and living with him *in the act of committing*

sexual intercourse with another person. If he has not surprised them in the act, Art. 247 will not apply if he kills or inflicts serious physical injuries on one or both of them.

Therefore, a husband who, upon arriving home one night and seeing a man jump out of the window, killed his wife who was begging him to pardon her, is guilty of parricide and the penalty to be imposed is *reclusion perpetua* to death, not *destierro* as prescribed in this article. (People vs. Marquez, 53 Phil. 260)

Art. 247 is not applicable when the accused did not see his spouse in the act of sexual intercourse with another person.

The phrase "in the act of committing sexual intercourse" does not include merely sleeping on the same bed. (People vs. Bituanan, 56 Phil. 23)

Neither does that phrase include a situation where the accused surprised his wife *after* the act, as when he saw her already rising up and the man buttoning his drawers. (People vs. Gonzales, 69 Phil. 66)

But it is enough that the circumstances show reasonably that the carnal act is being committed or has just been committed.

But for a husband to be justified, it is not necessary that he sees the carnal act being committed by his wife with his own eyes. It is enough that he surprises them under such circumstances as to show reasonably that the carnal act is being committed or has just been committed. (Concurring opinion of Moran in People vs. Gonzales, 69 Phil. 66, citing U.S. vs. Alano, 32 Phil. 381; U.S. vs. Feliciano, 36 Phil. 753)

Does "sexual intercourse" include preparatory acts?

Suppose a married woman and her paramour entered a room alone, then and thereafter undressed themselves, performed mutual acts of the character of lasciviousness all in prelude to the carnal act, and then and there the offended husband who saw all these things killed one or both of them, is he entitled to the benefits of Art. 247?

The majority of the Justices of the Supreme Court in the case of *People vs. Gonzales,* 69 Phil. 66, believed that there must be actual *sexual intercourse*.

But Justice Laurel in his dissenting opinion, asked: "Must the offended husband look on in the meantime and wait until the very physical act of coition takes place? This interpretation is far from being rational and certainly does violence to the reason and purpose of the law."

The killing or inflicting of serious physical injuries must be (1) "in the act of sexual intercourse," or (2) "immediately thereafter."

When a person surprised his spouse or young daughter while having sexual intercourse with another person, it is necessary, for the application of Art. 247, that he killed or inflicted serious physical injuries on any or both of them, either (1) while they were in *the act of sexual intercourse* or, if not, because they were able to run away, (2) *immediately after surprising* them in the act of sexual intercourse.

Meaning of the phrase "immediately thereafter."

U.S. vs. Alano
(32 Phil. 383-384)

Facts: **Accused Alano, feeling tired, went to bed, while his wife Teresa Marcelo remained at the window looking out and a little while afterward told her husband that she would go down for a moment to the Chinese store nearby, which she did.**

As Teresa Marcelo was slow in returning and her sick child was crying, Eufrasio Alano left the house to look for her in the Chinese store situated on the corner of Calles Dakota and Tennessee, and, not finding her there, went to look for her in another Chinese store nearby, with the same result. He therefore started to return home through an alley where he tripped on a wire lying across the way. He then observed as he stopped that among some grass near a clump of thick bamboo, a man was lying upon a woman in a position to hold sexual intercourse with her, but they both hurriedly arose from the ground, startled by the noise made by the defendant in stumbling. Alano at once recognized the woman as his wife, for whom he was looking, and the man as Martin Gonzales, who immediately started to run. He was wearing an undershirt and a pair of drawers, which lower garment he held and pulled up as he ran. Enraged by what he had seen, the defendant drew a fan knife he had in his pocket and pursued Martin Gonzales, although he did not succeed in overtaking him, and not knowing where he had fled, returned to his house, where he found his wife Teresa in the act of climbing the stairs. He then stabbed her several times. She died as a result of the stabbing by the accused.

Held: **The unfaithful wife was not killed in the very place where she was caught, for the reason that the wronged husband preferred first to attack the despoiler of his honor and afterwards the adulterous wife who succeeded in getting away from the place where she was caught with her paramour. The assault upon the woman must be understood to be a continuation of the act of the wronged husband's pursuit of her paramour, who had the good fortune to escape and immediately get away from the place of the crime.**

Consequently, although the deceased did not fall dead in the place where she was caught, but in another place nearby, logically it must be understood that the case at bar comes within the provisions of the said article.

The *discovery,* the *escape,* the *pursuit* and the *killing* must all form part of one continuous act. (U.S. vs. Vargas, *et al.*, 2 Phil. 194)

People vs. Coricor
(79 Phil. 672)

Facts: When he was approaching the room, the accused heard low voices. He looked through a hole into the room and saw Lego on top of his (accused's) wife who was naked from the chest down. Then he unsheathed his bolo, slowly went up passing through the kitchen door, and as he was approaching the door of the room, Lego came out and he gave him a thrust. Upon being wounded, Lego jumped out of the window, but the accused pursued and killed him.

Held: Art. 247 was applied and the accused was sentenced to *destierro* only.

The killing must be the direct by-product of the accused's rage.

Though quite a length of time, about an hour, had passed between the time the accused-appellant discovered his wife having sexual intercourse with the victim and the time the latter was actually shot, the shooting must be understood to be the continuation of the pursuit of the victim by the accused-appellant. The Revised Penal Code, in requiring that the accused "shall kill any of them or both of them. . . immediately" after surprising his spouse in the act of intercourse, does not say that he should commit the killing instantly thereafter. It only requires that the death caused be the proximate result of the outrage overwhelming the accused after chancing upon the spouse in the basest act of infidelity. But the killing should have been actually motivated by the same blind impulse, and must not have been influenced by external factors. The killing must be the direct by-product of the accused's rage. (People vs. Abarca, 153 SCRA 735)

The killing of his spouse by the accused must be by reason of having surprised her in the act of sexual intercourse with another person.

Appellant and the now deceased Florida Napala were husband and wife. Coming home one night from his *camote* plantation, appellant found his wife lying on bed with another man. The man was able to escape through the window, but the wife received a severe scolding from her husband and was ordered to leave the house. Calling her husband names, the wife gathered her clothes and picked up a bolo in the kitchen, and when her

husband followed her there, she attacked him with the bolo, wounding him twice in the abdomen. Wresting the bolo from his wife, appellant stabbed her with it in the breast. She died from her wound that same night. But appellant, though seriously wounded, survived and is now being made to answer for the killing of his wife.

We are with the trial court in not giving appellant the benefit of Article 247 of the Revised Penal Code, it appearing that although he found his wife on bed with another man, he did not kill her on that account. For her reprehensible conduct he merely upbraided her and bade her to leave the house. (People vs. Rabandaban, 85 Phil. 636-637)

Art. 247 applies, in the case of a husband, only when he surprises his wife in flagrant adultery.

Thus, when a husband caught a man having sexual intercourse with the former's wife against her will, as she was then shouting for help, an attack upon that man by the husband may be a defense of relative under Art. 11, par. 2, but not a case falling under Art. 247. (People vs. Ammalun, C.A., 51 O.G. 6250)

Note: The wife was not committing adultery, as she was *not voluntarily* having sexual intercourse with the man.

What is the justification for Art. 247?

The law, when the circumstances provided by this article are present, considers the spouse or parent as acting in a justified burst of passion. (People vs. Gonzales, 69 Phil. 66)

No criminal liability when less serious or slight physical injuries are inflicted.

If the physical injuries inflicted are *less serious* or *slight,* there is no criminal liability. It is an absolutory cause. The second paragraph of Art. 247 states that "if he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment."

Liability for physical injuries suffered by third persons.

Where physical injuries were suffered by third persons as a result of being caught in the crossfire as the accused shot the victim, the Supreme Court held that although as a rule, one committing an offense is liable for all the consequences of his act, the rule presupposes that the act done amounts to a felony. (Art. 4, No. 1) In the instant case, the accused was not committing murder when he discharged his rifle upon the accused.

Inflicting death under exceptional circumstances is not murder. Therefore, the accused cannot be held liable for injuries sustained by third persons as a result thereof. (People vs. Abarca, *supra)*

Not applicable to person who consented to the infidelity of spouse, or who facilitated the prostitution of his wife or daughter.

The benefits of this article are not extended to the accused who *promoted* or *facilitated* the prostitution of his *wife* or *daughter or* who otherwise *consented* to the infidelity of the other spouse.

Thus, a husband who, after he had learned from the very lips of his wife that she was in love with another man, signed a document wherein he ordered his wife to look for and live with another man, cannot claim the benefits of Art. 247. (People vs. Dumon, 72 Phil. 41)

Banishment not intended as penalty.

Art. 247, in effect, confers upon the offended spouse or parent, the power to inflict the supreme penalty of death.

The penalty of *destierro* is not really intended as a penalty but to remove the killer spouse from the vicinity and to protect him or her from acts of reprisal principally by relatives of the deceased spouse. (People vs. Lauron, C.A., 57 O.G. 7367)

In what cases is a person who committed parricide not to be punished with reclusion perpetua to death?

They are:

1. When parricide is committed through negligence. (Art. 365)
2. When it is committed by mistake. (Art. 249)
3. When it is committed under exceptional circumstances. (Art. 247)

Art. 248. *Murder.* — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by ***reclusion perpetua*** to **death**[3] if committed with any of the following attendant circumstances:

[3]See Appendix "A," Table of Penalties.

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

2. In consideration of a price, reward, or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. *(As amended by R.A. No. 7659)*

Murder, defined.

Murder is the unlawful killing of any person which is *not parricide* or *infanticide* provided that any of the following circumstances is present:

1. *With treachery,* taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In *consideration* of a price, reward or promise;
3. *By means* of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On *occasion* of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other *public calamity;*
5. *With* evident premeditation;
6. *With cruelty,* by deliberately and inhumanly augmenting the suffering of the victim, or *outraging or scoffing at his person or corpse.* (As amended by R.A. No. 7659)

Elements of murder:

1. That a person was killed.
2. That the accused killed him.
3. That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248.
4. The killing is not parricide or infanticide.

"Not falling within the provisions of Article 246."

Although Art. 248 makes reference only to Art. 246, which defines and penalizes parricide, it is understood that the person killed *should not be less than three days old;* for, otherwise, the crime would be infanticide defined and penalized by Art. 255.

"Shall kill another."

In murder, the victim must be killed to consummate the crime. If the victim is not killed, it is either attempted or frustrated murder.

The offender must have intent to kill to be liable for murder committed by means of fire, or other means enumerated in par. 3 of Art. 248.

Killing a person by means of fire is murder, only when there is actual design to kill on the part of the offender. (U.S. vs. Burns, 41 Phil. 418) This ruling is applicable to all the other circumstances enumerated in paragraph No. 3 of Art. 248.

But killing a person with treachery is murder even if there is no intent to kill.

If the defendant had not committed the assault in a treacherous manner, he would nevertheless have been guilty of homicide, although he *did not intend to kill* the deceased; and since the defendant did commit the crime with treachery, he is guilty of murder, because of the *voluntary* presence of the qualifying circumstance of treachery. (People vs. Cagoco, 58 Phil. 530) This ruling may be applicable to all the other circumstances in pars. Nos. 1, 2, 4, 5 and 6 of Art. 248.

Note: The ruling is based on Art. 4, par. 1, of the Code.

Rules for the application of the circumstances which qualify the killing to murder.

(a) That murder will exist with *only one* of the circumstances described in Art. 248. (U.S. vs. Labai, 17 Phil. 240)

When more than one of said circumstances are present, the *others* must be considered *as generic aggravating.* Thus, when in killing the victim, the commission of the crime is attended by: (1) evident premeditation, (2) treachery, and (3) price, reward or promise, only one of them shall qualify the killing to murder and the other shall be considered as generic aggravating circumstances. (See People vs. Dueño, 90 SCRA 23, where the rule was applied.)

(b) That when the other circumstances are *absorbed* or *included* in one qualifying circumstance, they cannot be considered as generic aggravating.

Thus, when there were ten or more armed captors of the female victim, and one or some of them shot her at the back, the qualifying circumstance of murder is either treachery, abuse of superior strength, or with the aid of armed men (People vs. Remalante, 92 Phil. 48); but if treachery is chosen to qualify the crime, the others are not generic aggravating circumstances, because they are included in the qualifying circumstance of treachery. (People vs. Sespeñe, *et al.*, 102 Phil. 199)

(c) That any of the qualifying circumstances enumerated in Art. 248 must be *alleged* in the information. (U.S. vs. Campo, 23 Phil. 369)

Thus, even if during the trial the prosecution proves that the accused killed the deceased with treachery, but treachery is not alleged in the information, treachery can not qualify the killing to murder, the crime charged being only homicide. It is only a generic aggravating circumstance.

The qualifying circumstances of murder, except "outraging or scoffing at his person or corpse," are among those defined in Art. 14.

Except the last qualifying circumstance, that of *"outraging or scoffing at his person or corpse,"* those mentioned in the six paragraphs of Art. 248 are fully discussed under Art. 14 which defines all aggravating circumstances in general.

With treachery.

Treachery, whenever present and alleged in the information, qualifies the killing of the victim and raises it to the category of murder. (People vs. Limaco, 88 Phil. 35)

The killing of the victims is qualified with treachery, when the shooting was sudden and unexpected, and the victims were not in a position to defend themselves. (People vs. Aguilar, 88 Phil. 693)

Treachery is present when the shooting of the victim with a carbine is sudden and unexpected to the point of incapacitating the victim to repel or escape it. And where the hands of the victim were raised as ordered by the accused who fired at him without any risk to the accused, treachery is present. (People vs. Catipon, 139 SCRA 192)

But to constitute treachery, the means, methods or forms of attack must be *consciously adopted* by the offender. (People vs. Tumaob, 83 Phil. 742)

Killing of a child of tender years is murder.

The killing of a child is murder even if the manner of attack was not shown. The qualifying circumstance of treachery or *"alevosia"* exists in the commission of the crime of murder when an adult person illegally attacks a child of tender years and causes his death. (People vs. Valerio, 112 SCRA 231)

Taking advantage of superior strength.

An attack made by a man with a weapon upon a girl which resulted in her death is murder, because the offender had taken advantage of superior strength. His sex and weapon gave him superiority of strength. (People vs. Quesada, 62 Phil. 446; People vs. Jamoralin, G.R. No. L-2257, Feb. 19, 1951, 88 Phil. 789)

The deceased, who had been wounded by one of the accused, was being treated in his house by his wife when the three accused pulled him from the stairs to the ground floor and then they proceeded to stab and strike him mercilessly and indiscriminately with their knives inflicting wounds on different parts of his body. It was held that since the deceased was wounded, weak and unarmed he was no match to the three accused who were all carrying bladed weapons. The circumstance of superior strength qualified the killing and raised it to the category of murder. (People vs. Mendoza, *et al.*, 91 Phil. 58)

But to qualify the killing, superior strength must be taken advantage of. (People vs. Pura, C.A., 44 O.G. 3841)

With the aid of armed men.

If the accused had companions who were armed when he committed the crime, this circumstance is considered present. (See People vs. Ortiz, *et al.*, 103 Phil. 944)

The armed men must take part in the commission of the crime directly or indirectly and the accused must avail himself of their aid or rely upon them when the crime is committed. (U.S. vs. Abaigar, 2 Phil. 417)

Employing means to weaken the defense.

A person who suddenly throws a cloak over the head of his opponent and while in this situation he kills him (U.S. vs. Devela, *et al.*, 3 Phil. 625), or one who suddenly casts sand or dirt upon the eyes of the victim and then kills him, evidently employs means which weaken the defense. (People vs. Siaotong, *et al,* G.R. No. L-9242, March 29, 1957, 100 Phil. 1103)

Employing means or persons to insure or afford impunity.

When means or persons are employed by the accused who killed the deceased to prevent his being recognized, or to secure himself against detection and punishment, he may be held liable for murder.

It seems that one who covered his face with handkerchief before killing his victim is liable for murder, because he employed means to insure or afford impunity.

In consideration of a price, reward or promise.

The person who received the price or reward or who accepted a promise of price or reward would not have killed the victim were it not for that price, reward or promise. Such person is a principal by direct participation.

The one who gave the price or reward or who made the promise is a principal by induction.

When this circumstance is alleged in the information for murder and proved by the prosecution, both are guilty of murder. (U.S. vs. Parro, 36 Phil. 923; U.S. vs. Alim, 38 Phil. 1)

By means of fire, poison, explosion, etc.

When the Code declares that homicide committed by means of fire shall be deemed to be murder, it is intended that there should be an actual design to kill and that the use of fire should be purposely adopted as a means to that end.

Thus, setting fire to an automobile in the basement of an inhabited house, resulting in the burning of the house also and the killing of one of its inmates, is not murder with respect to the death of the person, but only homicide. (U.S. vs. Burns, 41 Phil. 418)

The accused who had direct control of poisoning the rats that might attack the poultry, had in his possession arsenic powder for the purpose. He had illicit relations with a married woman. He and that woman wanted to eliminate her husband so that they could live together. He allowed her to take a quantity of the Arsenic powder and put it in the coffee which she gave to her husband. It was shown that the cause of the death of the woman's husband was the poisoned coffee that she had given him. It was held that the paramour was guilty of murder. (People vs. Bonifacio, 105 Phil. 1283)

A person who threw a hand grenade at his victim who was killed as a result of the explosion is guilty of murder. (People vs. Guillen, 85 Phil. 307)

Treachery and premeditation are inherent in murder by poison.

Treachery and evident premeditation are inherent in murder by means of poison and, as such, they cannot be considered as aggravating. (Viada, 3 Cod. Pen. 29)

The case of People vs. Galura, 16 C.A. Rep. 70.

To excite a woman sexually, so that he could easily consummate his dastardly lewd desire, the accused gave her chocolate with an overdose of cantharide. Consequently, the woman died, it being a fact that cantharide contains poison. There is no question that the intention of the accused was merely to excite the woman sexually, and not to kill her.

It was held that the crime committed was homicide. Two Justices dissented, contending that murder was committed by means of poison. The reason in support of the contention is that since the administration of cantharide is a criminal act, the accused should be held responsible for all the consequences even if the result be different from that which was intended. (Art. 4, par. 1, Revised Penal Code) It is claimed that the use of poison is inherent in murder. It is pointed out that in *People vs. Cagoco,* 58 Phil. 524, even if there was no intent to kill in inflicting physical injuries with treachery, the accused in that case was convicted of murder.

The dissenting opinion does not express accurately the rule.

Art. 4, par. 1, of the Code was correctly applied when the Court held that the crime committed was homicide. The accused had no intention to kill the woman; but having committed a felony, he was responsible for the consequence even if the wrongful act done was different from that which he intended.

It is not correct to say that the use of poison is inherent in murder. It becomes inherent only when the offender has the intent to kill the victim and he uses poison as a *means* to kill him. Note the phrase "By means of

xxxpoison" in Art. 248, and the phrase "With treachery" in the same article. The words "by means" presuppose an objective to bring about a result. On the other hand, in murder qualified by treachery, it is required only that there is treachery in the attack, and this is true even if the offender has no intent to kill the person assaulted.

The foregoing distinction should be understood to be the basis of the ruling in *U.S. vs. Burns,* 41 Phil. 418, and *People vs. Paterno,* 85 Phil. 722, and the ruling in *People vs. Cagoco, supra.*

On the occasion of inundation, shipwreck, etc., of an earthquake, eruption of a volcano, epidemic or any other public calamity.

Killing a person *on the occasion* of inundation, shipwreck, eruption of a volcano, epidemic, etc., or any other public calamity, *when taken advantage of* by the offender, qualifies the crime to murder.

With evident premeditation.

This circumstance is present and it qualifies the killing of a person to murder, when the prosecution proves (1) *the time* when the offender determined (conceived) to kill his victim; (2) an *act* of the offender manifestly indicating that he *clung* to his determination to kill his victim; and (3) a *sufficient lapse of time* (at least three hours) between the determination and the execution of the killing. (People vs. Leano, C.A., 36 O.G. 1120; People vs. Causi, G.R. No. L-16498, June 29, 1963)

With cruelty.

There is cruelty when other injuries or wounds are inflicted *deliberately* by the offender, which are not *necessary* for the killing of the victim. The victim must be alive when the other injuries or wounds are inflicted.

But there is no cruelty, when the offender in inflicting several other wounds on the victim has only a decided purpose to kill him.

Outraging or scoffing at the person or corpse of the victim.

A person is found dead with wounds in the back, neck and other parts of the body. What is the crime committed?

Murder. This is either *cruelty* if the victim was still alive when other wounds were inflicted or, otherwise, *outraging or scoffing at his corpse.* (People vs. Lozada, G.R. No. L-47692, June 4, 1943)

The word "outraging" means to commit an extremely vicious or deeply insulting act.

The word "scoffing" means to jeer, and implies a showing of irreverence.

Illustration of outraging at the corpse of the victim.

1. The act of an accused in having anal intercourse with the woman after killing her is an outrage at her corpse. (People vs. Butler, 120 SCRA 281)
2. Weighing the victims' bodies with a cement boulder and hub cap and tying their wrists and ankles with nylon card and wire constitute an outrage on their corpse. (People vs. Maguddatu, 124 SCRA 594)
3. The corpse was outraged when it was dismembered with the cutting off of the head and limbs and the opening up of the body to remove the intestines, lungs and liver. (People vs. Carmina, 193 SCRA 429)
4. The mere decapitation of the victim's head constitutes outraging at the corpse of the victim. (People vs. Whisenhunt, G.R. No. 123819, Nov. 14, 2001)

Illustration of scoffing at the dead.

The killer scoffed at the dead when the intestines were removed and hung around the neck of the victim's brother "as a necklace" and the lungs and liver were facetiously described as "pulutan." (People vs. Carmina, *supra)*

Penalty for murder.

Before the 1987 Constitution abolished the death penalty, the penalty for murder was *reclusion temporal* in its maximum period to death. With the abolition of the death penalty in the 1987 Constitution, the penalty became *reclusion temporal* in its maximum period to *reclusion perpetua.* (People vs. Gavarra, 155 SCRA 327; People vs. Lopez, 157 SCRA 304)

Republic Act No. 7659 restored the death penalty and increased the penalty for murder to *reclusion perpetua* to death. In view of R. A. No. 9346 which prohibited the imposition of the death penalty, the penalty for murder is now *reclusion perpetua.*

Art. 249. ***Homicide.*** — Any person who, not falling within the provisions of article 246, shall kill another, without the attendance of any of the circumstances enumerated in the

next preceding article, shall be deemed guilty of homicide and be punished by *reclusiontemporal.*[4]

Homicide, defined.

Homicide is the unlawful killing of any person, which is neither parricide, murder, nor infanticide.

Elements:

(1) That a person was killed;

(2) That the accused killed him without any justifying circumstance;

(3) That the accused had the intention to kill, which is presumed;

(4) That the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

"Shall kill another."

In homicide, the victim must be killed to consummate the crime. If the victim is not killed, it is either attempted or frustrated homicide.

Penalty when the victim of homicide is under 12 years of age.

The penalty for homicide shall be *reclusion perpetua* when the victim is under 12 years of age. (Sec. 10, R.A. No. 7610)

Intent to kill is conclusively presumed when death resulted.

When death resulted, even if there is no intent to kill, the crime is homicide, not merely physical injuries, because with respect to crimes of personal violence, the penal law looks particularly to the material results following the unlawful act and holds the aggressor responsible for all the consequences thereof. (U.S. vs. Gloria, 3 Phil. 333)

Evidence of intent to kill is important only in attempted or frustrated homicide.

In attempted or frustrated homicide, the offender must have the intent to kill the victim. If there is no intent to kill on the part of the offender, he is liable for physical injuries. (Arts. 263-266) only.

*See Appendix "A," Table of Penalties, No. 28.

Usually, the intent to kill is shown by the kind of weapon used by the offender and the parts of the victim's body at which the weapon was aimed, as shown by the wounds inflicted. Hence, when a deadly weapon, like a bolo, is used to stab the victim in the latter's abdomen, the intent to kill can be presumed.

Exception:

But if the accused went to his wife, who was living separately from him, to entreat her to live with him again, but a cousin of his wife provoked him then and there and caused him to assault him (wife's cousin) and her son by first marriage, with a bolo, inflicting physical injuries, caused *indiscriminately* and *not deliberately,* the *purpose* of the accused in going to the house, and not the kind of weapon he carried nor the parts of the bodies of the victims on which the wounds were inflicted, is indicative and determinative of his intention. The accused is liable only for physical injuries. (People vs. Penesa, 81 Phil. 398)

Note: The bolo which the accused carried with him is one ordinarily used by farm laborers and the accused was such a farm laborer.

Intent to kill must be proved beyond reasonable doubt.

The Court of Appeals concluded that the petitioner had no intention to kill the offended party, in view of petitioner's testimony:

"Q — In other words you want to tell us that you will do everything you could to stop Nacionales digging the canal, because you need water?

A — Yes, sir, because I need the water."

Held: The intent to kill being an essential element of frustrated or attempted homicide, said element must be proved by clear and convincing evidence. Such element must be proved with the same degree of certainty as is required of the other elements of the crime. The inference of intent to kill should not be drawn in the absence of circumstances sufficient to prove such intent beyond reasonable doubt. (Mondragon vs. People, G.R. No. L-17666, June 30, 1966)

That the death of the deceased was due to his refusal to be operated on, not a defense.

The fact that the victim would have lived had he received appropriate medical attention is immaterial. Hence, the refusal of the deceased to be operated on does not relieve the offender of the criminal liability for his

death. (People vs. Sto. Domingo, C.A., G.R. No. 3783, May 31, 1939; People vs. Flores, CA-G.R. No. 3567, May 25, 1939)

Note: This ruling is based on Art. 4, par. 1, Book I, R.P.C.

The killing must not be justified.

If the accused killed the deceased in self-defense, defense of a relative, defense of a stranger, or under any of the other justifying circumstances (Art. 11), the accused is not liable for homicide or any other crime.

"Without the attendance of any of the circumstances enumerated in the next preceding article" or of the qualifying circumstance of parricide or infanticide.

In the absence of *clear proof* of any circumstance that would qualify as murder the killing of the deceased, the guilty person should be sentenced only for homicide. (People vs. Cuaresma, *et al.*, 94 Phil. 304)

The offender should not be the father, mother or child, or legitimate other ascendant or legitimate other descendant or spouse of the deceased, for otherwise the crime would be parricide.

The person killed should not be less than three days old, otherwise the crime would be infanticide. (Art. 255)

No offense of frustrated homicide through imprudence.

The accused pharmacist compounded and prepared the medicine on prescription by a doctor. The accused erroneously used a highly poisonous substance. When taken by the patient, the latter nearly died. The accused was charged with frustrated homicide thru reckless imprudence.

Held: It is error to convict the accused of frustrated homicide through reckless imprudence. He is guilty of physical injuries through reckless imprudence. The element of intent to kill in frustrated homicide is incompatible with negligence or imprudence. Intent in felonies by means of *dolo* is replaced with lack of foresight or skill in felonies by *culpa.* (People vs. Castillo, *et al.*, 76 Phil. 72)

Where the wounds that caused death were inflicted by two different persons, even if they were not in conspiracy, each one of them is guilty of homicide.

A shot C with a pistol. Almost immediately after A had shot C, B also shot C with his (B's) gun. *Both wounds* inflicted by A and B *were mortal.* *C* was still alive when B shot him. C died as a result of the wounds received from A and B, *acting independently* of each other.

Held: Since either wound could cause the death of C, both are liable and each one of them is guilty of homicide. The burden of proof is on each of the defendants to show that the wound inflicted by him did not cause the death. (People vs. Abiog, 37 Phil. 137) The one who inflicted a wound that contributed to the death of the victim is equally liable. (People vs. Mallon, CA-G.R. No. 5754, April 24, 1940)

When it is clearly established by the evidence that the deceased died as a result of the several wounds inflicted upon him by Atanacio and Perpetuo, and it has not been shown which wounds were inflicted by one and which by the other, both are liable for the death of said deceased and each of them is guilty of homicide. (People vs. Bool, *et al.*,C.A., 50 O.G. 3130)

Note: This ruling is applicable only when there is no conspiracy between or among the accused. When there is conspiracy, it is not necessary to apply this ruling, because in such case, the act of one is the act of all.

When the act of mortally wounding and the fact of suicide by the victim concur.

A shot *B* with a revolver in the latter's abdomen, inflicting a wound that was necessarily mortal. *B* fell to the ground, stunned for an instant, but soon got up and went into his house. Soon afterward, *B* procured a knife and, knowing that he would die anyway, cut his throat, inflicting a ghastly wound, from the effect of which, he died in five minutes.

Held: The contention of the defense that *B* killed himself and was not killed by *A,* is untenable. When the death of *B* occurred, the wound inflicted by *A* ***did contribute*** to the event. *B* was actually dying when he cut his throat. After the throat was cut, *B* continued to languish from both wounds. Drop by drop the life current went out from both wounds. (People vs. Lewis, [1899] 124 Cal., 551, cited in U.S. vs. Abiog, 37 Phil. 143)

Use of unlicensed firearm is an aggravating circumstance in homicide.

Where murder or homicide results from the use of an unlicensed firearm, the crime is no longer qualified illegal possession, but murder or homicide, as the case may be. In such a case, the use of the unlicensed firearm is not considered as a separate crime but shall be appreciated as a mere aggravating circumstance. In view of the amendments introduced by Republic Act 8294 to Presidential Decree No. 1866, separate prosecutions for homicide and illegal possession are no longer in order. Instead, illegal possession of firearms is merely to be taken as an aggravating circumstance in the homicide case. (People vs. Avecilla, G.R. No. 117033, Feb. 15, 2001)

Accidental homicide.

Accidental homicide is the death of a person brought about by a lawful act performed with proper care and skill, and without homicidal intent.

Thus, in a boxing bout where the game is freely permitted by law or local ordinance, and all the rules of the game have been observed, the resulting death or injuries cannot be deemed felonious, since the playing of the game is a lawful act.

But if the rules have been violated, as a foul blow, and death resulted, the crime would be homicide through negligence.

And if the foul blow is intended for the purpose of killing the opponent, the crime of intentional homicide is committed.

Corpus delicti in crimes against persons.

Corpus delicti, in modern sense of the term, means the actual commission of the crime charged. (People vs. Madrid, 88 Phil. 1, cited in People vs. Yee, C.A., 52 O.G. 4298)

Corpus delicti means that a crime was actually perpetrated, and does not refer to the body of the murdered person. (People vs. Bungay, G.R. No. L-18308, April 30, 1966, pp. 834-838)

In all crimes against persons in which the death of the victim is an element of the offense, there must be satisfactory evidence of (1) the fact of death and (2) the identity of the victim.

Thus, when the body of the supposed victim who was *unknown,* could not be located on the bank of the river, the place indicated by the witness, and there was a possibility that the victim might have been borne away by the current and *might have survived,* the fact of death is not sufficiently established. (U.S. vs. Samarin, 1 Phil. 239)

But if the victim is known and could not have survived, because the evidence shows that his arms and legs had been tied with a rope and thereafter he had been stuck on the head with a piece of wood, before he was thrown into the sea, even if his body was never found, the *corpus delicti* is established.

Art. 250. ***Penalty for frustrated parricide, murder, or homicide.*** — The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime or parricide, murder, or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provisions of Article 50.

The courts, considering the facts of the case, may likewise reduce by one degree the penalty which under Article 51 should be imposed for an attempt to commit any of such crimes.

Courts may impose a penalty two degrees lower for frustrated parricide, murder or homicide.

The court may impose a penalty lower by one degree than that imposed under Art. 50.

Art. 50 provides that the penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.

Hence, the court can impose a penalty *two degrees* lower, in view of the facts of the case.

This is permissive — not mandatory.

Courts may impose a penalty three degrees lower for attempted parricide, murder or homicide.

The court may reduce by one degree the penalty imposed under Art. 51.

Art. 51 provides that the penalty lower by *two degrees* than that prescribed by law for the consummated felony should be imposed upon the principals in an attempt to commit a felony.

The court can, therefore, impose a penalty *three degrees* lower in view of the facts of the case.

Illustrations:

Thus, where the defendant had good reason to be jealous of his wife and attempted to kill her under the influence of resulting passion, the accused may be given the benefit of this article. (U.S. vs. Villanueva, 2 Phil. 62; U.S. vs. Poblete, 10 Phil. 578)

In a case of frustrated murder, in view of the nature of the wounds inflicted upon the injured party which were cured in less than one month, the accused may be given the benefit of a reduction of the corresponding penalty. (U.S. vs. Poblete, 10 Phil. 582)

An attempt on, or a conspiracy against, the life of the Chief Executive, etc., is punishable by death.

Any person who shall attempt on, or conspire against, the life of the Chief Executive of the Republic of the Philippines, that of any member of his family, or against the life of any member of his cabinet or that of any member of the latter's family, shall suffer the penalty of death. (Presidential Decree No. 1110-A which took effect on March 29, 1977)

The reason for the heavier penalty for any attempt on or conspiracy against the life of the Chief Executive, etc., is that the prevailing circumstances require that he and the other persons mentioned be given ample protection against lawless elements who may attempt on or conspire against their lives, and to make it as a deterrent.

Art. 251. *Death caused in a tumultuous affray.* — When, while several persons, not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it cannot be ascertained who actually killed the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by ***prisionmayor***.[5]

If it cannot be determined who inflicted the serious physical injuries on the deceased, the penalty of *prision* ***correccional*** in its medium and maximum **periods**[6] shall be imposed upon all those who shall have used violence upon the person of the victim.

Elements:

1. That there be *several* persons.
2. That they *did not* compose groups organized for the common purpose of assaulting and attacking each other reciprocally.
3. That these several persons *quarreled* and *assaulted* one another in a *confused* and *tumultuous manner.*

[5]See Appendix "A," Table of Penalties, No. 19.
[6]See Appendix "A," Table of Penalties, No. 15.

4. That someone was killed in the course of the affray.
5. That it *cannot be ascertained* who actually killed the deceased.
6. That the person or persons who inflicted serious *physical injuries* or who used *violence* can be *identified.*

Tumultuous affray exists when at least four persons took part.

The word "several" (in the phrase "when, while several persons") in Art. 251 means more than two but not very many. The word "tumultuous" as used in Art. 153 means that the disturbance is caused by *more than three* persons who are *armed* or are provided *with means of violence.*

When there are two identified groups of men who assaulted each other, then there is no tumultuous affray.

A, assisted by some laborers, was gathering tobacco. Then, they heard two sounds of the horn, and later on the eastern side of the land, they discerned more than 13 men coming towards them. When these men came, they surrounded and attacked them. Two laborers were wounded. When they saw the two laborers fall on the ground, one of them sounded the horn and his companions withdrew. One of the laborers later died. *There was no confusion in the aggression or the defense. The aggressors helped one another to inflict upon the deceased the fatal blow. The quarrel here was between two well-known groups of men.*

Held: The crime committed is not death caused in a tumultuous affray. The crime of homicide was committed in view of the death of one of the two laborers. The accused and their companions *were united in their common purpose to attack,* as is shown by the circumstances that they rallied together under the signal of two sounds of the horn in order to commence the aggression and they withdrew from the field also under the signal of one sound of the horn. (U.S. vs. Tandoc, 40 Phil. 954)

There is no crime of death in a tumultuous affray if the quarrel is between two (2) well-known groups. (People vs. Corpus, 102 SCRA 674)

There are *two distinct groups* in a fight between the Scouts and civilians (People vs. Ginatilan, C.A., 47 O.G. 1945), or in a fight between the faction of the deceased and that of one of the accused. (People vs. Rapadas, *et al.*, 52 O.G. 3973) In both cases, the accused were convicted of homicide under Art. 249, not under Art. 251.

When there was confusion in the fight and the person who inflicted the wounds could not be identified, the crime is death caused in a tumultuous affray.

Four accused, on one hand, fought against three other persons, on the other; one of whom was mortally wounded, but it *did not appear* who inflicted the wounds. There was *confusion* in the fight. The four accused did not help one another in attacking the injured person.

Held: The accused were guilty of death caused in a tumultuous affray, and as the person who inflicted the wounds could not be identified, they were all liable under the 2nd paragraph of Art. 251, because they all used violence. (People vs. Bandojo, G.R. No. 44588, IV L.J., 934)

Note: In this case, although the four persons, on *one* hand and the three persons, on the other, seem to form two groups, such is not the case because there was no unity of purpose and intention among the persons who used violence.

Someone is killed in the course of the affray.

The person killed in the course of the affray need not be one of the participants in the affray.

"And it cannot be ascertained who actually killed the deceased."

If the *one who inflicted the fatal wound is known,* the crime is not homicide in tumultuous affray. It is a case of homicide under Art. 249 against the one who inflicted the fatal wound.

The serious physical injuries, if inflicted by one of the participants, should not be the cause of death of the deceased.

Who are liable for death in a tumultuous affray?

1. The person or persons who inflicted the serious physical injuries are liable. (Art. 251, par. 1)
2. If it is not *known who inflicted the serious physical injuries* on the deceased, all the persons who *used violence* upon the person of the victim are liable, but with lesser liability. (Art. 251, par. 2)

Application of the second paragraph of Art. 251.

After a free-for-all fight, one of the participants died the next day. There was no convincing evidence that it was the knife which the accused wielded upon the body of the deceased that precisely caused any of the three stab wounds in the body of the deceased. All the wounds sustained by the

deceased were inflicted by protagonists not composing groups. It was held that the accused, having used violence upon the person of the deceased in wielding the knife, was liable under the second paragraph of Art. 251. (People vs. Dacanay, CA-G.R. No. 15655-R, Dec. 15, 1956)

Those who used violence upon the person of the victim are liable for death caused in a tumultuous affray only "if it cannot be determined who inflicted the serious physical injuries on the deceased." (Art. 251, par. 2)

If the participant in the affray who inflicted the serious physical injuries is known, he alone is liable for death caused in a tumultuous affray. Those who used violence only, without inflicting serious physical injuries, may be held liable for the act or acts actually performed by them.

Art. 252. ***Physical injuries inflicted in a tumultuous affray.*** **— When in a tumultuous affray as referred to in the preceding article, only serious physical injuries are inflicted upon the participants thereof and the person responsible therefor cannot be identified, all those who appear to have used violence upon the person of the offended party shall suffer the penalty next lower in degree than that provided for the physical injuries so inflicted.**

When the physical injuries inflicted are of a less serious nature and the person responsible therefor cannot be identified, all those who appear to have used any violence upon the person of the offended party shall be punished by ***arresto mayor*** **from five to fifteen days.**

Elements:

1. That there is a *tumultuous affray* as referred to in the preceding article.
2. That a *participant* or some *participants* thereof suffer *serious physical injuries or physical injuries of a less serious nature* only.
3. That the person responsible therefor cannot be identified.
4. That all those who appear to have used violence upon the person of the offended party are known.

"When in a tumultuous affray x x x, only serious physical injuries are inflicted."

When a person is killed in the course of the affray, and the one who inflicted serious physical injuries is known, Art. 252 is not applicable to those who used violence, because that article applies when in a tumultuous affray, *only* serious physical injuries or physical injuries of a less serious nature are inflicted.

"Inflicted upon the participants thereof."

Unlike the victim in Art. 251, the injured party in the crime of physical injuries inflicted in a tumultuous affray must be one or some of the participants in the affray.

Penalty is one degree lower than that for the physical injury inflicted.

Those who appear to have used violence upon the person of the offended party shall suffer the penalty next lower in degree than that provided for the physical injuries so inflicted. (Art. 252, par. 1)

Only the one who used violence is liable.

Note that only those who used violence are punished, because if the one who caused the physical injuries is known, he will be liable for the physical injuries actually committed (Arts. 263, 265 and 266), and not under this article.

Are slight physical injuries included?

There is no clear provision for slight physical injuries in a tumultuous affray. The second paragraph mentions physical injuries of a less serious nature. It seems that they refer to less serious physical injuries.

It will be noted that the penalty for physical injuries inflicted in a tumultuous affray is one degree lower than that provided for the physical injuries so inflicted. (Art. 252, par. 1) Even in homicide caused in a tumultuous affray, the penalty is one degree lower than that provided for homicide. (Art. 251, par. 1)

It being the intention of the Legislature to provide a penalty one degree lower for crimes committed during a tumultuous affray, and considering that the penalty for slight physical injuries under Art. 266 is at most *arresto menor*, and the penalty one degree lower from *arresto menor* is public censure (Art. 71), it is believed that in providing the penalty of

arresto mayor from five to fifteen days for physical injuries of a less serious nature in a tumultuous affray, the Legislature intended to exclude slight physical injuries.

Art. 253. *Giving assistance to suicide.* — Any person who shall assist another to commit suicide shall suffer the penalty of *prision mayor*,[7] if such person lends his assistance to another to the extent of doing the killing himself, he shall suffer the penalty of *reclusion temporal*.[8] However, if the suicide is not consummated, the penalty of *arresto mayor* in its medium and maximum periods[9] shall be imposed.

Acts punishable as giving assistance to suicide.

1. By assisting another to commit suicide, whether the suicide is *consummated* or *not.*
2. By lending his assistance to another to commit suicide to the extent of *doing the killing himself.*

"If the suicide is not consummated."

The second sentence of Art. 253 has reference to the first way of giving assistance to suicide, that is, only furnishing the person to commit suicide the means with which to kill himself.

If the offender who lends his assistance performs acts to do the killing himself, and the suicide is not consummated, the penalty of *arresto mayor* in its medium and maximum periods mentioned in the second sentence of Art. 253 should not be imposed.

The penalty one or two degrees lower than that provided for consummated suicide, where the assistance of the offender consists in performing acts to do the killing himself, should be imposed, depending upon whether it is frustrated or it is attempted suicide.

[7] See Appendix "A," Table of Penalties, No. 19.
[8] See Appendix "A," Table of Penalties, No. 28.
[9] See Appendix "A," Table of Penalties, No. 14.

What is the penalty for giving assistance to suicide, if the offender is the father, mother, child, or spouse of the one committing suicide?

Art. 253 does not distinguish and does not make any reference to the relation of the offender with the person committing suicide.

Hence, the penalty would be the same as that provided in said article.

A person who attempts to commit suicide is not criminally liable.

A person who attempts to commit suicide is not criminally liable, because society has always considered a person who attempts to kill himself as an unfortunate being, a wretched person more deserving of pity rather than of penalty.

Is a pregnant woman, who tried to commit suicide by means of poison, but instead of dying, the foetus in her womb was expelled, liable for abortion?

No. In order to incur criminal liability for the result not intended, one must be committing a felony. (Art. 4, par. 1, R.P.C.) An attempt to commit a suicide is an act, but it is not punishable by law. (Art. 3, R.P.C.) Art. 253 does not penalize the person who attempts to commit suicide. A woman who tries to commit suicide is not committing a felony. She is, therefore, not liable for abortion for expelling the foetus instead.

What Art. 253 considers a felony or unlawful is assisting another to commit suicide. Since attempting to commit suicide is not an unlawful act within the meaning of Art. 253, the pregnant woman who suffers an abortion due to the poison she took to commit suicide should not be held liable for the abortion that resulted.

What is more, the abortion that resulted is unintentional, abortion not having been intended by her, and unintentional abortion is punishable only when it is caused by violence, not by poison. (Art. 257)

Assistance to suicide is different from mercy-killing.

Euthanasia — commonly known as mercy-killing — is the practice of painlessly putting to death a person suffering from some incurable disease.

Euthanasia is not lending assistance to suicide. In *euthanasia,* the person killed does not want to die. A doctor who resorts to mercy-killing of his patient may be liable for murder. (Art. 248)

Art. 254. *Discharge of firearms.* — Any person who shall shoot at another with any firearm shall suffer the penalty of *prision correccional* in its minimum and medium periods,[10] unless the facts of the case are such that the act can be held to constitute frustrated or attempted parricide, murder, homicide, or any other crime for which a higher penalty is prescribed by any of the articles of this Code.

Elements:

1. That the offender discharges a firearm *against* or *at another person.*
2. That the offender has *no intention to kill* that person.

"Shall shoot at another."

The act constituting the offense is shooting at another with any firearm, without intent to kill him. If the firearm is *not discharged at a person,* there is no crime of discharge of firearm.

Discharge towards the house of victim is not illegal discharge of firearm.

The mere assertion of the offended party that the shot was directed at the place in his house where he was, is not sufficient proof that the shot was aimed or fired at him. It is essential for the prosecution to prove in a positive way that the discharge of the firearm was directed precisely against the offended party. (People vs. Cupin, C.A., 40 O.G., Supp. 11, 21)

Firing a gun against the house of the offended party at random, not knowing in what part of the house the people inside were, is only alarm under Art. 155.

The accused fired his gun at the door of the kitchen, and at the wall of the house of the offended party. He did not know in what part of the house the people inside were.

Held: The acts committed by the accused constituted a violation of Art. 155, par. 1, for they were intended to cause alarm in the place where the shots were fired, producing danger to the persons in the house. (People vs. Hinolan, C.A., 47 O.G. 3596)

[1] See Appendix "A," Table of Penalties, No. 1.

There must be no intention to kill.

If the discharge of the firearm at the offended party is coupled with intent to *kill him,* the felony should be classified as frustrated or attempted parricide, murder or homicide, and *not merely* illegal discharge of firearm. This is so, because Art. 254 states, "unless the facts of the case are such that the act can be held to constitute frustrated or attempted parricide, murder or homicide."

The purpose of the offender is only to intimidate or frighten the offended party.

In discharge of firearm under Art. 254, the purpose of the offender is only to intimidate or to frighten the offended party.

Intent to kill is negatived by distance of 200 yards between offender and victim.

The distance of 200 meters was so great that it is difficult to impute an intention on the part of the offender to kill the offended party. The discharge was intended merely to frighten away the offended party. The crime is only discharge of firearm. (People vs. Agbuya, 57 Phil. 238)

But when there is intent to kill, because the accused, not having contented himself with firing once, fired successive shots at the offended party, added to the circumstance that immediately before, he had already killed a cousin of the offended party, the crime committed is attempted homicide. (People vs. Kalalo, *et al.*, 59 Phil. 715)

Complex crime of illegal discharge of firearm with serious or less serious physical injuries.

If in the illegal discharge of firearm the offended party is hit and wounded, there is a complex crime of discharge of firearm with physical injuries when the physical injuries are serious or less serious. (U.S. vs. Marasigan, 11 Phil. 27; People vs. Arquiza, 62 Phil. 611; People vs. Opena, *et al.*, C.A., 51 O.G. 4071)

Note: When only slight physical injuries are inflicted, there is no complex crime, because such physical injuries constitute a light felony.

The crime is discharge of firearm, even if the gun was not pointed at the offended party when it fired, as long as it was initially aimed by the accused at or against the offended party.

1. As the accused *aimed the gun* at, and was about to shoot, the offended party who was then seated, a third person tapped it down so that,

when it fired, the bullet hit the floor. *Held:* Illegal discharge of firearm. (People vs. Oscar Ramirez, C.A., 46 O.G. 6119)

Note: There is no intent to kill in this case.

2. The accused intimidated the complaining witnesses by pointing his revolver in their direction, whereupon they threw themselves upon and disarmed him. In the course of the struggle, the accused discharged the revolver so close to one of the complaining witnesses. *Held:* Illegal discharge of firearm. (U.S. vs. Kosel, 10 Phil. 409)

3. *B*, with intention to knock *A* with the butt of the gun, approached *A* but the latter met *B* and tried to snatch the gun away from *B*. In the course of the struggle, the gun was fired by *B* at a couple of meters in front of *A*. *Held: B* is guilty of illegal discharge of firearm. (U.S. vs. Sabio, 2 Phil. 485)

But a public officer who fired his *revolver in the air* in order to capture some gamblers and to prevent them from escaping, was acquitted as he was not guilty of any crime. (U.S. vs. Samonte, 10 Phil. 642)

Section Two. — Infanticide and abortion

Art. 255. ***Infanticide.*** — The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

If the crime penalized in this article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of *prision mayor* in its medium and maximum periods,[11] and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be *reclusion temporal.*[12] *(As amended by RA. No. 7659)*

[11] See Appendix "A," Table of Penalties, No. 24.
[12] See Appendix "A," Table of Penalties, No. 28.

Infanticide, defined.

Infanticide may be defined as the killing of any child *less than* three days of age, whether the killer is the parent or grandparent, any other relative of the child, or a stranger.

Elements of infanticide.

1. That a child was killed.
2. That the deceased child was less than three days (72 hours) of age.
3. That the accused killed the said child.

The penalty is that for parricide or murder, but the name of the crime is always infanticide.

Art. 225 does not provide a penalty for infanticide. The penalty must be taken from Art. 246 or from Art. 248.

Father or mother or legitimate other ascendant who kills a child less than three days old, to suffer penalty for parricide.

If the father or mother or legitimate grandparent kills the child less than three days old, the penalty is that corresponding to parricide. (Art. 255)

Other person who kills a child less than three days old, to suffer the penalty for murder.

If the offender is not so related to the child, the penalty corresponding to murder shall be imposed. (Art. 255)

Since the person who killed the child less than 3 days old was the brother-in-law of its mother, he incurred the penalty for murder. (People vs. Jaca and Rasalan, 55 Phil. 952)

Infanticide to conceal dishonor.

The accused, an *unmarried* woman, gave birth to a living child. She hastily left the house, taking the infant with her. In a place nearby, she buried the child. When the body was found, there was an abrasion on both sides of the nose which might have been caused by pressure exerted by another person. The death of the child might have been due to suffocation. It was held that inasmuch as it was born alive and in a healthy condition, it is not to be presumed, without some just reason therefor, that it died a natural death within the extremely short time that elapsed between its

birth and its burial. The facts proven clearly revealed her decided intent to kill the newly born child in order to conceal her dishonor. (U.S. vs. Vedra, 12 Phil. 96)

Concealing dishonor is not an element of infanticide.

The purpose of concealing the dishonor is not an element of infanticide; it merely mitigates the liability of the *mother* or *maternal grandparents* who committed the crime.

Only the mother and maternal grandparents of the child are entitled to the mitigating circumstance of concealing the dishonor.

The only persons in whose favor the mitigating circumstance of having killed a child less than three days of age to conceal the dishonor may be considered are the (1) mother, and (2) maternal grandparents, or either of them. (Art. 255, par. 2)

The accused who killed the newborn baby of his sister-in-law in order to conceal her dishonor, was convicted of infanticide and sentenced to *reclusion perpetua.* (People vs. Jaca and Rasalan, *supra)*

Reason for the mitigation of the liability of the mother.

Viada says: "We understand that the responsibility of the mother is mitigated when, right after giving birth to a baby bom out of an illicit relationship, without time to reflect, excited and obfuscated solely by the fear of her dishonor being made public, she desires to erase the traces of her mistake. Within that same day, we understand that obfuscation, but on the day following, or on the third day, when that disgraced child has been taken by the mother on her lap, when the warmth of maternal love from the mother's breast has been communicated to it, when it has been given a kiss on its innocent cheek, honor cannot overcome filial love, a love which has no equal on earth."

Delinquent mother who claims concealing dishonor must be of good reputation.

The delinquent mother must be of good reputation and good morals, in order that concealing dishonor may mitigate her liability.

Thus, if she is a prostitute, she is not entitled to a lesser penalty because she has no honor to conceal. (Albert)

Stranger cooperating with the mother in killing a child less than three days old is guilty of infanticide also but the penalty is that for murder.

A stranger who cooperates in the perpetration of infanticide committed by the mother or grandparent on the mother's side, is liable for infanticide, but he must suffer the penalty prescribed for murder. (U.S. vs. Aquino, 34 Phil. 813)

No crime of infanticide is committed where the child was born dead, or although born alive, it could not sustain an independent life when it was killed.

A woman gave birth to a child born dead and lifeless. On account of the darkness of the night, instead of a grave being dug to bury it, the lifeless body was deposited by the other accused in a hole one meter deep.

Held: Since the crime consists in killing a child, the prosecution must prove that the mother gave birth to a living creature. (U.S. vs. Aquino, *et al.*, 34 Phil. 813)

The child must be born alive and fully developed, that is, it can sustain an independent life. (U.S. vs. Vedra, 12 Phil. 96) A foetus about *six months old* cannot subsist by itself, outside the maternal womb. (People vs. Detablan, C.A., 40 O.G., Supp. 5, 30)

Art. 256. *Intentional abortion.* — Any person who shall intentionally cause an abortion shall suffer:

1. The penalty of ***reclusion temporal,***[13] if he shall use any violence upon the person of the pregnant woman.

2. The penalty of ***prision mayor,***[14] if, without using violence, he shall act without the consent of the woman.

3. The penalty of ***prision correccional*** in its medium and maximum **periods,**[15] if the woman shall have consented.

[13] See Appendix "A," Table of Penalties, No. 28.
[14] See Appendix "A," Table of Penalties, No. 1.
[15] See Appendix "A," Table of Penalties, No. 15.

Abortion, defined.

Carrara has defined abortion as the willful killing of the foetus in the uterus, or the violent expulsion of the foetus from the maternal womb which *results in the death of the foetus.* (Guevara)

Foetus must die in consummated abortion.

If the foetus *survives* in spite of the attempt to kill it or the use of violence, abortion is *not* consummated. If abortion is *intended* and the foetus *does not die*, it is frustrated intentional abortion when all the acts of execution have been performed by the offender.

If abortion is *not intended* and the foetus *does not die*, in spite of the violence intentionally exerted, the crime may be only physical injuries. There is no frustrated unintentional abortion, in view of the lack of intention to cause an abortion.

In abortion, the foetus may be over or less than six months old.

Under the Revised Penal Code, abortion ordinarily means the expulsion of the foetus before the sixth month or before the term of its viability, that is, capable of sustaining life.

But as long as the foetus dies as a result of the violence used or the drugs administered, the crime of abortion exists, even if the foetus is *full term.* (Viada, Vol. V, p. 12, 5th ed.)

Ways of committing intentional abortion:

1. By using any *violence* upon the person of the pregnant woman.
2. By *acting,* but *without* using violence, *without the consent* of the woman. (By administering drugs or beverages upon such pregnant woman *without her consent.)*
3. By *acting* (by administering drugs or beverages), *with the consent* of the pregnant woman.

Elements of intentional abortion:

a. That there is a pregnant woman;

b. That violence is exerted, or drugs or beverages administered, or that the accused otherwise acts upon such pregnant woman;

c. That as a result of the use of violence or drugs or beverages upon her, or any other act of the accused, the foetus dies, either in the womb or after having been expelled therefrom;

d. That the *abortion is intended.*

Example of abortion by administering abortive.

A, believing that the child in the womb of a woman was a sort of fish-demon, gave her a "*pocion*" made of herbs. Two hours thereafter, she gave birth to a child three months in advance of the full period of gestation. (U.S. vs. Boston, 12 Phil. 134)

Persons liable for intentional abortion.

The person who intentionally caused the abortion is liable under Art. 256. The woman is liable under Art. 258, if she *consented* to the abortion caused on her. If she did not consent to the abortion caused on her, she is *not liable.*

"If the woman shall have consented."

Art. 256, No. 3, provides for the least penalty "if the woman shall have consented" to the act causing the abortion. Is that provision applicable if the act which caused the abortion was by using violence and the woman consented to the abortion? The provision must be construed in relation to that in No. 2 of Art. 256, because the absence of consent of the woman is mentioned in connection with a case where the offender acted "without using violence."

Abortion distinguished from infanticide.

A mother, who had aborted for taking "*pocionesamargas*," buried near her house a living foetus. The expelled foetus had already acquired a human form and about six months old. But it did not have its own life, independently of the mother. It could not subsist by itself, outside the maternal womb. It did not unite all the conditions for legal viability. A foetus under these conditions had necessarily to succumb a few moments after its expulsion from the maternal womb.

Held: Abortion, not infanticide, was committed. If the foetus (1) could sustain an *independent life*, after its separation from the maternal womb, and it (2) is *killed*, the crime is infanticide. (See People vs. Detablan, C.A., 40 O.G., Supp. 5, 30)

Art. 257. *Unintentional abortion.* — **The penalty of** ***prision correccional*** in its minimum and medium **periods**[16] shall be

[16] See Appendix "A," Table of Penalties, No. 14.

imposed upon any person who shall cause an abortion by **violence,** but unintentionally.

Elements:

1. That there is a pregnant woman.
2. That violence is used upon such pregnant woman *without intending* an abortion.
3. That the violence is *intentionally* exerted.
4. That as a result of the violence the foetus dies, either in the womb or after having been expelled therefrom.

Unintentional abortion is committed only by violence.

It should be noted that the law employs the word "*violence*," that is, actual physical force.

Thus, where a man points a gun at a pregnant woman, at the same time telling her that he will kill her, and because of the fright she absorbs, she suffers an abortion, the offender is guilty of threats only. (Dec. Supreme Court of Spain of Nov. 30, 1887)

The violence must be intentionally exerted.

The accused who struck a woman three months pregnant on her hip with a bottle, causing hemorrhage and miscarriage was held guilty of unintentional abortion. (U.S. vs. Jeffrey, 15 Phil. 391) Note that the violence consisting in striking the pregnant woman with a bottle on the hip was *intentionally exerted* by the accused.

Unintentional abortion through imprudence.

People vs. Jose
(C.A., 50 O.G. 706; 709)

Facts: A truck driven by Romeo Jose on the road leading to the municipality of San Nicolas, Ilocos Norte, bumped a *calesa* from behind causing the horse drawing it to stumble; that as a result, the *cochero* and the passengers of the *calesa* were thrown from their seats; that one of the passengers, Caridad Palacio, who was then on the sixth month of her pregnancy, bumped her abdomen against the front wall of the *calesa* when she was thrown off her seat; that as a consequence of her fright and the force with which she was thrown against the front wall of the *calesa,* she

had a momentary loss of consciousness; that on the evening of the accident blood came out from Caridad Palacio's vagina and she had to call a doctor to examine and treat her; that the physician's diagnosis of her ailment was threatened abortion; and that on January 21, 1951, or three days later, she did have an abortion.

Held: The appellant Romeo Jose is hereby declared guilty of the crime of unintentional abortion through reckless imprudence and sentenced to suffer the penalty of 2 months and 1 day of *arresto mayor,* with costs.

Is the accused liable for abortion even if he did not know that the woman was pregnant?

Even though it was not the criminal intent of the defendant to cause the abortion, the fact that, without any apparent reason whatever, he maltreated Teodorica Saguinsin, *presumably not knowing that she was pregnant,* as author of the abuse which caused the miscarriage, he is liable not only for such maltreatment but also for the consequences thereof, to wit, for the abortion. (U.S vs. Jeffrey, 15 Phil. 394)

But the more decisive factor here is that it being established by the prosecution itself that Luz being then only about *two months* pregnant, which would mean that her condition was not noticeable at all, and in the absence of a definite proof that Felipe knew of the pregnancy, in his favor must be considered the uniform and well reasoned decisions of the Spanish Supreme Court that for the crime of abortion, even unintentional, to be held committed, *the accused must have known of the pregnancy.* (People vs. Carnaso, C.A., 61 O.G. 3623, citing Dec. Supreme Court of Spain, July 12, 1893, Viada, V:125)

Complex crime of homicide with unintentional abortion.

A, becoming angry with a pregnant woman, struck her with his fist, causing her to fall to the ground, and when she got up, he gave another blow which caused her to fall again. As a result, she suffered hemorrhage, culminating in the premature delivery of one of her twin babies, the other not having been born because the woman died.

Held: This is a complex crime of homicide with unintentional abortion. (People vs. Genoves, 33 O.G. 2201)

Mere boxing on the stomach, taken together with immediate strangling of the victim in a fight, is not sufficient proof to show an intent to cause an abortion. In fact, appellant must have merely intended to kill the victim but not necessarily to cause an abortion. Appellant should be held guilty of the complex crime of parricide with unintentional abortion. (People vs. Salufrania, 159 SCRA 401)

Complex crime of parricide with abortion.

A husband, who, with violence kills his pregnant wife, thus occasioning the death of the foetus, is guilty of parricide with unintentional abortion. (People vs. Villanueva, 242 SCRA 47)

No intention to cause abortion, no violence — Art. 256 or Art. 257 does not apply — no abortion of any kind.

The husband gave to his pregnant wife a bitter substance because she was suffering from stomach trouble. The purpose of the husband was to cure the stomach trouble of the wife. Then she suffered an abortion as a result. Is the husband liable for abortion? No, because abortion was not intended and it could not be unintentional abortion for there was no violence used.

Art. 258. ***Abortion practiced by the woman herself or by her parents.*** **— The penalty of** ***prision correccional*** **in its medium and maximum periods[17] shall be imposed upon a woman who shall practice an abortion upon herself or shall consent that any other person should do so.**

Any woman who shall commit this offense to conceal her dishonor shall suffer the penalty of ***prision correccional*** **in its minimum and medium periods.[18]**

If this crime be committed by the parents of the pregnant woman or either of them, and they act with the consent of said woman for the purpose of concealing her dishonor, the offenders shall suffer the penalty of ***prision correccional*** **in its medium and maximum periods.[19]**

Elements:

1. **That there is a pregnant woman who has suffered an abortion.**
2. **That the abortion is intended.**
3. **That the abortion is caused by —**

[17] See Appendix "A," Table of Penalties, No. 15.
[18] See Appendix "A," Table of Penalties, No. 14.
[19] See Appendix "A," Table of Penalties, No. 15.

a. the *pregnant woman* herself;

b. any other person, with her consent; or

c. any of *her parents, with her consent* for the purpose of concealing her dishonor.

The woman is liable if she "shall consent that any other person should do so."

Note that the woman is liable under Art. 258 either (1) when she shall *practice* an abortion upon herself, or (2) when she shall *consent* that any other person should do so.

Only the woman or any of her parents is liable under Art. 258, if the purpose of the latter is to conceal her dishonor.

Note that Art. 258 covers three cases, namely:

1. Abortion committed by the woman upon herself or by any other person with her consent. (par. 1)

2. Abortion by the woman upon herself to *conceal her dishonor.* (par. 2)

3. Abortion by any of the parents of the woman with the latter's consent to *conceal her dishonor.* (par. 3)

The person liable under paragraph 1 of Art. 258 is the woman only. The other person who caused the abortion on her with her consent is liable under Art. 256. If the purpose of the parents of the woman was not to conceal her dishonor, the case does not fall under Art. 258, but under Art. 256.

Liability of pregnant woman is mitigated if purpose is to conceal dishonor.

If the purpose of the pregnant woman is to conceal her dishonor, the penalty is lower. (Art. 258, par. 2)

The reason for the mitigated responsibility is that when a woman becomes pregnant out of an illicit relationship, *excited* and *obfuscated* by the fear of her dishonor being made public, she either practices abortion upon herself or consents that any other person does so, to erase the traces of her mistake.

No mitigation for parents of pregnant woman even if the purpose is to conceal dishonor.

If committed *by any of the parents* of the pregnant woman and with the consent of such woman to conceal her dishonor, the penalty is the same

as that for the woman who practiced abortion upon herself *without* such purpose of concealing her dishonor. (See paragraphs 1 and 3 of Art. 258)

There is no mitigation for the parents of the pregnant woman, unlike in infanticide.

Art. 259. ***Abortion practiced by a physician or midwife and dispensing of abortives.*** — The penalties provided in Article 256 shall be imposed in their maximum **period,** respectively, upon any physician or midwife who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same.

Any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer *arresto* ***mayor***[20] and a fine not exceeding 1,000 pesos.

Elements:

1. That there is a pregnant woman who has suffered an abortion.
2. That the abortion is *intended.*
3. That the offender, who must be a *physician* or *midwife,* causes, or assists in causing, the abortion.
4. That said physician or midwife *takes advantage of* his or her scientific knowledge or skill.

Penalty for intentional abortion is imposed in its maximum period on physician or midwife.

The penalties provided for *intentional abortion* (Art. 256) shall be imposed in the maximum period upon the physician or midwife. (Art. 259)

Reason for the maximum penalty.

Physicians and midwives who cause or assist in causing abortion are more severely punished because they incur a heavier guilt in making use of their knowledge for the *destruction of human life,* where it should be used only for its *preservation.* (Albert)

[1] See Appendix "A," Table of Penalties, No. 1.

As to pharmacists, the elements are:

1. That the offender is a pharmacist.
2. That there is no *proper prescription* from a physician.
3. That the offender *dispenses* any *abortive.*

Is it necessary that the pharmacist knows that the abortive would be used to cause an abortion?

This article does not require it. What is punished is the dispensing of abortive without the proper prescription from a physician.

If he knew that the abortive would be used to cause an abortion and abortion resulted from the use thereof, the pharmacist would be an accomplice in the crime of abortion.

The act constituting the offense is dispensing abortive without proper prescription from a physician. It is not necessary that the abortive be actually used.

Republic Act No. 4729, approved on June 18, 1966, regulates the sale, dispensation, and/or distribution of contraceptive drugs and devices.

Section 1. It shall be unlawful for any person, partnership, or corporation, to sell, dispense or otherwise distribute whether for or without consideration, any contraceptive drug or device, unless such sale, dispensation or distribution is by a duly licensed drug store or pharmaceutical company and with the prescription of a qualified medical practitioner.

Section 2. For the purpose of this Act:

(a) "Contraceptive drug" is any medicine, drug, chemical, or portion which is used exclusively for the purpose of preventing fertilization of the female ovum; and

(b) "Contraceptive device" is any instrument, device, material, or agent introduced into the female reproductive system for the primary purpose of preventing conception.

Section 3. Any person, partnership, or corporation, violating the provisions of this Act shall be punished with a fine of not more than five hundred pesos or an imprisonment of not less than six months or more than one year or both in the discretion of the Court.

Section Three. — Duel

Art. 260. *Responsibility of participants in a duel.* — The penalty of *reclusion temporal*[21] shall be imposed upon any person who shall kill his adversary in a duel.

If he shall inflict upon the latter physical injuries only, he shall suffer the penalty provided therefor, according to their nature.

In any other case, the combatants shall suffer the penalty of *arresto mayor*,[22] although no physical injuries have been inflicted.

The seconds shall in all events be punished as accomplices.

Duel, defined.

It is a formal or regular combat previously concerted between two parties in the presence of two or more seconds of lawful age on each side, who make the selection of arms and fix all the other conditions of the fight.

Acts punished in duel.

1. By killing one's adversary in a duel.
2. By inflicting upon such adversary physical injuries.
3. By making a combat although no physical injuries have been inflicted.

Who are liable in a duel?

1. The *person who killed or inflicted physical injuries* upon his adversary, or *both combatants* in any other case, as principals.
2. The *seconds*, as accomplices.

If death results, penalty is the same as that for homicide.

Note that the penalty for duel is *reclusion temporal*, the same as that for homicide, if death resulted.

[21] See Appendix "A," Table of Penalties, No. 28.
[22] See Appendix "A," Table of Penalties, No. 1.

Must the penalty be that for physical injuries only when the agreement is to fight to the death?

Art. 260 makes no distinction and the rule is that we must not distinguish when the law makes no distinction.

But the general principle is that when there is intent to kill, the inflicting of physical injuries is either attempted or frustrated homicide. The penalty for duel, when a person kills his adversary, is the same as that for homicide, because when death results, the intent to kill is conclusively presumed. When there is an agreement to fight to the death, there is intent to kill on the part of the combatants. However, the Code disregards the intent to kill in considering the penalty for duel when only physical injuries are inflicted upon the adversary.

If only slight physical injuries are inflicted in a duel, must the penalty be arresto menor?

If no physical injuries are inflicted in a duel, the penalty to be imposed upon the *combatants* is *arresto mayor.* On the other hand, if a person inflicted upon his adversary in a duel *physical injuries* only, he shall suffer the penalty provided therefor, according to their nature.

But the penalty for slight physical injuries, as provided in paragraph 1 of Art. 266, is *arresto menor.* Which penalty should be imposed in case a person inflicted upon his adversary in a duel slight physical injuries?

It is believed that the second paragraph of Art. 260 should apply and the penalty of *arresto menor,* not *arresto mayor,* should be imposed.

The third paragraph of Art. 260 applies only when no physical injuries are inflicted by either of the combatants on the other, in which case, *both combatants* shall be punished by *arresto mayor.*

Art. 261. ***Challenging to a duel.*** **— The penalty of *prision correccional* in its minimum period[23] shall be imposed upon any person who shall challenge another, or incite another to give or accept a challenge to a duel, or shall scoff at or decry another publicly for having refused to accept a challenge to fight a duel.**

[23]See Appendix "A," Table of Penalties, No. 11.

Acts punished under Art. 261:

1. By challenging another to a duel.
2. *By inciting another to give or accept* a challenge to a duel.
3. By *scoffing* at or *decrying* another *publicly* for having *refused to accept* a challenge to fight a duel.

"Shall challenge another x x x to a duel."

A challenge to fight, without contemplating a duel, is not challenging to a duel. The person making the challenge must have in mind a formal combat to be concerted between him and the one challenged in the presence of two or more seconds.

Not challenging to a duel.

Nursing ill-feelings and moved by hatred, the accused challenged the offended party to a duel, inciting the latter to accept said challenge by uttering: "Come down, let us measure your prowess, we shall see whose intestine will come out. You are a coward if you do not come down." The offended party refused to come down and accept the challenge. Later, when the accused saw the offended party running toward a nearby house, the former ran after the latter, but desisted upon seeing that the offended party had a companion.

Held: This is not challenging to a duel, but only light threats under Art. 285, par. 2. (People vs. Tacomoy, G.R. No. L-4798, July 16, 1951)

Persons responsible under Art. 261 are:

(1) challenger, and

(2) instigators.

Chapter Two

PHYSICAL INJURIES

What are the crimes of physical injuries?

They are:

1. Mutilation. (Art. 262)
2. Serious physical injuries. (Art. 263)
3. Administering injurious substance or beverages. (Art. 264)
4. Less serious physical injuries. (Art. 265)
5. Slight physical injuries and maltreatment. (Art. 266)

Art. 262. *Mutilation.* — The penalty of *reclusion temporal* to *reclusion perpetua*[1] shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction.

Any other intentional mutilation shall be punished by *prision mayor* in its medium and maximum periods.[2]

Mutilation, defined.

The term "mutilation" means the *lopping* or the *clipping* off of some part of the body.

The putting out of an eye does not fall under this definition. Thus, when a robber stabbed a woman in one eye, and as a result of the wound thus inflicted she lost the use of the eye, there is no mutilation. (U.S. vs. Bogel, 7 Phil. 285)

[1] See Appendix "A," Table of Penalties, No. 32.
[2] See Appendix "A," Table of Penalties, No. 24.

Two kinds of mutilation:

1. By *intentionally* mutilating another by depriving him, either totally or partially, of some *essential organ* for reproduction.
2. By intentionally making other mutilation, that is, by lopping or clipping off any part of the body of the offended party, other than the essential organ for reproduction, to deprive him of that part of his body.

Elements of mutilation of the first kind:

1. That there be a castration, that is, mutilation of organs necessary for generation, such as the penis or ovarium.
2. That the mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction. (Guevara)

Mutilation of the first kind is castration which must be made purposely.

Clearly it is the intention of the law to punish any person who shall intentionally deprive another of any organ necessary for reproduction. An applicable construction, is that of Viada in the following language:

"At the head of these crimes, according to their order of gravity, is the mutilation known by the name of 'castration' which consists of the *amputation of whatever organ* is necessary for generation. The law could not fail to punish with the utmost severity such a crime, which, although not destroying life, deprives a person of the means to transmit it. But bear in mind that according to this article in order for 'castration' to exist, it is indispensable that the 'castration' be made *purposely.* The law does not look only to the result but also to the *intention of the act.* Consequently, if by reason of an injury or attack, a person is deprived of the organs of generation, the act, although voluntary, not being intentional to *that end,* it would not come under the provisions of this article, but under No. 2 of Article 431." (Art. 263; Viada, Codigo Penal, Vol. 3, p. 70. See to same effect, 4 Groizard, Codigo Penal, p. 525, cited in U.S. vs. Esparcia, 36 Phil. 840)

"Any other intentional mutilation."

If the mutilation involves a part of the body, other than an organ for reproduction, such as the cutting of the outer ear or arm of the offended party, with a *deliberate purpose* of depriving him of that part of his body, it is other intentional mutilation, under the second paragraph of Art. 262.

"Mayhem" is other intentional mutilation.

Penalty when the victim of other intentional mutilation is under 12 years of age.

The penalty for Article 262, paragraph 2 (other intentional mutilation) shall be *reclusion perpetua* when the victim is under 12 years of age (Sec 10, R.A. No. 7610)

The offender must have the intention to deprive the offended party of a part of his body.

If a mutilation is not caused purposely and deliberately so as to deprive the offended party of a particular part of his body, the case will be considered as physical injuries falling under Art. 263, paragraph 1 (offended party becoming impotent) or paragraph 2 (loss of hand, foot, arm, or leg), as the case may be.

Art. 263. *Serious physical injuries.* — Any person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries and shall suffer:

1. The penalty of *prision mayor*,[3] if in consequence of the physical injuries inflicted, the injured person shall become insane, imbecile, impotent, or blind;

2. The penalty of *prision correccional* in its medium and maximum periods,[4] if in consequence of the physical injuries inflicted, the person injured shall have lost the use of speech or the power to hear or to smell, or shall have lost an eye, a hand, a foot, an arm, or a leg, or shall have lost the use of any such member, or shall have become incapacitated for the work in which he was theretofore habitually engaged;

3. The penalty of *prision correccional* in its minimum and medium periods,[5] if in consequence of the physical injuries inflicted, the person injured shall have become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he

[3]See Appendix "A," Table of Penalties, No. 19.
[4]See Appendix "A," Table of Penalties, No. 15.
[5]See Appendix "A," Table of Penalties, No. 14.

was habitually engaged for a period of more than ninety days;

4. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period,[6] if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person for more than thirty days.

If the offense shall have been committed against any of the persons enumerated in Article 246, or with attendance of any of the circumstances mentioned in Article 248, the case covered by subdivision number 1 of this article shall be punished by *reclusion temporal* in its medium and maximum periods,[7] the case covered by subdivision number 2 by *prision correccional* in its maximum period to *prision mayor* in its minimum period[8] the case covered by subdivision number 3 by *prision correccional* in its medium and maximum periods[9] and the case covered by subdivision number 4 by *prision correccional* in its minimum and medium periods.[10]

The provisions of the preceding paragraph shall not be applicable to a parent who shall inflict physical injuries upon his child by excessive chastisement.

How is the crime of serious physical injuries committed?

It is committed —

(1) by wounding;

(2) by beating; or

(3) by assaulting (Art. 263); or

(4) by administering injurious substance. (Art. 264)

The accused, while conversing with the offended party, drew the latter's bolo from its scabbard. The offended party caught hold of the edge of the blade of his bolo and wounded himself.

[6]See Appendix "A," Table of Penalties, No. 8.
[7]See Appendix "A," Table of Penalties, No. 31.
[8]See Appendix "A," Table of Penalties, No. 17.
[9]See Appendix "A," Table of Penalties, No. 15.
[10]See Appendix "A," Table of Penalties, No. 14.

Held: Since the accused did not wound, beat or assault the offended party, he cannot be guilty of serious physical injuries. (U.S. vs. Villanueva 31 Phil. 412)

May be committed by reckless imprudence, or by simple imprudence or negligence.

A person may be guilty of *lesiones* by reckless imprudence, or by simple imprudence or negligence under Art. 365 in relation to Art. 263, when due to *lack of precaution* he wounded another.

What are serious physical injuries?

They are:

1. When the injured person becomes *insane, imbecile, impotent or blind in* consequence of the physical injuries inflicted.
2. When the injured person (a) *loses the use of speech* or the *power to hear or to smell, or loses an eye,* a *hand,* a *foot,* an *arm,* or a *leg,* or (b) *loses the use of any such member,* or (c) becomes *incapacitated* for the work in which he was *theretofore habitually engaged,* in consequence of the physical injuries inflicted.
3. When the person injured (a) becomes *deformed,* or (b) loses *any other member* of his body, or (c) loses the *use* thereof, or (d) becomes *ill* or *incapacitated* for the performance of the work in which he was *habitually* engaged for more than 90 days, in consequence of the physical injuries inflicted.
4. When the injured person becomes ill or *incapacitated* for labor for more than 30 days (but must not be more than 90 days), as a result of the physical injuries inflicted.

Classes of serious physical injuries.

Art. 263 is divided into several paragraphs, with specifications, in each case, of (1) the consequences of the injuries inflicted, (2) the nature and character of the wound inflicted, and (3) the proper penalty. (U.S. vs. Santos, 17 Phil. 87)

There must not be intent to kill.

If there was intent to kill when the offender inflicted any of the serious physical injuries described in this article, the crime would be frustrated or attempted murder, parricide or homicide, as the case may be.

Physical injuries, distinguished from attempted or frustrated homicide.

1. In both crimes, the offender inflicts physical injuries. Attempted homicide may be committed, even if no physical injuries are inflicted.
2. While in the crime of physical injuries, the offender has no intent to kill the offended party, in attempted or frustrated homicide, the offender has an intent to kill the offended party.

PARAGRAPH 1: INJURED PERSON BECOMES INSANE, IMBECILE, IMPOTENT OR BLIND

Meaning of the term "impotent".

In medical jurisprudence, impotence means inability to copulate. Properly used of the male; but it also has been used synonymously with "sterility". (Smith vs. Smith, 206 Mo. App. 646, 229, S.W. 398; Heinemann vs. Heinemann, 118 Or. 178, 245, p. 1082, 1083, cited in Black's Law Dictionary, 4th Ed., p. 889)

Since the effect is the same: loss of power to procreate, the term impotent should include inability to copulate and sterility.

Penalty when the victim of serious physical injuries under paragraph 1 is under 12 years of age.

The penalty for Article 262, paragraph 1 shall be *reclusion perpetua* when the victim is under 12 years of age. (Sec. 10, R.A. No. 7610)

Blindness and loss of an eye.

Under paragraph 1, the blindness must be of two eyes.

Under paragraph 2, note the loss of an eye only.

According to Cuello Calon (II Codigo Penal, 10th Ed., pp. 515-516), the *blindness must be complete.* Mere weakness of vision is not contemplated.

PARAGRAPH 2: INJURED PERSON LOSES USE OF SPEECH OR POWER TO HEAR OR SMELL OR LOSES AN EYE, HAND, FOOT, ARM, OR LEG, OR LOSES USE OF ANY SUCH MEMBER OR BECOMES INCAPACITATED FOR WORK IN WHICH HE WAS HABITUALLY ENGAGED.

Loss of power to hear.

It must be loss of power to hear of both ears. If there is loss of power to hear of *one ear only,* it is serious physical injuries under paragraph 3 of Art. 263. (People vs. Hernandez, 94 Phil. 49)

Loss of use of hand or incapacity for usual work must be permanent.

During the trial, offended party Eleuterio Macayan tried to prove that as a result of the injury on his left wrist, he permanently lost the use of it "because the fingers are paralyzed, the fingers lose their flexibility." Art. 263, paragraph 2, presupposes that the loss of the use of the hand or the incapacity for usual work is permanent. Offended party's uncorroborated testimony does not sufficiently establish that the loss of the use of his left hand is lasting and permanent. Even if he could not use his left hand during the trial, it does not necessary follow that he has forever lost the use thereof. It is possible that he might later on regain its use. No expert testimony was presented to show that the nature of Eleuterio Macayan's injury was such that he has permanently lost the use of his left hand by reason thereof. In order to sustain a conviction under the aforementioned provision of law, the prosecution must prove by clear and conclusive evidence that the offended party actually cannot make use of his hand and that such impairment is permanent. The act committed by the defendant constitutes the crime of serious physical injuries defined and penalized under paragraph 3, Article 263 of the Revised Penal Code. (People vs. Reli, C.A., 53 O.G. 5695)

All those mentioned in paragraph 2 are principal members of the body.

All those mentioned in paragraph 2 of this article are principal members. Thus, the eye, the hand, etc., are principal members.

The arm is a principal member within the meaning of paragraph 2 of this article. (U.S. vs. Camacho, 8 Phil. 142) Where victim's left arm becomes permanently maimed, the crime is serious physical injuries. (People vs. Sto. Tomas, 138 SCRA 206)

PARAGRAPH 3: **INJUREDPERSONBECOMESDEFORMED, OR LOSES ANY OTHER MEMBER OF THE BODY, OR THE USE THEREFOR, OR BECOMES ILL OR INCAPACITATED FOR THE PERFORMACE OF THE WORK IN WHICH HE WAS HABITUALLY ENGAGED FOR MORE THAN 90 DAYS**

Paragraph 3 covers any member which is not principal member of the body.

The phrase *"any other part of his body"* in paragraph 3 of this article should be "any other member", meaning any member other than an eye, a hand, a foot, an arm, or a leg, which are mentioned in paragraph 2. (People vs. Balubar, 60 Phil. 699)

The fingers of the hand are not principal members. The loss of the use of three fingers of a left hand is serious physical injuries under paragraph 3 of Art. 263. But if it is *alleged in the information and proved* that the loss of the use of the three fingers also resulted in the loss of the use of the hand itself, it is serious physical injuries under paragraph 2 of said article. (U.S. vs. Punsalan, 23 Phil. 375)

It is a serious physical injury when the offended party becomes deformed.

Deformity, defined.

By deformity it is meant physical ugliness, permanent and definite abnormality. It must be conspicuous and visible.

Deformity requires that it be —

(a) physical ugliness,

(b) permanent and definite abnormality, and

(c) conspicuous and visible.

Note: If the scar is usually covered by the dress or clothes, it would not be conspicuous and visible.

A scar produced by an injury on the upper part of the neck, near the jaw, constitutes deformity within the meaning of paragraph 3 of this article.

Loss of teeth as deformity.

The loss of three *incisors* is a visible deformity, while the loss of one incisor does not constitute deformity according to the Supreme Court of Spain. (Guevara)

Deformity by loss of teeth refers to injury which cannot be repaired by the action of nature.

The accused struck the injured party in the mouth with the iron instrument used for turning the engine of a motor truck, causing the loss of four front teeth.

The injury contemplated by the Code is an injury that cannot be repaired by the action of nature. The fact that the offended party may have artificial teeth, if he has the necessary means and so desires, does not repair the injury, although it may lessen the disfigurement. The case of a child or an old man is an *exception* to the rule. (People vs. Balubar, 60 Phil. 699)

Loss of one tooth which impaired appearance is deformity.

The crime committed falls under subdivision 3 of Article 263 in view of the uncontroverted loss of Duremdes' left upper central incisor which loss was visible and impaired his appearance, and which disfigurement could not be removed by the action of nature. (People vs. Lagrosas, C.A., 61 O.G. 6519, citing the case of People vs. Balubar, 60 Phil. 698)

In an earlier case, it was held that the breakage of an incisor does not constitute deformity. (People vs. Cambel, CA-G.R. No. 6054, Nov. 28, 1940)

A front tooth is a member of the body.

A front tooth is a member of the body, other than a principal member, within the meaning of the words, "or shall have lost any other member," as used in Subsection 3 of Art. 263 of the Revised Penal Code. (People vs. Balubar, 60 Phil. 707)

Hence, the loss of a front tooth due to a fist blow is serious physical injury under paragraph 3 of Art. 263.

Loss of both outer ears constitutes deformity and also loss of the power to hear.

Since the loss of two ears caused the deafness of the injured party, the defendants who cut off both ears of the offended party are guilty of serious physical injuries. (U.S. vs. Mañaul, *et al.*, 4 Phil. 342)

Note: The loss of the outer ears will necessarily cause deformity. If there is loss of power to hear of both ears as a result of the loss of both outer ears, the crime should be punished under par. 2 of Art. 263.

Loss of the lobule of the ear is deformity.

The accused held the offended party by the hair, dragged her along the ground, and then bit her left ear.

Held: The offended party was permanently disfigured because of the loss of the lobule of the left ear. (U.S. vs. Solis, *et al.*, 4 Phil. 178)

Loss of index and middle fingers is either deformity or loss of a member, not principal one, of his body or use of same.

The accused struck with his bolo the offended party, severing the index and middle fingers of his right hand. The offended party was not rendered incapable of working in the fields, his occupation, with the loss of his said fingers.

Held: The offended party lost a member, not principal one, of his body or the use of the same and was also deformed. (U.S. vs. Bugarin, 15 Phil. 189)

Loss of power to hear of right ear only is loss of use of other part of body.

Loss "of the power to hear" is surely a serious physical injury. But is the loss "of the power to hear of his right ear" a loss of the power to hear? As the offended party *may still hear thru his left ear,* it would seem he has not lost the power to hear. However, Article 263, paragraph 3, prescribes *prision correccional* in its minimum and medium periods if the person injured shall have lost "the use of any other part of his body." The offended party was deprived of the use of his right ear, a part of his body. (People vs. Hernandez, 94 Phil. 49)

Illness as a consequence of physical injuries inflicted.

The words "ill" and "illness" are used in paragraphs Nos. 3 and 4, respectively, of Art. 263. There is illness for a certain period of time, when the *wound* inflicted *did not heal* within that period. (People vs. Penesa, 81 Phil. 403)

In a case, months after the offense occurred, the injury to the offended party's left eye has not been *entirely cured.* This is illness for more than 30 days and the case falls under paragraph 4 of Art. 263. (People vs. De Castro, G.R. No. 41606, April 29, 1935)

Note: It would seem that if the injury would require medical attendance for more than 30 days, the illness of the offended party may be considered as lasting for more than 30 days. The fact that there was medical attendance for that period of time shows that the injuries were not cured for that length of time.

Medical attendance is not important in serious physical injuries.

It is to be noted that par. 4, Art. 263, requires *illness* or *incapacity* for labor, *not medical attendance.* (People vs. Obia, C.A., 45 O.G. 2568) In other paragraphs of Art. 263, medical attendance is not also mentioned.

In determining incapacity, must the injured party have an avocation at the time of the injury?

In paragraph 2 of this article, note that the incapacity of the offended party refers to the work *"in which he was theretofore habitually engaged."*

So also in paragraph 3, which speaks of "incapacitated for the performance of the work in which he was *habitually engaged."*

In these two paragraphs, at least, the offended party must have an avocation or work at the time of the injury.

The term "work" includes studies or preparation for a profession.

Incapacity for a certain kind of work only, but not for all, is a serious physical injury under par. 2 or par. 3 of this article.

In the case of *U.S. vs. Bugarin,* 16 Phil. 189, it is said that the incapacity must show that the physical injury has rendered the offended party incapable of working in the fields which was the occupation in which at the time he had been habitually engaged.

When the injured man did not recover so as to be able to attend to his ordinary avocation for a period of a little more than 30 days, the case falls under Art. 263, par. 4. (U.S. vs. Sy Vinco, 5 Phil. 47)

PARAGRAPH 4: INJURED PERSON BECOMES DLL OR INCAPACITATED FOR LABOR FOR MORE THAN 30 DAYS

Paragraph 4 speaks of incapacity for any kind of labor.

The fourth paragraph of this article *does not* refer to labor in which the offended party is engaged at the time the serious physical injuries are inflicted. Hence, the incapacity is for any kind of labor.

Injury requiring hospitalization for more than thirty days is serious physical injuries.

The leg injury inflicted on the victim required hospitalization for more than 30 days. Said physical injury is covered by par. 4 of Art. 263 of the Revised Penal Code. (People vs. Moro Ali, *et al.*, G.R. No. L-7431, May 30, 1958, 103 Phil. 1166)

Note: Hospitalization for more than thirty days may mean either illness or incapacity for labor for more than thirty days.

When the category of the offense of serious physical injuries depends on the period of illness or incapacity for labor, there must be evidence of the length of that period; otherwise, the offense is only slight physical injuries.

We cannot share the view of the trial court that despite the absence of evidence the appellant should be found guilty of serious physical injuries. In a prosecution for this crime where the category of the offense and the severity of the penalty depend on the period of illness or incapacity for labor, the length of this period must likewise be proved beyond reasonable doubt in much the same manner as the main act charged. (People vs. Codilla, CA-G.R. No. 4079-R, June 26, 1950) And when, as in the case at bar, proof of the said period is absent, the crime committed should be deemed only as slight physical injuries. (People vs. De los Santos, C.A., 59 O.G. 4393, citing People vs. Penesa, 81 Phil. 398; People vs. Sarmiento, *et al.*, CA-G.R. No. 3784-R, July 28, 1950)

Lessening of efficiency due to injury is not incapacity.

There is *no incapacity* if the injured party could still engage in his work although less effectively than before. (U.S. vs. Bugarin, *supra)*

Ordinary physical injuries, distinguished from mutilation.

The mutilation must have been caused *purposely and deliberately to lop or clip off some* part of the body so as to derive the offended party of such part of the body; this special intention is not present in the other kinds of physical injuries.

Qualified serious physical injuries.

If the offense is committed against any of the persons enumerated in the article defining the crime *of parricide* (Art. 246) or with the attendance of any of the circumstances mentioned in the article defining the crime of murder (Art. 248), the law provides higher penalties. (Art. 263, paragraph next to the last)

Serious physical injuries by excessive chastisement by parents are not qualified.

The penalties referred to in the paragraph next to the last of Art. 263 are not to be imposed on a parent who inflicted physical injuries upon his child by *excessive chastisement.* (Art. 263, last paragraph)

Art. 264. *Administering injurious substances or beverages.* — The penalties established by the next preceding article shall be applicable in the respective case to any person who, without intent to kill, shall inflict upon another any serious physical injury, by knowingly administering to him any injurious substances or beverages or by taking advantage of his weakness of mind or credulity.

Elements:

1. That the offender inflicted upon another any *serious* physical injury.
2. That it was done by *knowingly administering* to him any injurious substances or beverages or by taking advantage of his weakness of mind or credulity.
3. That he had *no intent* to kill.

It is frustrated murder when there is intent to kill.

If the offender had any intention to kill, the crime would be frustrated murder, the injurious substance to be considered as poison.

"By knowingly administering to him any injurious substances."

If the accused *did not know* of the injurious nature of the substances he administered, he is *not liable* under this article.

Administering injurious substance means introducing into the body the substance.

The infliction of injuries by throwing mordant chemicals or poisons on the face or upon the body is not contemplated in this article, because that is not "administering" injurious substance or beverage. (U.S. vs. Chiong Songco, 18 Phil. 459)

Art. 264 does not apply when the physical injuries that result are less serious or slight.

If as a result of administering injurious substance, only less serious or slight physical injuries are inflicted, they will be treated under Art. 265 or Art. 266, as the case may be.

Art. 264 specifically mentions "any serious physical injury."

"Weakness of mind or credulity,"

"By taking advantage of his weakness of mind or credulity" may take place in the case of witchcraft, philters, magnetism, etc. (Albert)

Art. 265. *Less serious physical injuries.* — Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*.[11]

Whenever less serious physical injuries shall have been inflicted with the manifest intent to insult or offend the injured person, or under circumstances adding ignominy to the offense, in addition to the penalty of *arresto mayor* a fine not exceeding 500 pesos shall be imposed.

Any less serious physical injuries inflicted upon the offender's parents, ascendants, guardians, curators, teachers, or persons of rank, or persons in authority, shall be punished by *prision correccional* in its minimum and medium periods,[12] provided that, in the case of persons in authority, the deed does not constitute the crime of assault upon such persons.

Matters to be noted in the crime of less serious physical injuries.

1. That the offended party is incapacitated for labor for *ten days or more* (but not more than 30 days), or needs *medical attendance* for the same period of time.

2. That the physical injuries must not be those described in the preceding articles.

Thus, if the incapacity is more than 30 days or the illness lasts for more than 30 days, it is a serious physical injury under paragraph 4 of Art. 263.

[11] See Appendix "A," Table of Penalties, No. 1.
[12] See Appendix "A," Table of Penalties, No. 14.

Qualified less serious physical injuries.

(1) A fine not exceeding P500, in addition to *arresto mayor,* shall be imposed for less serious physical injuries when —

(a) there is a manifest intent to *insult* or *offend* the *injured* person, or

(b) there are circumstances adding *ignominy* to the offense.

(2) A higher penalty is imposed when the victim is either —

(a) The offender's parents, ascendants, guardians, curators or teachers; or

(b) Persons of rank or persons in authority, provided the crime is not direct assault.

Medical attendance or incapacity is required in less serious physical injuries.

The law includes two subdivisions, dealing with (1) the inability for work, and (2) the necessity for medical attendance. So that although the wound required medical attendance for only two days; yet if the injured party was prevented from attending to his ordinary labor for a period of twenty-nine days, the physical injuries are denominated less serious. (U.S. vs. Trinidad, 4 Phil. 152; People vs. Olavides, C.A., 40 O.G., Supp. 4, 8)

The crime is less serious physical injuries even if there was no incapacity, but the medical treatment was for 13 days.

Her injury comes under the provisions of Art. 265, inasmuch as she was treated for only 13 days, and there is no evidence that she was given further medical attendance, granting that it took more than 13 days for the fracture to heal. She was not incapacitated for the performance of the work in which she was habitually engaged. (People vs. Anastacio, C.A., 55 O.G. 5047)

It is only slight physical injury when there is no medical attendance or incapacity for labor.

Physical injuries which *do not prevent* the offended party *from engaging* in his *habitual work or require medical attendance* are classified as slight. (Art. 266, par. 2) This is true even if the injuries were cured, but without medical attendance, say in twenty days.

But suppose the injuries, without medical attendance, were healed after two months? In this case, it may be considered illness for more than 30 days and, hence, the crime is serious physical injuries under par. 4, Art. 263. (See People vs. De Castro, *supra)*

"Or shall require medical attendance for the same period."

Does the phrase "shall require" refer to the nature of the wound or injury inflicted or to the actual medical attendance?

Suppose, *A* inflicted on *B* physical injuries which did not incapacitate the latter for labor. *B* did not apply any medicine to his wounds, but they were healed in 14 days. Is *A* liable for less serious physical injuries? It will be noted that no medical attendance was given to *B*, although the nature of the wounds required it. It is believed that the phrase "shall require" refers to the *actual medical attendance. There must be proof as to the period of the required medical attendance.* (People vs. Penesa, 81 Phil. 398)

Art. 266. ***Slight physical injuries and maltreatment.*** — The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period;

2. By *arresto menor* or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance;

3. By *arresto menor* in its minimum period or a fine not exceeding 50 pesos when the offender shall ill-treat another by deed without causing any injury.

Three kinds of slight physical injuries:

1. Physical injuries which *incapacitated* the offended party for labor from *one* (1) to *nine* (9) days, or required *medical attendance during the same period.*
2. Physical injuries which did not prevent the offended party from engaging in his habitual work or which did not require medical attendance.
3. Ill-treatment of another by deed without causing any injury.

Some hours after nine days, not amounting to ten days.

A physical injury which incapacitates the offended party from working for 9 days and some hours without amounting to 10 days, is a slight physical injury.

Examples of physical injuries under paragraph 2.

Contusion on the face or black eye produced by fistic blow.

When there is no evidence of actual injury, it is only slight physical injuries.

In the absence of proof as to the period of the offended party's incapacity for labor or of the required medical attendance, the crime committed is slight physical injuries. (People vs. Penesa, 81 Phil. 398)

Where conspiracy to murder is not proved, and the gravity or duration of the physical injury resulting from the fistblows by the accused on the victim was not established by the evidence, the accused is presumed, and is held, liable for slight physical injuries. (People vs. Tilos, *et al.*, G.R. No. 128385, Jan. 16, 2001)

In the absence of evidence to show actual injury, as when the deceased died of other causes and there is no evidence as to how many days the deceased lived after the injury, the crime is only slight physical injuries, it appearing that the wounds inflicted by the accused could not have caused death. (People vs. Amarao, *et al.*,C.A., 36 O.G. 3462)

Example of slight physical injury by ill-treatment.

Any physical violence which does not produce injury, such as slapping the face of the offended party, without causing a dishonor.

Supervening event converting the crime into serious physical injuries after the filing of the information for slight physical injuries can still be the subject of a new charge.

Where the charge contained in the original information was for slight physical injuries because at that time, the fiscal believed that the wound suffered by the offended party would require medical attendance for a period of only 8 days, but when the preliminary investigation was conducted by the justice of the peace, he found that the wound would heal after 30 days, the act which converted the crime into a more serious one had supervened after the filing of the original information and this supervening event can still be the subject of amendment or of a new charge without necessarily placing the accused in double jeopardy. (People vs. Manolong, 85 Phil. 829)

Regional Trial Court has no jurisdiction to sentence on appeal for a crime over which municipal court had no jurisdiction.

The jurisdiction of the Court of First Instance (now Regional Trial Court) by virtue of the appeal is limited to the crime object of the judgment, from which the appeal has been taken. It has no jurisdiction to sentence the accused on appeal for a crime over which the justice of the peace court (now municipal trial court) had no jurisdiction. (People vs. Aquino, 71 Phil. 143)

Republic Act No. 9262

Anti-Violence Act Against Women and Their Children Act of 2004

March 8, 2004

Violence against women and their children.

"Violence against women and their children" **refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:**

A. ***"Physical Violence"*** **refers to acts that include bodily or physical harm;**

B. ***"Sexual violence"*** **refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:**

a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other harm or coercion;

c) Prostituting the woman or child.

C. *"Psychologicaviolence"* refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

D. *"Economic abuse"* refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;

2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;

3. destroying household property;

4. controlling the victims' own money or properties or solely controlling the conjugal money or properties. (Sec. 3)

Acts of Violence Against Women and Their Children.

The crime of violence against women and their children is committed through any of the following acts:

(a) Causing physical harm to the woman or her child;

(b) Threatening to cause the woman or her child physical harm;

(c) Attempting to cause the woman or her child physical harm;

(d) Placing the woman or her child in fear of imminent physical harm;

(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited

to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

(1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;

(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

(3) Depriving or threatening to deprive the woman or her child of a legal right;

(4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;

(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

(1) Stalking or following the woman or her child in public or private places;

(2) Peering in the window or lingering outside the residence of the woman or her child;

(3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;

(4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and

(5) Engaging in any form of harassment or violence;

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children. (Sec. 5)

Penalties.

The crime of violence against women and their children shall be punished according to the following rules:

(a) Acts fallingunder Section 5(a) constituting attempted, frustrated or consummated parricide or murder or homicide shall be punished in accordance with the provisions of the Revised Penal Code.

If these acts resulted in mutilation, it shall be punishable in accordance with the Revised Penal Code; those constituting serious physical injuries shall have the penalty of prision mayor; those constituting less serious physical injuries shall be punished by prision correccional; and those constituting slight physical injuries shall be punished by arresto mayor.

Acts falling under Section 5(b) shall be punished by imprisonment of two degrees lower than the prescribed penalty for the consummated crime as specified in the preceding paragraph but shall in no case be lower than arresto mayor.

(b) Acts falling under Section 5(c) and 5(d) shall be punished by arresto mayor;

(c) Acts falling under Section 5(e) shall be punished by prision correccional;

(d) Acts falling under Section 5(f) shall be punished by arresto mayor;

(e) Acts falling under Section 5(g) shall be punished by prision mayor;

(f) Acts falling under Section 5(h) and Section 5(i) shall be punished by prision mayor.

If the acts are committed while the woman or child is pregnant or committed in the presence of her child, the penalty to be applied shall be the maximum period of penalty prescribed in the section.

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (P100,000.00) but not more than three hundred thousand pesos (300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court. (Sec. 6)

Chapter Three

RAPE

Art. **266-A.** *Rape, When and How Committed.* — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. *(Republic Act No. 8353 which took effect on October 22, 1997)*

Art. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

When the rape is attempted **and** a homicide is committed by reason or on the occasion thereof, the penalty shall be ***reclusion perpetua*** to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following **aggravating/** qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of **the** victim.

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution.

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime.

5) When the victim is a child below seven (7) years old.

6) When the offender knows that he is afflicted with Human **Immuno-Deficiency** Virus **(HIV)/Acquired** Immune Deficiency Syndrome (ADDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim.

7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability.

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime.

10) When the offender knew of the mental disability, emotional disorder **and/or** physical handicap of the offended party at the time of the commission of the crime.

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor.*

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal.*

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion temporal.*

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion temporal to *reclusion perpetua.*

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be *reclusion perpetua.*

Reclusion temporal shall also be imposed if the rape is committed with any of the ten **aggravating/qualifying** circumstances mentioned in this article. *(Republic Act No. 8353)*

Elements of rape under paragraph 1:

(1) That the offender is a man;

(2) That the offender had carnal knowledge of a woman;

(3) That such *act is accomplished* under any of the following circumstances:

- (a) By using force or intimidation; or
- (b) When the woman is deprived of reason or otherwise unconscious; or
- (c) By means of fraudulent machination or grave abuse of authority; or
- (d) When the woman is under 12 years of age or demented.

Elements of rape under paragraph 2:

(1) That the offender commits an act of sexual assault;

(2) That the act of sexual assault is *committed by* any of the following means:

(a) By inserting his penis into another person's mouth or anal orifice; or

(b) By inserting any instrument or object into the genital or anal orifice of another person;

(3) That the act of sexual assault is *accomplished* under any of the following circumstances:

(a) By using force or intimidation;

(b) When the woman is deprived of reason or otherwise unconscious: or

(c) By means of fraudulent machination or grave abuse of authority; or

(d) When the woman is under 12 years of age or demented.

Who can commit rape?

Under Republic Act No. 8353, the crime of rape can now be committed by a *male or a female.* Before its amendment, rape could only be committed by a male person.

PARAGRAPH 1: RAPE BY SEXUAL INTERCOURSE

The contact of the male penis with the woman's vagina is referred to as "rape by sexual intercourse" (People vs. Soriano, 388 SCRA 140, [2002]; People vs. Palma, 148869-74, Dec. 11, 2003)

In rape under paragraph 1, there must be sexual intercourse.

Penetration, even partial is necessary. The slightest penetration is enough. Proof of emission is not necessary. (Miller, Criminal Law, 299; People vs. Selfaison, *et al.*, G.R. No. L-14732, Jan. 28, 1961) The absence of spermatozoa in the vagina does not negative rape. (People vs. Nula, CA-G.R. No. 19896-R, May 7, 1958; People vs. Canastre, 82 Phil. 480)

In *People vs. De la Peña*, 233 SCRA 573 [1994], the Supreme Court clarified that the decisions finding a case for rape even if the attacker's penis merely touched the external portions of the female genitalia were made in the context of the presence or existence of an erect penis capable

of full penetration. Where the accused failed to achieve an erection, had a limp or flaccid penis, or an oversized penis which could not fit into the victim's vagina, the Court nonetheless held that rape was consummated on the basis of the victim's testimony that the accused repeatedly tried, but in vain, to insert his penis into her vagina and in all likelihood reached the labia of her pudendum as the victim felt his organ on the lips of her vulva (People vs. Bacalso, G.R. 195 SCRA 557 [1991]; People vs. Hangdaan, 201 SCRA 568 [1991]; People vs. De la Peña, 233 SCRA 573 [1994]; People vs. Clopino, 290 SCRA 432 [1998]; People vs. Quinañola, G.R. No. 126148, 5 May 1999) or that the penis of the accused touched the middle part of her vagina (People vs. Navarro, 221 SCRA 684 [1993]). Thus, touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the mons pubis, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. The labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the labia majora or the labia minora of the pudendum constitutes consummated rape.

The pudendum or vulva is the collective term for the female genital organs that are visible in the perineal area, *e.g.*, mons pubis, labia majora, labia minora, the hymen, the clitoris, the vaginal orifice, etc. The mons pubis is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the labia majora or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the labia majora is the labia minora. (Mishell, Stenchever, Droegemueller, Herbst Comprehensive Gynecology, 3rd Ed., 1997, pp. 42-44.)

Jurisprudence dictates that the labia majora must be entered for rape to be consummated, and not merely for the penis to stroke the surface of the female organ. Thus, a grazing of the surface of the female organ or touching the mons pubis of the pudendum is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, i.e., touching of either labia of the pudendum by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness. (People vs. Campuhan, G.R. No. 129433, March 30, 2000)

If there is no sexual intercourse and only acts of lewdness are performed, the crime may be rape through sexual assault under par. 2 or acts of lasciviousness only under Art. 336.

Only one of the four circumstances mentioned in paragraph 1 is sufficient.

Thus, when force or intimidation is employed by the offender, it is not necessary that the woman be unconscious when he had carnal knowledge of her.

PARAGRAPH 2: RAPE THROUGH SEXUAL ASSAULT

The sexual abuse under paragraph 2 is categorized as "rape through sexual assault." (People vs. Soriano, 388 SCRA 140, [2002]; People vs Palma, 148869-74, Dec. 11, 2003)

Aviolation of the body orifices by the fingers is within the expanded definition of rape under Republic Act No. 8353.

In the case of *Obaña vs. Hon. Soriano, et al.*, CA-G.R. SP No. 60353, Aug. 29, 2001, the Court held that: (1) whether or not "finger" is included within the contemplation of "object" in paragraph 2 of Art. 266-B results in an ambiguity that calls for the application of the rules and conventions of construction; (2) treating "finger" as an object in the provision in question does not offend the ordinary or common meaning of the words; (3) excluding "finger" from the concept of "object" would be contrary to the purpose of the law; (4) there is indication from legislative history of the intention to include "finger" within the contemplation of the questioned phrase; and (5) excluding "finger" from the motion of the "object" would result in an absurdity and in a capricious distinction between acts equally intrusive and offensive, a distinction supported by no cogent reason whatsoever.

In People vs. Soriano, G.R. No. 142779-95, 29 August 2002, 388 SCRA 140, it was ruled that the appellant is guilty of rape through sexual assault when he inserted his finger into the vagina of his victim. This is one of the significant amendments introduced by the new law, thus making the insertion of any instrument, object, or any part of the human body other than the sexual organ into the genital or anus of another person as rape and not merely acts of lasciviousness. (People vs. Campuhan, G.R. No. 129433, March 30, 2000)

BY USING FORCE AND INTIMIDATION

Degree of force necessary to constitute rape.

At first, the offended woman shouted for help, struggled and kicked the accused, but the latter pressed a hunting knife at her throat, overcame her resistance, fondled her and after removing her drawers, succeeded in having sexual intercourse with her.

Held: A verbal refusal alone will not do. There must be physical struggle, taxing her powers to the utmost. Thus, mere initial resistance of the offended party in rape cases is not the *manifest and tenacious resistance* that the law requires. (People vs. Lago, C.A., 45 O.G. 1356)

Consent and *not physical force* is the common origin of acts between man and woman. Strong evidence and indications of great weight will alone provide force and violence in rape. (U.S. vs. De Dios, 8 Phil. 279, citing Pacheco)

When the accused girl stated that she defended herself against the accused as long as she could, but he overpowered her and held her till her strength gave out, and then accomplished his vicious purpose, there is evidence of sufficient force. (People vs. Momo, 56 Phil. 86)

The force need not be irresistible. It need not be present and so long as it brings the desired result, all considerations of whether it was more or less irresistible is beside the point. (People vs. Momo, *supra*; People vs. Jimenez, 93 Phil. 137)

Force employed against the victim of rape need not be of such character as could be resisted.

It is not necessary that the force employed against the complaining woman in rape be so great or of such a character as could not be resisted. It is enough that the force used is sufficient to consummate the culprit's purpose of copulating with the offended woman. The force or violence necessary in rape is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other. (People vs. Savellano, 57 SCRA 320) CONSTRUCTIVE FORCE (THE WOMAN DECEIVED)

Resistance when futile, does not amount to consent.

It was held in People vs. Las Piñas, Jr. , G.R. No. 133444, Feb. 20, 2002, citing People vs. Dreu, 334 SCRA 62 (2000), that the test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault. It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance. (People vs. Sending, G.R. Nos. 141773-76, Jan. 20, 2003)

Intimidation.

Intimidation must be viewed in light of the victim's perception and judgment at the time of rape and not by any hard and fast rule. It is enough that it produces fear — fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident. (People vs. Tabugoca, 285 SCRA 312, 332 [1998]; People vs. Metin, G.R. *No.* 140781, May 8, 2003)

Rape committed by employing intimidation.

Rosalia was thirteen years, four months and twenty days old at the time she was raped. She was an immature teenager. She could easily be coerced or cowed by a big old farmer and former security guard like Garcines (his brother was a policeman). Her case is not far removed from that on an eleven-year-old girl with whom voluntary carnal intercourse is considered rape. Intimidation includes the moral kind such as the fear caused by threatening the girl with a knife or pistol. (People vs. Garcines, 57 SCRA 653, citing 2 Cuello Calon, Codigo Penal, 12 Ed. 537)

Moral Ascendancy or Influence, held to substitute for the element of physical force or intimidation.

In a number of cases, the Supreme Court has ruled that the moral ascendancy or influence exercised by the accused over the victim substitutes for the element of physical force or intimidation in cases of rape and, it may be added, acts of lasciviousness. The Court has applied this rule to rapes commited by:

a) fathers against their daughters (People vs. Bazona, G.R. Nos. 133343-44, March 2, 2000; People vs. Maglente, 306 SCRA 546 [1999]; People vs. Panique, 316 SCRA 757 [1999] People vs. Tabugoca, 285 SCRA 312 [1998]; People vs. Bartolome, 296 SCRA 615 [1998]; People vs. Adora, 275 SCRA 441 [1997])

b) stepfathers against their stepdaughters (People vs. Vitor, 245 SCRA 392 [1995]; People vs. Robles, 170 SCRA 557 [1989]);

c) a godfather against his goddaughter (People vs. Casil, 241 SCRA 285 [1995]);

d) uncles against their nieces (People vs. Betonio, 279 SCRA 532) (1997); and

e) the first cousin of the victim's mother (People vs. Perez, 307 SCRA 276 [1999]. (People vs. Dichoson, G.R. Nos. 118986-89, Feb. 19, 2001)

When the offender in rape has an ascendancy on influence over the girl, it is not necessary that she put up a determined resistance.

When the offender is the father of the girl who was yet of tender age, it is not necessary that there be signs that she put up a determined resistance. A sexual act between father and daughter is so revolting that it would be hard to believe that the complainant would have submitted thereto if her will to resist had not been overpowered. (People vs. Alinea, C.A., 45 O.G., Supp. 5, 1940)

The kind of force or violence, threat or intimidation as between father and daughter need not be of such nature and degree as would be required in other cases, for the father in this instance exercises strong moral and physical influence and control over his daughter. (People vs. Rinion, C.A., 61 O.G. 4422)

Rape may be proved by the uncorroborated testimony of the offended woman.

The testimony of the offended party most often is the only one available to prove directly the commission of rape; corroboration by other eyewitnesses is seldom available. In fact, the presence of such eyewitnesses would, in certain cases, place a serious doubt as to the possibility of its commission. The testimony, however, must be conclusive, logical and probable. (People vs. Landicho, C.A., 43 O.G. 3767)

In reviewing the evidence adduced in a prosecution for the crime of rape, three well-known principles should guide an appellate court, namely, (1) that an accusation for rape can be made with facility, is difficult to prove, but more difficult for the person accused, though innocent, to disprove; (2) that in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) that the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weaknesses of the evidence for the defense. (People vs. Cudira, 3 C.A. Rep. 93; People vs. Villapana, 101 SCRA 72; People vs. Aldana, 175 SCRA 135)

Where the testimony coming from the offended party is firm, categorical and straightforward, her clothing, including the most intimate garments, soiled and smudged, ripped and torn, which are mute witnesses of the futile resistance she put up, the accused should be convicted on the basis of her testimony. (People vs. Baylon, 57 SCRA 114)

But where the complainant did not shout despite the presence of student boarders and patients in the clinic at the time of the alleged rape, her testimony which is uncorroborated cannot support the conviction of the accused. (Dacug, *et al.* vs. Gonzales, C.A., 58 O.G. 7068)

Offended party deprived of reason or otherwise unconscious.

In the rape of a woman deprived of reason or otherwise unconscious the *victim has no will.*

Sexual intercourse with an insane woman was considered rape (People vs. Layson, C.A., 37 O.G. 318)

Cohabitation with *feebleminded, idiotic* woman is rape. The deprivation of reason contemplated by *law does not need to be complete.* Mental abnormality or deficiency is sufficient. (People vs. Daing, C.A., 49 O.G. 2331)

Intercourse with a deaf-mute woman is *not rape, in the absence* of proof that she is an imbecile. (People vs. Nava, C.A., 40 O.G. 4237)

In the following cases, there is rape because the woman is unconscious:

(a) Carnal act while the offended party was asleep (People vs. Caballero, 61 Phil. 900), or before a young wife awoke. (People vs. Corcino, 53 Phil. 234)

(b) When the woman is in a lethargy produced by sickness.

(c) After the woman was knocked unconscious. On seeing the ravishing figure of a woman taking a bath, the accused hit her and, after she became unconscious, had sexual intercourse with her. (People vs. Sanico, C.A., 46 O.G. 98)

(d) When narcotic was administered to the woman. (Albert)

But where consent is induced by the administration of drugs or liquor, which incites her passions but *does not deprive her of her will power,* the accused is not guilty of rape. (State vs. Lung, 21 Nov. 29, 28, p. 235, 37 Am. St. Rep. 505)

(e) When a potion is given to the woman.

Rape is committed if a potion is given to the woman and as a result of which she felt dizzy and weak and experienced a sudden loss of control over her person and thereafter, she was abused. It deprived the woman of reason and will to resist the sexual assault of the accused. (People vs. Bautista, 102 SCRA 483)

Consummated rape.

For the consummation of the crime of rape, it is not essential that there be a complete penetration of the female organ; neither is it essential that there be a rupture of the hymen.

It is enough that the labia of the female organ was penetrated. The slightest penetration of the labia consummates the crime of rape. (People vs. Oscar, 48 Phil. 527; People vs. Hernandez, 49 Phil. 980)

The absence of spermatozoa does not disprove the consummation of rape, the important consideration being, not the emission of semen, but penetration. (People vs. Jose, 37 SCRA 450)

Frustrated rape.

Frustrated rape is committed upon a girl 3 years and 11 months old, there being no evidence of penetration of her genital organ. (People vs. Erinia, 60 Phil. 998)

There is no crime of frustrated rape.

In the crime of rape, from the moment the offender has carnal knowledge of his victim, he actually attains his purpose and, from that moment also, all the essential elements of the offense have been accomplished. Nothing more is left to be done by the offender, because he has performed the last act necessary to produce the crime. Thus, the felony is consummated. In a long line of cases, a uniform rule has been set that for the consummation of rape, perfect penetration is not essential. Any penetration of the female organ by the male organ is sufficient. Entry of the labia or lips of the female organ, without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction. Necessarily, rape is attempted if there is no penetration of the female organ because not all acts of execution was performed. The offender merely commenced the commission of a felony directly by overt acts. Taking into account the nature, elements and manner of execution of the crime of rape and jurisprudence on the matter, it is hardly conceivable how the frustrated stage in rape can ever be committed. (People vs. Orita, 184 SCRA 114-115)

Note: In the case ***of People vs. Orita,*** the Supreme Court held that the Erinia case appears to be a "stray" decision inasmuch as it has not been reiterated in the Court's subsequent decisions.

It was likewise mentioned therein that "[w]hile Art. 335 provides in its penultimate paragraph for the penalty of death when the rape is attempted or frustrated and a homicide is committed by reason of or on the occasion thereof, the Court is of the opinion that the particular provision on frustrated rape is a dead provision, which must have been prompted by the Erinia case. *Note:* Under Art. 266-B, the word "frustrated" has been deleted. Thus, the phrase now reads: "When the rape is attempted and a homicide is committed by reason or on the occasion thereof x x x."

Attempted rape.

Attempted rape was committed by the accused after raising the dress of the woman then asleep and placing himself on top of her, and when the woman was awakened the accused threatened her with a knife, but because

of her continued shouting and offering of resistance, a neighbor came to her rescue. (People vs. Tayaba, 62 Phil. 559)

Note: In this case, there was *intent* on the part of the accused to have carnal knowledge of the woman against her will.

Resignation to consummated act is not consent.

Taking advantage of the fact that the woman was asleep, the accused entered upon the commission of the act. When prosecuted for rape, the accused contended that the woman consented because when she woke up she made no resistance.

Held: The crime had already been consummated and the offended party's final consent, after she realized the outrage perpetrated against her, is not of the character to exclude the concept of the crime of rape. (People vs. Dayo, 62 Phil. 102; People vs. Caballero, 61 Phil. 900)

Note: When the offended party woke up, at least the labia of her organ was already penetrated. Hence, the crime of rape was already consummated when she woke up.

STATUTORY RAPE: When the girl is under 12 years of age.

(a) Where the offended party is less than twelve years of age, rape is committed although she consented to the sexual act. (People vs. Villamor, C.A., 37 O.G. 947; People vs. Canencia, C.A. 51 O.G. 844)

(b) Sexual intercourse with a nine-year-old girl is rape. (People vs. Peido, C.A., 44 O.G. 2764)

When the girl is under 12 years of age.

(a) Where the offended party is less than twelve years of age, rape is committed although she consented to the sexual act. (People vs. Villamor, C.A., 37 O.G. 947; People vs. Canencia, C.A., 51 O.G. 844)

(b) Sexual intercourse with a nine-year-old girl is rape. (People vs. Perido, C.A., 44 O.G. 2764)

(c) Rape is committed even if the girl under 12 years is a prostitute. (People vs. Perez, C.A., 37 O.G. 1762)

Note: The law does not consider that kind of consent voluntary, as the offended party under 12 years old cannot have a will of her own.

Character of the offended woman is immaterial in rape.

The fact that the offended party may have been of an unchaste character constitutes no defense in a charge of rape, *provided that the illicit*

relations were committed with force and violence, etc. (People vs. Blanco, 46 Phil. 113)

Multiple rape by two or more offenders.

While Alfaro was having sexual intercourse with the offended girl, Hernandez was threatening her with his revolver, and when Hernandez was lying with her, Alfaro was pointing to her his revolver.

Held: Each of the two accused should suffer two sentences. (People vs. Alfaro, *et al.*, 91 Phil. 404)

Each of the four defendants who raped the victim, having conspired with the others to rape her, is responsible not only for the rape committed personally by him, but also for those committed by the others, because each sexual intercourse had, through force by each one of them with the victim, was consummated separately and independently from that had by each of the others. Each of the defendants was held liable for four crimes of rape, in the commission of which he participated by direct execution and by acts without which the commission of the crimes would not have been accomplished. (People vs. Villa, *et al.*, 81 Phil. 193)

When rape is punished by death.

The penalty of death shall be imposed for rape in the following cases:

1. When by reason or on occasion of the rape, a *homicide* is committed.
2. When the victim is under *eighteen* (18) years of age and the offender is a *parent, ascendant,* stepparent, guardian, relative by consanguinity or affinity *within the third civil degree,* or the common-law spouse of the parent of the victim.
3. When the victim is under the *custody of the police or military authorities* or any law enforcement or penal institution.
4. When the rape is committed in *full view* of the husband, parent, any of the children or other *relatives within the third civil degree of consanguinity.*
5. When the victim is a *religious* engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime.
6. When the victim is a child below seven (7) years old.
7. When the *offender knows* that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other *sexually transmissible disease* and the virus or disease is *transmitted to the victim.*

8. When committed by any *member of the Armed Forces of the Philippines or* paramilitary units thereof or the *Philippine National Police* or any *law enforcement agency* or *penal institution,* when the offender *took advantage of his position* to facilitate the commission of the crime.

9. When by reason or on the occasion of the rape, the victim has *suffered permanent physical mutilation or disability.*

10. When the offender *knew of the pregnancy* of the offended party at the time of the commission of the crime.

11. When the offender *knew of the mental disability,* emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

Note: Pursuant to RA No. 9346 prohibiting the imposition of the death penalty, the penalty of *reclusion perpetua* without eligibility for parole shall be imposed, in lieu of death.

Rape with homicide is a special complex crime.

Rape with homicide is now a special complex crime, like robbery with homicide, in view of the amendment to Art. 335. The commentaries relative to robbery with homicide, under Art. 294, on the meaning of the phrase "by reason" may be considered in the special complex crime of rape with homicide.

The special complex crime of rape with homicide is committed by the accused who, while raping a 6-year-old girl, strangled her to death in order to silence her. The accused was sentenced to death. (People vs. Yu, G.R. No. L-13780, Jan. 28, 1961)

When the homicide is committed NOT by reason or on the occasion of the rape.

The accused murdered two sisters. As the elder sister was dying, the accused had carnal intercourse with her.

The prosecution characterized the two murders and rape as "double murder with rape" alleging in the information that the rape was committed on the occasion of the murders.

Held: This is *not* the special complex crime of rape with homicide, since the victim was already at the threshold of death when she was ravished. That bestiality may be regarded either as a form of ignominy causing disgrace or as a form of cruelty which aggravated the murder of the elder sister, it being unnecessary to the commission thereof (Arts. 14[17 and 20] and 248[6]), Revised Penal Code. The accused is guilty of two separate murders. (People vs. Laspardas, 93 SCRA 638, 76 O.G. 2519)

Note: Another illustration of rape with homicide is, where the rapist, who was suffering from gonorrhea, infected the victim who died as a result.

Penalties for rape under paragraph 1 and rape under paragraph 2, compared.

1) Rape committed under any of the four (4) circumstances

Par. 1 - RECLUSION PERPETUA

Par. 2 - PRISION MAYOR

2) Rape committed with the use of a deadly weapon or by two or more persons

Par. 1 - RECLUSION PERPETUA TO DEATH

Par. 2 - PRISION MAYOR TO RECLUSION TEMPORAL

3) Rape where victim becomes insane

Par. 1 - RECLUSION PERPETUA TO DEATH

Par. 2 - RECLUSION TEMPORAL

4) Attempted rape and homicide is committed

Par. 1 - RECLUSION PERPETUA TO DEATH

Par. 2 - RECLUSION TEMPORAL TO RECLUSION PERPETUA

5) Rape with homicide

Par. 1 - DEATH

Par. 2 - RECLUSION PERPETUA

6) Rape with aggravating/qualifying circumstances

Par. 1 - DEATH

Par. 2 - RECLUSION TEMPORAL

Indemnity in Rape.

The award of P50,000 as indemnity *ex delicto* is mandatory upon the finding of the fact of rape. (People vs. Taño, G.R. No. 133872 [2000]; People vs. Maglente, 306 SCRA 546 [1999]).

If the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the present amended law, the indemnity of the victim shall be in the increased amount of not less than P75,000. (People vs. Victor, 292 SCRA 186 [1998]; People vs. Prades, 293 SCRA 411 [1998]; People vs. Mahinay, 302 SCRA 486 [1999])

The award of civil indemnity is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations overtime, but also an expression of the displeasure of the Court over the incidence of heinous crimes against chastity. (People vs. Victor, 292 SCRA 186 [1998])

Indemnity in Rape with Homicide.

With regard to the civil indemnity, the Court hereby rules that the victim of rape with homicide should be awarded the amount of P100,000. Prevailing judicial policy has authorized the mandatory award of P50,000 in case of death, and P50,000 upon the finding of the fact of rape. Also, under recent case law, the indemnity for the victim shall be in the increased amount of P75,000 if the crime of rape committed is effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws. Thus, if homicide is committed by reason or on the occasion of the rape, indemnity in the amount of P100,000 is fully justified and properly commensurate with the seriousness of the said complex crime. (People vs. Robles, Jr., 305 SCRA 273 [1999])

Damages in Rape.

Moral damages in the amount of P50,000 is to be automatically awarded in rape cases without need of proof. (People vs. Prades, 293 SCRA 411 [1998])

Moral damages may be awarded to the victim in such amount as the court deems just without the necessity for pleading or proof of mental or physical suffering provided in Art. 2217 of the Civil Code other than the fact of the commission of the offense. This is because it is recognized that the victim's injury is concomitant with and necessarily resulting from the odious crime of rape to warrant *per se* the award of moral damages. (People vs. Dizon, 309 SCRA 669 [1999])

Exemplary damages may be awarded in criminal cases as part of the civil liability if the crime was committed with one or more aggravating circumstances. (People vs. Batoon, G.R. No. 1341494, 26 October 1999)

Exemplary damages have been awarded in rape cases committed by fathers against their daughters to deter other fathers with pervert or aberrant sexual behavior from sexually abusing their daughters. (People vs. Bayona, G.R. No. 13343, 2 March 2000; People vs. Mosqueda, 313 SCRA 694 [1999])

Art. 266-C. ***Effect of pardon.*** **— The subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed.**

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: ***Provided,*** **That the crime shall not be extinguished or the penalty shall not be abated if the marriage is void** ***ab initio. (Republic Act No. 8353)***

Effect of marriage.

Marriage extinguishes **not only the penal action, but likewise the penalty that may be imposed. (Laceste vs. Santos, 56 Phil. 472; People vs. Miranda, 57 Phil. 264; Art. 266-C)**

In crimes against chastity, such effect ***benefits not only the principals but also the accomplices and accessories.*** **(Art. 344, Revised Penal Code) However, since rape has ceased to be a crime against chastity, but is now a crime against persons, it now appears that marriage extinguishes that penal action and the penalty only as to the principal** ***(i.e.,*** **husband) and not as to the accomplices and accessories.**

Further, this principle does not apply where multiple rape is committed, because while marriage with one defendant extinguishes the criminal liability, its benefits cannot be extended to the acts committed by the others of which he is a co-principal. (People vs. Bernardo, ***et al.,*** **C.A. 38, O.G. 3479)**

Rape of wife by husband.

Prior to Rep. Act No. 8353, a husband cannot be guilty of rape committed upon his wife because of the matrimonial consent which she gave when she assumed the marriage relation, and the law will not permit her to retract in order to charge her husband with the offense. (State vs. Haines, 51 La. Ann. 731, 25 So. 372; 441 R.A. 837) The second paragraph of Section 266-C of RA 8353 is explicit in providing that a husband may be guilty of rape of his wife when it states: "In case it is the legal husband who is the offender x x x."

When the legal husband is the offender.

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal

action or the penalty: *Provided,* That the crime shall not be extinguished or the penalty shall not be abated if the marriage is void *ab initio.* (Art. 266-C, 2nd par.)

It is only in crimes against chastity that pardon/forgiveness by the offended party shall bar the prosecution of the offense committed, *i.e.,* seduction, abduction, acts of lasciviousness. Since rape is no longer a crime against chastity, but is now a crime against persons, the provision that "subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty" is the exception to the rule that forgiveness by the offended party shall not extinguish the penal action in crimes against persons.

Art. 266-D. ***Presumptions.*** — Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article **266-A.** *(Republic Act No. 8353)*

Evidence which may be accepted in the prosecution of rape.

(a) any physical overt act manifesting resistance against the act of rape in any degree from the offended party; or

(b) where the offended party is so situated as to render him/her incapable of giving consent.

Title Nine

CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

What are the crimes against liberty?

They are:

(1) Kidnapping and serious illegal detention. (Art. 267)

(2) Slight illegal detention. (Art. 268)

(3) Unlawful arrest. (Art. 269)

(4) Kidnapping and failure to return a minor. (Art. 270)

(5) Inducing a minor to abandon his home. (Art. 271)

(6) Slavery. (Art. 272)

(7) Exploitation of child labor. (Art. 273)

(8) Services rendered under compulsion in payment of debt. (Art. 274)

What are the crimes against security?

They are:

(1) Abandonment of persons in danger and abandonment of one's own victim. (Art. 275)

(2) Abandoning a minor. (Art. 276)

(3) Abandonment of minor by person entrusted with his custody; indifference of parents. (Art. 277)

(4) Exploitation of minors. (Art. 278)

(5) Trespass to dwelling. (Art. 280)

(6) Other forms of trespass. (Art. 281)

(7) Grave threats. (Art. 282)

(8) Light threats. (Art. 283)

(9) Other light threats. (Art. 285)

(10) Grave coercions. (Art. 286)

(11) Light coercions. (Art. 287)

(12) Other similar coercions — (Compulsory purchase of merchandise and payment of wages by means of tokens). (Art. 288)

(13) Formation, maintenance and prohibition of combination of capital or labor through violence or threats. (Art. 289)

(14) Discovering secrets through seizure of correspondence. (Art. 290)

(15) Revealing secrets with abuse of office. (Art. 291)

(16) Revealing of industrial secrets. (Art. 292)

Chapter One

CRIMES AGAINST LIBERTY

Section One. — Illegal detention

What are the crimes classified as illegal detention?

They are:

1. Kidnapping and serious illegal detention. (Art. 267)
2. Slight illegal detention. (Art. 268)
3. Unlawful arrest. (Art. 269)

Art. 267. ***Kidnapping and serious illegal detention.*** **— Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of** ***reclusion perpetua*** **to death:**[1]

1. If the kidnapping or detention shall have lasted more than three days;

2. If it shall have been committed simulating public authority;

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made;

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense.

[1] See Appendix "A," Table of Penalties, No. 37.

When the victim is killed or dies as a consequence of the detention, or is raped or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. *(As amended by R.A. No. 7659)*

Elements:

1. That the offender is a *private individual.*
2. That he *kidnaps* or *detains* another, or in any other manner *deprives* the latter of his *liberty.*
3. That the act of detention or kidnapping must be *illegal.*
4. That in the commission of the offense, any of the following circumstances is present:
   (a) That the kidnapping or detention lasts for more than 3 days;
   (b) That it is committed simulating public authority;
   (c) That any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or
   (d) That the person kidnapped or detained is a minor, female, or a public officer. (cited in People vs. Mercado, 131 SCRA 501)

If the offender is a public officer, the crime is arbitrary detention.

This article requires that the offender is a private individual, because when the offender is a public officer, it will be arbitrary detention.

But the public officer must have a duty under the law to detain a person, such as a policeman or Constabulary soldier. If he has no such duty, like a sanitary inspector or a clerk in a government office, and he detains a person, he is liable under this article.

Penalty when victim is a minor and accused is one of the parents.

When victim is a minor and accused is any of the parents, the penalty is that provided for in Article 271, par. 2 — *arresto mayor* or a fine not exceeding P300, or both.

Intention to deprive the victim of his liberty for purpose of extorting ransom on the part of the accused is essential in the crime of kidnapping.

The accused approached, took hold of, and dragged *M*, striking the latter with the butt of his rifle. The companions of *M* were told to continue

on their way. Hardly had they walked one kilometer when they heard gun reports. The following day, *M* was found dead with gunshot wounds.

Held: There is no sufficient evidence of intention to kidnap because from the moment *M* was held and dragged to the time when the gun reports were heard, nothing was *done* or *said* by the accused to show or indicate that they intended *to deprive M* of her *liberty* for *sometime* and for *some purpose.* The interval was so short as to negative the idea implied in kidnapping. Her *short detention* forms part of the perpetration of the crime of murder. (People vs. Remalante, 92 Phil. 48; People vs. Sacayanan, G.R. Nos. L-15024-25, Dec. 31, 1960)

Must there be actual demand for ransom?

As long as the kidnapping or detention was committed *"for the purpose of extorting ransom,"* actual demand for ransom is not necessary.

The accused is not liable when there is lack of motive to resort to kidnapping.

Where the agents of the Constabulary took the supposed victim from his house to make him answer for the murder of those persons who had disappeared, there was lack of motive to resort to kidnapping. Such agents are not liable for kidnapping. (People vs. Soriano, *et al.*, 51 O.G. 4513)

Detention or locking up of victim is essential.

The offended party testified that the accused had ordered her not to go out of the agency or to peep out of the window. But there is no evidence that the doors of the agency or of its rooms were locked or closed in such a way as to prevent the offended party from going out had she wanted to go out. Neither did she ever feel she wanted to go out of the building and was prevented from doing so. On the contrary, she went to the agency on August 28 voluntarily as there was an offer for her to work as a maid but she rejected it. There is no evidence that the three accused conspired to instill fear into her mind in order to compel and force her to remain in the agency.

The acts of the accused prohibiting her from peeping out of the window or going out were made that she might not be seen by the police.

Held: There is no illegal detention, because the element of detention or locking up is lacking. (People vs. Ching Suy Siong, *et al.*, G.R. No. L-6174, Feb. 28, 1955; 96 Phil. 975)

It is essential in the crime of illegal detention that there be actual *confinement* or *restriction of the person* of the offended party. (U.S. vs. Cabanag, 8 Phil. 64)

Thus, if the alleged victim had freedom to leave the premises where she was allegedly confined, the crime of illegal detention cannot rise because she was not deprived of her liberty. (See U.S. vs. Quevengco, 2 Phil. 412; U.S. vs. Herrera, *et al.*, 3 Phil. 5x5)

Also, when the girl, who had been taken from her grandmother and brought to his house by the defendant, was not confined, but on the contrary was allowed to go back alone to her grandmother, returning to the defendant on the same day, there is no illegal detention. (U.S. vs. Cabanag, 8 Phil. 64)

But a husband who locks up in a room his lawful wife for more than 20 days, during which time the victim is not *allowed to leave the room nor even to peep out of the window,* is guilty of illegal detention under this article, because there is *actual confinement* of the offended party.

It is not necessary that the victim be placed in an inclosure.

Illegal detention, as defined and punished in the Code, may consist not only in placing a person in an inclosure but also in detaining him or depriving him in any manner of his liberty. (People vs. Crisostomo, *et al.*, 46 Phil. 775)

Leaving a child in the house of another, where he had freedom of locomotion but not the freedom to leave it at will, deprives him of liberty.

It is true that the boy was allowed to play in the house where he was kept, but the fact remains that he was under the control of accused Bravo who left him there, as he could not leave the house until she shall have returned for him. Because of his *tender age* and the fact that he did not know *the way back home*, he was then and there in a way deprived of his liberty. It is like putting him in prison or in an asylum where he may have freedom of locomotion but not the freedom to leave it at will. (People vs. Acosta, *et al.*, 60 O.G. 6999)

Restraint need not be permanent.

Thus, if the child two years old was held and tied to a wooden pillar *until* his brother, servant of the two accused, should appear and return to their service, because said brother had run away, there is illegal detention. (U.S. vs. Peralta, 8 Phil. 200)

The detention must be illegal.

The third element, that is, that the detention or kidnapping must be illegal, although not expressed in Article 267, must be understood as included therein. (Albert)

There are cases where it is lawful to detain another.

The fact that the owners of a sugarcane plantation locked up in the lobby of their house a boy who had stolen some sugar canes from the plantation, from 9:00 a.m. to 5:00 p.m., without giving him anything to eat, does not constitute the crime of illegal detention. (People vs. Tamorro, G.R. No. 25373, June 11, 1925)

Reasons for this decision:

(1) That no injury or disturbance of a right was intended by, or resulted from, the act of the accused.

(2) That the act of the accused was to a certain extent justified.

Note: The detention here is legal to a certain extent, because even a private person can arrest one who commits a crime in his presence.

The Supreme Court, however, found the accused guilty of light coercion under paragraph 2, Art. 287.

Detention is illegal when not ordered by competent authority or not permitted by law.

The *illegality* of the detention punished by Art. 267 *consists* in such detention *not ordered by a competent authority or not permitted by law.*

For that reason, the fact that a boy was apprehended and detained for over eight hours, with his hands and feet bound to a post, *without just cause,* on *suspicion* that he was an incendiarist, has been held to constitute illegal detention. (U.S. vs. Mendoza, 8 Phil. 468)

Essential element of kidnapping.

The essential element or act which makes the offense of kidnapping is the *deprivation of* an offended party's *liberty* under any of the four instances enumerated in Article 267, paragraph 1, of the Revised Penal Code, the illegal detention of the victim for more than five days (now, three days) being one of the instances. (People vs. Suarez, *et al.,* 82 Phil. 484)

But when the kidnapping or detention was committed for the purpose of *extorting ransom,* it is *not necessary* that one or any of such circumstances enumerated in the first paragraph of Art. 267 be present.

Detention for more than 3 days is not necessary when any of the other circumstances is present.

Thus, when the offender simulated public authority, or when serious physical injuries were inflicted on the victim, or when threats to kill him

were made, or when the person kidnapped or detained was a minor, female, or public officer, even if the period of detention was less than three days, the crime committed is serious illegal detention.

Kidnapping of a public officer.

A barrio captain is a public officer. His kidnapping is covered by Article 267, par. 4 of the Revised Penal Code. (People vs. Del Mundo 114 SCRA 719)

Restraint by robbers not illegal detention.

The sequestration of nearly half an hour of the dwellers of the house when the robbers compelled them to leave it and follow them up to a certain distance, for no other purpose than to prevent their reporting the matter to the authorities while the robbers were near the place, is not illegal detention. The purpose of the robbers in so doing was to delay or prevent assistance being rendered by the authorities. (U.S. vs. Sol, 9 Phil. 265)

The purpose is immaterial when any of the circumstances in the first paragraph of Art. 267 is present.

The accused stood trial for kidnapping with serious illegal detention, and the deprivation of complainant's liberty, which is the essential element of the offense, was duly proved. That there may have been other crimes committed in the course of the victim's confinement is immaterial to the case. The kidnapping became consummated when the victim (a female) was actually restrained or deprived of her freedom, and that makes proper the prosecution of the herein accused under Article 267 of the Revised Penal Code. The surrounding circumstances make it clear that the main purpose of Annabel's detention was to coerce her into withdrawing her previous charge against appellant Ablaza, thus obstructing the administration of justice. The acts of rape were incidental and used as a means to break the girl's spirit and induce her to dismiss the criminal charge. (People vs. Ablaza, 30 SCRA 173)

Special Complex Crime of Kidnapping with Murder.

Prior to 31 December 1993, the date of effectivity of Republic Act No. 7659, the rule was that where the kidnapped victim was subsequently killed by his abductor, the crime committed would either be a complex crime of kidnapping with murder under Art. 48 of the Revised Penal Code, or two (2) separate crimes of kidnapping and murder. Thus, where the accused kidnapped the victim for the purpose of killing him, and he was in fact killed

by his abductor, the crime committed was the complex crime of kidnapping with murder under Art. 48 of the Revised Penal Code, as the kidnapping of the victim was a necessary means of committing the murder. On the other hand, where the victim was kidnapped not for the purpose of killing him but was subsequently slain as an afterthought, two (2) separate crimes of kidnapping and murder were committed.

However, Republic Act No. 7659 amended Art. 267 of the Revised Penal Code by adding thereto a last paragraph which provides —

> "When the victim is killed or dies as a consequence of the detention, or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed."

This amendment introduced in our criminal statutes the concept of "special complex crime" of kidnapping with murder or homicide. It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing was not deliberately resorted to but was merely an afterthought. Consequently, the rule now is: "Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by R.A. No. 7659." (People vs. Ramos, 297 SCRA 618, 640-641 [1998], citing Parulan vs. Rodas, 78 Phil. 855 [1947])

Where the victim is taken from one place to another solely for the purpose of killing him, the crime committed is murder.

Where the victim was taken from his house, solely for the purpose of killing him and not for detaining him illegally for any length of time or for the purpose of obtaining ransom for his release, the crime committed was simple murder, not the complex crime of kidnapping with murder. (People vs. Camo, *et al.*, 91 Phil. 240)

In a line of cases, it was ruled that, if the main purpose was to kill the victim and the forcible taking of the victim was only incidental to the killing, the crime was murder, apparently absorbing the kidnapping. Thus, in *U.S. vs. Ancheta*, 1 Phil. 165, a 1902 case, it was held that, where the victim was taken from his home, bound and brought to a remote place, where he was killed, the crime was murder only. It was noted that "the fact that the deceased was captured in his house and taken by the defendants to an uninhabited place selected by them for the purpose of killing him there, does not constitute the crime of illegal detention since *it does not appear that it was the purpose of the accused to commit this offense.* On the contrary, they

seized the unfortunate victim in his house with the sole object of carrying him away to a suitable place and of their murdering him.

It seems clear that the weight of authority is in favor of the proposition that where the victim was taken from one place to another, solely for the purpose of killing him and not for detaining him for any length of time or for the purpose of obtaining ransom for his release, the crime committed is murder, and not the complex crime of kidnapping with murder. (People vs Ong, 62 SCRA 174)

When Murder, and Not Kidnapping.

It bears stressing that in determining what crime is charged in an information, the material inculpatory facts recited therein describing the crime charged in relation to the penal law violated are controlling. Where the specific intent of the malefactor is determinative of the crime charged such specific intent must be alleged in the information and proved by the prosecution. A decade ago, this Court held in *People vs. Puno, et al,* 219 SCRA 85 (1993), that for kidnapping to exist, there must be indubitable proof that the actual specific intent of the malefactor is to deprive the offended party of his liberty and not where such restraint of his freedom of action is merely an incident in the commission of another offense primarily intended by the malefactor. This Court further held:

> "x x x. Hence, as early as *United States vs. Ancheta,* 1 Phil. 165 (1902), and consistently reiterated thereafter, it has been held that the detention and/or forcible taking away of the victims by the accused, even for an appreciable period of time but for the primary and ultimate purpose of killing them, holds the offenders liable for taking their lives or such other offenses they committed in relation thereto, but the incidental deprivation of the victims' liberty does not constitute kidnapping or serious illegal detention."

If the primary and ultimate purpose of the accused is to kill the victim, the incidental deprivation of the victim's liberty does not constitute the felony of kidnapping but is merely a preparatory act to the killing, and hence, is merged into, or absorbed by, the killing of the victim. The crime committed would either be homicide or murder. (People vs. Delim, G.R. No. 142773, January 28, 2003)

Specific Intent, determinative of whether crime committed is murder or kidnapping.

What is primordial then is the specific intent of the malefactors as disclosed in the information or criminal complaint that is determinative of what crime the accused is charged with — that of murder or kidnapping.

Philippine and American penal laws have a common thread on the concept of specific intent as an essential element of specific intent crimes. Specific intent is used to describe a state of mind which exists where circumstances indicate that an offender actively desired certain criminal consequences or objectively desired a specific result to follow his act or failure to act (People vs. Garland, 627 NE 2d 377). Specific intent involves a state of the mind. It is the particular purpose or specific intention in doing the prohibited act. Specific intent must be alleged in the Information and proved by the state in a prosecution for a crime requiring specific intent (State vs. Mundy, 650 NE 2d 502). Kidnapping and murder are specific intent crimes.

Specific intent may be proved by direct evidence or by circumstantial evidence. It may be inferred from the circumstances of the actions of the accused as established by the evidence on record. (21 Am Jur 2d, Criminal Law, pp. 214-215)

Specific intent is not synonymous with motive. Motive generally is referred to as the reason which prompts the accused to engage in a particular criminal activity. Motive is not an essential element of a crime and hence the prosecution need not prove the same. As a general rule, proof of motive for the commission of the offense charged does not show guilt and absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder (Cupps v. State, 97 Northwestern Reports, 210) The history of crimes shows that murders are generally committed from motives comparatively trivial. (Wharton, Criminal Law, Vol. 1, p. 215.)

Crime is rarely rational. In murder, the specific intent is to kill the victim. In kidnapping, the specific intent is to deprive the victim of his/her liberty. If there is no motive for the crime, the accused cannot be convicted for kidnapping (People vs. Manliguez, *et al,* 206 SCRA 812 [1992]) In kidnapping for ransom, the motive is ransom. Where accused kills the victim to avenge the death of a loved one, the motive is revenge.

In this case, it is evident on the face of the Information that the specific intent of the malefactors in barging into the house of Modesto was to kill him and that he was seized precisely to kill him with the attendant modifying circumstances. The act of the malefactors of abducting Modesto was merely incidental to their primary purpose of killing him. Moreover, there is no specific allegation in the information that the primary intent of the malefactors was to deprive Modesto of his freedom or liberty and that killing him was merely incidental to kidnapping. Irrefragably then, the crime charged in the Information is Murder under Article 248 of the Revised Penal Code and not Kidnapping under Article 268 thereof. (People vs. Delim, G.R. No. 142773, January 28, 2003)

Circumstances qualifying the offense.

If the purpose of the kidnapping or detention is to extort ransom from the victim or any other person, even if none of the circumstances mentioned in Art. 267 is present, the penalty is death.

In this case, death is imposed as a single penalty. It shall be imposed regardless of the presence and number of ordinary mitigating circumstances. (Art. 63, par. 1)

The death penalty prescribed for kidnapping for ransom is not reduced by the circumstances of voluntary release by the captors and non-attainment of the purpose. (Asistio vs. San Diego, 10 SCRA 673)

However, if the offender is over 15 but under 16 years of age, it being a privileged mitigating circumstance, the penalty may be lowered by one degree. (Art. 68)

Meaning of ransom.

The accused maintain that they should not be convicted of kidnapping because the intention was at most merely to compel the victim to fulfill his promise of defraying hospital expenses of one Hayam.

Held: Even if the purpose is to compel the alleged payment, under Art. 267 of the Penal Code, the offense is still kidnapping for ransom.

The last paragraph of Art. 267 having been derived from statutes of the United States, particularly the Lindbergh Law, American jurisprudence has an application. Under American rulings, ransom is money, price, or consideration paid or demanded for redemption of a captured person or persons, a payment that releases from captivity. (See Corpus Juris Secundum, 458; 36 Words and Phrases, 102; Keith, *et al.* vs. State, 163 So. 136, 120 Fla. 847) Now since the accused demanded and received money as a requisite for releasing a person from captivity, whatever other motive may have compelled them to do so, the money is still ransom under the law. (People vs. Kamad Akiran, *et al.*,18 SCRA 239)

Conspiracy to extort ransom makes all the conspirators liable under the second paragraph of Art. 267, including those who did not take any part of the money.

One of the accused demanded money for the victim's release, and the others fully concurred in that criminal resolution and affirmed their assent when they escorted the victim to the abaca plantation where he was confined. Even if they went home afterwards or did not get any part of the money, the fact is that they fully and directly cooperated and did their part to carry out the resolution of their co-accused. Under these facts, there was conspiracy to extort ran6om. (People vs. Akiran, *supra)*

When maximum of the penalty is imposed.

The maximum penalty shall be death —

1) **if the purpose of kidnapping or detention is to extort *ransom;***
2) **when the victim is *killed* or dies as a consequence of the detention;**
3) **when the victim is *raped;***
4) **when the victim is subjected to *torture* or dehumanizing acts.**

Note: **In view of the enactment of Republic Act No. 9346 which prohibits the imposition of the death penalty, the maximum penalty is now *reclusion perpetua.***

No Complex Crime of Illegal Detention with Rape under Art. 48.

Prior to the effectivity of Republic Act 7659, when the person kidnapped or illegally detained was raped, two independent crimes of kidnapping and rape were committed.

Republic Act 7659, however, amended the last paragraph of Article 267 of the Revised Penal Code on serious illegal detention and kidnapping to read:

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

Under this provision, when the person kidnapped or illegally detained is raped, the offense committed is the special complex crime of serious illegal detention or kidnapping with rape, punishable with the maximum penalty of death. (People vs. Ramos, 358 Phil. 261(1998).

The last paragraph of Article 267 applies only to instances where the person illegally detained or kidnapped is raped. It does not provide for a complex crime of rape with serious illegal detention. As the Court ruled in *People vs. Lactao,* 227 SCRA 463 [1993], there is no complex crime of illegal detention with rape under Article 48 of the Revised Penal Code. There is also no complex crime of kidnapping with attempted rape under Article 48 because there is no single act which results in two or more grave or less grave felonies. Neither is illegal detention a necessary means for committing rape (People vs. Gonzales, G.R. No. 129894, 337 SCRA 590 [2000]; People vs. Leonardo Nuguid, G.R. No. 148891, Jan. 21, 2004)

Illegal detention distinguished from arbitrary detention.

The crime of illegal detention is committed by a private individual who unlawfully kidnaps, detains, or otherwise deprives a person of liberty;

arbitrary detention is committed by a public officer or employee who detains a person without legal ground.

Illegal detention is a crime against personal liberty and security; arbitrary detention is a crime against the fundamental law of the State.

Art. 268. *Slight illegal detention.* — The penalty of *reclusion temporal*[2] shall be imposed upon any private individual who shall commit the crimes described in the next preceding article without the attendance of any of the circumstances enumerated therein.

The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime.

If the offender shall voluntarily release the person so kidnapped or detained within three days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be *prision mayor* in its minimum and medium periods and a fine not exceeding seven hundred pesos. *(As amended by Republic Act No. 18)*

Elements:

1. That the offender is a *private individual.*
2. That he *kidnaps* or *detains* another, or in any other manner *deprives* him of his *liberty.*
3. That the act of kidnapping or detention is *illegal.*
4. That the crime is committed without the attendance of any of the circumstances enumerated in Art. 267.

Liability of accomplice in slight illegal detention.

The same penalty is incurred by anyone who *furnished the place* for the perpetration of the crime. (Art. 268, par. 2)

His participation is raised to that of a real co-principal.

[2]See Appendix "A," Table of Penalties, No. 28.

But if the cooperation of the accomplice is by an act or acts other than furnishing the place for the perpetration of the crime, the penalty should be one degree lower than that provided for the crime of slight illegal detention.

Privileged mitigating circumstance in slight illegal detention.

If the offender (a) voluntarily *releases* the person so kidnapped or detained within *three days* from the commencement of the detention, (b) without having attained the purpose intended, and (c) before the institution of criminal proceedings against him, his liability is mitigated. In effect, it is a privileged mitigating circumstance because the penalty is lower by one degree.

But to impose the lesser penalty, it must be shown by the offender that he was in a position to prolong the detention for more than three days and yet he released the person detained within that time.

No mitigation of the penalty is allowed when the proceedings have already been instituted, for the simple reason that in this case, the accused acted through fear rather than through repentance.

All the requisites mentioned in (a), (b) and (c) must concur.

Is voluntary release privileged mitigating if the victim is a woman?

The accused with threat and intimidation were able to compel Juana Briones to go with them to a certain house where she was kept for two nights and one day. The purpose of the offenders in keeping her there was to enable Montilla to have a talk with her in private so that he could persuade her into marrying him. On the third day, Juana was able to persuade the accused to take her to the house of her brother, so that they could talk the matter over with him. She was taken there and was then and there released. *Held:* The crime committed is that of slight illegal detention under the third paragraph of Art. 268, as amended by Rep. Act No. 18. (People vs. Saliente, *et al.*, 84 Phil. 137)

Note: When the victim is a female, the detention is punished under Art. 267. Voluntary release is not mitigating under that article.

The last paragraph of Art. 268 applies to slight illegal detention only, not to Art. 267. Arts. 267 and 268 are independent of each other. (Asistio vs. San Diego, 10 SCRA 673)

Art. 269. ***Unlawful arrest.***— The penalty of *arresto mayor*[3] and a fine not exceeding 500 pesos shall be imposed upon any person who, in any case other than those authorized by law, or without reasonable ground therefor, shall arrest or detain another for the purpose of delivering him to the proper authorities.

Elements:

1. That the offender *arrests* or *detains* another person.
2. That the *purpose* of the offender is to deliver him to the *proper authorities*.
3. That the arrest or detention is *not authorized by law* or there is *no reasonable ground* therefor.

The offender is any person, whether a public officer or a private individual.

This article punishes *any person* who commits the acts defined therein. This article applies to public officers. (People vs. Malasugui, 63 Phil. 221) Under Sec. 6, Rule 113 of the Revised Rules of Criminal Procedure, a *private person may arrest* an individual without warrant under the circumstances when public officers can make arrest. If the private person makes an arrest without reasonable ground therefor, because it is not in accordance with Sec. 6, Rule 113 of the Revised Rules of Criminal Procedure, and the purpose is to deliver the person arrested to the proper authorities, he is liable under this article.

Unlawful arrests by public officers should be punished as arbitrary detention under Art. 124, if the public officer has the authority to arrest and detain a person, but the arrest is without legal ground.

If the public officer has no authority to arrest and detain a person, or if he did not act in his official capacity, he should be punished for unlawful arrest under Art. 269.

There is no unlawful arrest, when the arrest is authorized by a warrant issued by the court.

The accused is charged with illegal arrest through false testimony.

[3]See Appendix "A," Table of Penalties, No. 1.

An information for falsification of official and commercial documents was filed against Emilio Jugo, Jr., and an unidentified person, John Doe; and the corresponding warrant of arrest (exhibit B) was issued. The accused and his counsel presented exhibit B to Detective Jose Jacob, together with the affidavit of the accused (exhibit C) attesting, among others, that the John Doe named in the warrant was Leon Co Santos. On the strength of exhibits B and C, Jacob and the accused proceeded to the house of Leon Co Santos in order to arrest the latter.

It was held that the crime charged was not committed. The arrest of Co Santos as the John Doe mentioned in the information was authorized by exhibit B issued by the presiding judge of Branch XX of the Court of First Instance of Manila. The proper issuance of this valid warrant presupposed a reasonable ground therefor. It cannot be said that the accused accomplished or contributed to Co Santos' arrest through false testimony, for the accused has not as yet testified in any hearing regarding John Doe's identity, but merely executed an affidavit pointing out Co Santos as the John Doe mentioned in the information and warrant. At most, therefore, the accused could only have perjured. But even perjury by the accused has not been proven by the evidence at hand. (People vs. Lim Chun, C.A., 68 O.G. 5293)

Unlawful arrest distinguished from other illegal detention.

If the purpose of locking up or detaining the victim is to deliver him to the proper authorities, and it develops that the detention is unlawful, then the offense committed is *unlawful arrest.*

In any other case, the detention will render the culprit liable for other illegal detention.

Example of unlawful arrest.

Thus, when *F* and *P* had a dispute as to the right of *P* to cultivate the land in question, a fight ensued, and having beaten *P, F* tied *P* with a piece of rope and conducted him to the municipal jail where the jailer kept *P* for several hours, until he was released by the Justice of the Peace.

Held: The fact that the accused immediately conducted the complaining witness to the municipal jail takes the offense out of the article for illegal detention and brings it within Art. 269. (U.S. vs. Fontanilla, 11 Phil. 233)

Distinguished from Art. 125.

(1) In the crime of delay in the delivery of detained persons to the proper judicial authority (Art. 126), the *detention* is *for some legal ground;* in unlawful arrest, the detention is not authorized by law.

(2) Under Art. 125, the crime is committed by failing to deliver such person to the proper judicial authority within a certain period of time; in unlawful arrest, it is committed by making an arrest not authorized by law.

No period of detention is fixed by law in Art. 269, but the motive of the offender is controlling.

Suppose the detention is more or less than three days, will the case fall under Art. 267 or Art. 269?

The motive of the offender is controlling; if his purpose is to deliver him to the proper authorities, it is still unlawful arrest. But absence of this motive may be shown by the length of time the victim is detained.

Section Two. — Kidnapping of minors

What are the crimes called kidnapping of minors?

They are:

(1) Kidnapping and failure to return a minor. (Art. 270)

(2) Inducing a minor to abandon his home. (Art. 271)

Art. 270. ***Kidnapping and failure to return a minor.*** — The penalty of ***reclusion perpetua**** shall be imposed upon any person who, being entrusted with the custody of a minor person, shall deliberately fail to restore the latter to his parents or guardians. ***(As amended by Republic Act No. 18)***

Elements:

1. That the offender is entrusted with the custody of a minor person (whether over or under 7 years but less than 21 years of age).
2. That he *deliberately* fails to restore the said minor to his parents or guardians.

*See Appendix "A," Table of Penalties, No. 36.

Age of minor is under 21 years.

The amendment is silent as to the age of the minor. We are inclined to believe that the legal provisions cover all minors, whether under or over 7 years of age, but less than 21. (Guevara)

What is punished is the deliberate failure of the custodian of the minor to restore the latter to his parents or guardian.

Section 5 of Republic Act No. 18, amending Article 270, punishes not the kidnapping of a minor, as the title of the article seems to indicate, but rather the *deliberate failure* of the custodian of such minor to restore the latter to his parents or guardian.

When the crime is committed by the father or mother of the minor, the penalty is *arresto mayor* or a fine not exceeding P300, or both.

While the penalty for kidnapping and failure to return a minor is *reclusion perpetua,* the penalty to be imposed upon the minor's father or mother who committed that crime is that one provided in Art. 271, paragraph 2, that is, *arresto mayor* or a fine not exceeding P300, or both.

Is there a conflict between Art. 267 and Art. 270?

Art. 270, as amended by section 5 of Rep. Act No. 18, punishes the *deliberate failure* by the person having the custody of the minor to restore such minor to his parents or guardian.

Under Art. 267, the kidnapping of a minor is also punished. But while under Art. 270, the offender is entrusted with the custody of the minor, under Art. 267, the offender is not entrusted with the custody of the victim.

Kidnapping and failure to return a minor under Art. 270 is necessarily included in Kidnapping and Serious Illegal Detention of Minor under par. 4 of Art. 267.

The offense as charged, kidnapping and failure to return a minor under Art. 270 of the R.P.C., is necessarily included in the offense proved, which is Kidnapping and Serious Illegal Detention of a minor under Art. 267(4) of the same Code, inasmuch as the essential ingredients of the offense charged constitute or form a part of those constituting the offense proved. Thus, deliberate failure to restore a minor under one's custody and kidnapping a minor who is not in custody both constitute deprivation of liberty. Besides, there is authority to the effect that paragraph 1 of Art. 270 might have

been superseded by Art. 267, as amended, which punishes as serious illegal detention, the kidnapping of a minor, regardless of the purpose of detention (People vs. Jo, 143 SCRA 552)

Essential element which qualifies the crime of kidnapping a minor under Art. 270.

The essential element is that the *offender is entrusted with the custody of the minor.* What is punished in kidnapping a minor under Art. 270 is the deliberate failure of the offender having the custody of the minor to restore him to his parents or guardian.

It is not necessary that the purpose of the offender is to separate permanently the minor from his parents or guardian. Paragraph 1 of Art. 270 which required it was abolished by Rep. Act No. 18. The ruling in the case of *U.S. vs. Peralta, et al.*, 8 Phil. 200, is no longer applicable.

Art. 271. ***Inducing a minor to abandon his home.*** — The penalty of *prision correccional*[5] and a fine not exceeding seven hundred pesos shall be imposed upon anyone who shall induce a minor to abandon the home of his parents or guardians or the persons entrusted with his custody.

If the person committing any of the crimes covered by the two preceding articles shall be the father or the mother of the minor, the penalty shall be *arresto mayor*[6] or a fine not exceeding three hundred pesos, or both. *(As amended by Republic Act No. 18)*

Elements:

1. That a minor (whether over or under seven years of age) is living in the home of his parents or guardian or the person entrusted with his custody.
2. That the offender *induces* said minor to abandon such home.

[5]See Appendix "A," Table of Penalties, No. 10.
[6]See Appendix "A," Table of Penalties, No. 1.

Age of the minor is under 21 years.

The term "minor" was inserted by Republic Act No. 18, Sec. 5, in lieu of "person under age but over seven years" before the amendment.

The inducement must be actual, committed with criminal intent, and determined by a will to cause damage.

People vs. Paalam
(C.A., 54 O.G. 8267-8268)

Facts: **In a conversation she had with the minors Diansin Yap and Inn Samain, the accused told said minors that Manila was a big city; that the movie houses there were bigger and better than those found in Jolo; that the City was a better place to live in; that she would take them with her to Manila; and that they need not worry about the expenses incident to their going to and stay in that City as she would defray them all. The accused was 19 years old and Diansin Yap and Inn Samain were 14. The accused was a mere maid, while Diansin Yap and Inn Samain were school children, the former being the niece and the latter the daughter of ladies who were much more affluent than the accused.**

Held: **The accused is not guilty of the crime of inducing a minor to abandon his home. In order for an inducement of a minor to abandon the home of his parents or guardian or the person entrusted with his custody to constitute the crime penalized under Article 271 of the Revised Penal Code, it is essential that the inducement be actual, committed with criminal intent, and determined by a will to cause damage. The representations made by the accused to said minors highly praising the City of Manila and her offer and promise to take them to that city, as narrated above, clearly do not constitute that inducement which is essential to the act. The phrase "to induce" means "to influence; to prevail on; to move by persuasion; to incite by motives."**

Since there was very little difference in their ages, and there could not have been much difference in the degree of their intelligence, it cannot be supposed that the accused commanded such ascendancy over Diansin Yap and Inn Samain as to be able to prevail on them, or that the latter were so gullible as to believe outright the promise of a mere maid, a minor like them, with no other source of income except the small salary that she was receiving as such. The probabilities are that these girls abandoned their respective homes moved by the irresponsible spirit of restlessness and adventure which is commonly found in the youth of today, and not because of the offer and promise made them by the accused.

"Shall induce a minor to abandon the home."

In view of this phrase, what constitutes the crime is the act of inducing a minor to abandon his home or the home of his guardian, and it is not necessary that the minor actually abandons the home.

People vs. Apolinar
(C.A., 62 O.G. 9044)

Facts: **At about 3:30 p.m. on September 16, 1963 in Cabanatuan City, appellant met Myrna, a 12-year-old girl who was living with her parents in Vijandre District of said city. They were together until about seven o'clock in the evening.**

From what can be gleaned and gathered from Myrna's testimony, it appears that she had just come from a show when she was accosted by appellant who asked her where Sta. Mesa was. She replied that there was no Sta. Mesa in Cabanatuan City. Appellant held her by the hand and said if she would go with appellant to Sta. Mesa, the latter would give her plenty of clothes. Frightened, Myrna demurred. She tried to free her hand but appellant warned her and threatened to kill her if she would shout. Appellant then took her for a walk until they reached the Avenue Theatre on Burgos Avenue where they tarried looking at the pictures on display. Thereafter, they continued walking. At the Pacific Restaurant on Sanciangco Street, appellant bought "balot" eggs and gave one to Myrna whom she again asked to go with her to Sta. Mesa. Appellant then talked to a man in constabulary uniform with her back towards Myrna who, seeing an opportunity, ran away and went to the house of her classmate where she slept that night. The following morning, she and her father reported the matter to the police authorities.

Appellant contends that to sustain conviction under the law in question, it must be shown that because of the inducement, the minor decided or was actually persuaded to leave and abandon his house.

Held: **We find no merit in the contention. The law is intended to discourage and prevent disruption of filial relationships and undue interference with the parents' right and duty to the custody of their minor children and to rear them. In view of the reason for the penal provision and the clear import of the words "shall induce," the mere commission of any act which tends to *influence, persuade* or *prevail on a minor* to abandon his home is what constitutes the crime. So long as the inducement is done maliciously and with criminal intent, its effect on the minor, *i.e.,* whether by reason thereof he actually decides to abandon his home, is immaterial.**

The minor should not leave his home of his own free will.

Belen Cabalfin, a minor 15 years old, who was on her way to church was approached and asked by Soledad Belo if she wanted to go to Manila. Because of a promise that she would find a job and could continue her studies in Manila, Belen finally agreed and after coming from the church, Soledad immediately conducted her to the house of the accused.

Held: There is no question that the minor Belen did not abandon her parental home of her own free will, but was induced to do so because of the aforesaid promise of Soledad Belo and the accused. (People vs. Ricarte, C.A., 49 O.G. 974)

Note: But if the minor would leave his home of *his own free will* and would go and live with another person, the latter is not criminally liable.

Father pr mother may commit crimes under Arts. 270 and 271.

Under Art. 271, where the father and mother are living separately, and the custody of their minor child has been given to one of them, the other parent who *kidnaps* such minor child from the one having the lawful custody of said child or *induces* such minor to leave his home is liable.

"Any of the crimes covered by the two preceding articles."

Art. 269, which defines and punishes unlawful arrest, could not be contemplated in the second paragraph of Art. 271. It should read, "If the person committing any of the crimes covered by the preceding article and the first paragraph of this article shall be the father or the mother of the minor," etc.

Section Three. — Slavery and servitude

What are the crimes called slavery and servitude?

They are:

1. Slavery. (Art. 272)
2. Exploitation of child labor. (Art. 273)
3. Services rendered under compulsion in payment of debt. (Art. 274)

Art. 272. *Slavery.* — The penalty of *prision mayor*[7] and a fine of not exceeding 10,000 pesos shall be imposed upon

[7] See Appendix "A," Table of Penalties, No. 19.

anyone who shall purchase, sell, kidnap, or detain a human being for the purpose of enslaving him.

If the crime be committed for the purpose of assigning the offended party to some immoral traffic, the penalty shall be imposed in its maximum period.

Elements:

1. That the offender *purchases, sells, kidnaps* or *detains* a human being.
2. That the *purpose* of the offender is to *enslave* such human being.

Circumstance qualifying the offense.

If the purpose of the offender is to assign the offended party to some immoral traffic (prostitution), the penalty is higher.

Distinguished from kidnapping or illegal detention.

When the act or manner of committing the offense is by *kidnapping* or *detaining,* how is the crime of slavery distinguished from kidnapping or illegal detention?

The purpose must be determined. If the purpose is to enslave the victim, it IS slavery; otherwise, it is kidnapping or illegal detention.

"For the purpose of enslaving him."

The employment or custody of a *minor with the consent of the parent* or *guardian* although against the child's own will cannot be considered involuntary servitude. (U.S. vs. Cabanag, 8 Phil. 64)

But where it is proven that the defendant was obliged to render service in plaintiffs house as a servant *without* remuneration whatever and to remain there so long as she has not paid her debt, there is slavery. (Reyes vs. Alojado, 16 Phil. 499)

Art. 273. *Exploitation of child labor.* — The penalty of *prision correccional* in its minimum and medium periods[8]

[8]See Appendix "A," Table of Penalties, No. 14.

and a fine not exceeding 500 pesos shall be imposed upon anyone who, under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian, or person entrusted with the custody of a minor, shall, against the latter's will, retain him in his service.

Elements:

1. That the offender *retains* a *minor* in his service.
2. That it is *against* the *will* of the minor.
3. That it is under the *pretext* of reimbursing himself of a debt incurred by an *ascendant, guardian* or person entrusted with the custody of such minor.

The service of the minor must be against his will.

Note the phrase "*against* the (minor's) *latter's will*"; hence, if the minor consents to the offender's retaining his services, there is no violation of this article.

Indebtedness, not a ground for detention.

In a petition for a writ of *habeas corpus,* it appears that the respondent refused to permit a girl to go until the amount advanced for her fare and subsistence was repaid to an employment agency. *Held:* The existence of an indebtedness constitutes no legal justification for holding a person and depriving him of his freedom to live where he wills. (Caunca vs. Salazar, 82 Phil. 851)

Art. 274. ***Services rendered under compulsion in payment of debt.*** — The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period[9] shall be imposed upon any person who, in order to require or enforce the payment of a debt, shall compel the debtor to work for him, against his will, as household servant or farm laborer.

[9]See Appendix "A," Table of Penalties, No. 8.

Elements:

1. That the offender *compels* a debtor to work for him, either as *household servant or farm laborer.*
2. That it is *against the debtor's will.*
3. That the *purpose* is to require or enforce the *payment* of *a debt.*

"As household servant or farm laborer."

If a person is compelled by the accused to work for him as office janitor to enforce the payment of a debt, will there be a violation of this article? No, because this article specifically provides that the debtor is compelled to work as *household servant* or *farm laborer.*

Slavery is punished.

This article, like Art. 273, punishes a form of slavery. Note that this article *does not* distinguish whether the victim is a minor or not.

Under this article, the debtor himself is the one compelled to work for the offender. Under Art. 273, it is the minor who is compelled to render services for the supposed debt of his parent or guardian. Under Art. 273, the service of the minor is not limited to household and farm work.

Chapter Two

CRIMES AGAINST SECURITY

Section One. — Abandonment of helpless persons and exploitation of minors

What are the crimes called abandonment of helpless persons and exploitation of minors?

They are:

1. Abandonment of persons in danger and abandonment of one's victim. (Art. 275)
2. Abandoning a minor. (Art. 276)
3. Abandonment of minor by person entrusted with his custody; indifference of parents. (Art. 277)
4. Exploitation of minors. (Art. 278)

Art. 275. *Abandonment of persons in danger and abandonment of one's own victim.* — The penalty of *arresto mayor*[1] shall be imposed upon:

1. Anyone who shall fail to render assistance to any person whom he shall find in an uninhabited place wounded or in danger of dying, when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense;

2. Anyone who shall fail to help or render assistance to another whom he has accidentally wounded or injured;

3. Anyone who, having found an abandoned child under seven years of age, shall fail to deliver said child to

[1] See Appendix "A," Table of Penalties, No. 1.

the authorities or to his family, or shall fail to take him to a safe place.

Acts punishable under Art. 275.

1. By *failing to render assistance* to any person whom the offender finds in an *uninhabited place wounded or in danger of dying* when he can render such assistance *without detriment* to himself, unless such *omission* shall constitute a *more serious* offense.

Elements:

a. The place is *not inhabited;*

b. The accused found there a person *wounded* or *in danger of dying;*

c. The accused can render assistance *without detriment* to himself;

d. The accused *fails* to render assistance.

2. By *failing* to help or render assistance to another whom the offender has *accidentally* wounded or injured.

3. *By failing* to deliver a child, *under seven years* of age whom the offender has *found abandoned,* to the authorities or to his family, or by *failing* to take him to a *safe place.*

"Any person whom he shall find x x x wounded or in danger of dying."

Thus, if a person *intentionally wounded* another in an uninhabited place, paragraph 1 of Art. 275 is not applicable, because he *did not find* him wounded or in danger of dying in that place.

Omission constituting a more serious offense.

The 1st paragraph of this article provides that "the penalty of *arresto mayor* shall be imposed x x x, unless such omission shall constitute a more serious offense."

Example: If the offender, who failed to render assistance to the person in danger of dying in an uninhabited place, *had the custody of such person who is a minor* under seven years of age and the minor died as a consequence, the penalty of *prision correccional* in its medium and maximum periods provided in the 2nd paragraph of Art. 276 shall be imposed, which is a *graver* penalty.

Paragraph 2 of Art. 275 applies only when someone is accidentally injured by the accused.

Note the use of the word "accidentally" in the article. Hence, if a person *intentionally* stabs or shoots another who is wounded and he does not render him assistance, that person is not liable under this article. He is liable only for the crime resulting from the stabbing or shooting, which may be physical injuries or homicide if the victim dies.

Must the offender know that the child is under seven years?

Under the third way of committing the crime, it is immaterial that the offender did not know that the child is under seven years. (Albert)

Does paragraph 3 apply to one who found a lost child?

It would seem that such child also needs the same protection that the law intends to extend to an abandoned child.

"Shall fail to take him to a safe place."

The child under seven years of age must be *found by the accused* in an *unsafe* place.

Art. 276. *Abandoning a minor.* — The penalty of *arresto mayor*[2] and a fine not exceeding 500 pesos shall be imposed upon anyone who shall abandon a child under seven years of age, the custody of which is incumbent upon him.

When the death of the minor shall result from such abandonment, the culprit shall be punished by *prision correccional* in its medium and maximum periods;[3] but if the life of the minor shall have been in danger only, the penalty shall be *prision correccional* in its minimum and medium periods.[4]

The provisions contained in the two preceding paragraphs shall not prevent the imposition of the penalty

[2]See Appendix "A," Table of Penalties, No. 1.
[3]See Appendix "A," Table of Penalties, No. 15.
[4]See Appendix "A," Table of Penalties, No. 14.

provided for the act committed, when the same shall constitute a more serious offense.

Elements:

1. That the offender *has the custody* of a child.
2. That the child is *under seven years* of age.
3. That he *abandons* such child.
4. That he has *no intent to kill* the child when the latter is abandoned.

When there is intent to kill, this article does not apply.

The offender in abandoning a minor has no intent to kill the latter. His purpose in abandoning the minor under his custody is to avoid the obligation of taking care of said minor.

If there is intent to kill and the child dies, the crime would be either murder, parricide, or infanticide, as the case may be. If the child does not die, it is attempted murder, parricide or infanticide, as the case may be.

Reason:

The provisions contained in Article 276 shall not prevent the imposition of the penalty provided for the act committed, when the same shall constitute a more serious offense. (Art. 276, par. 3)

Intent to kill cannot be presumed from the death of the child.

The ruling that the intent to kill is presumed from the death of the victim of the crime is applicable only to crimes against persons, and not to crimes against security, particularly the crime of abandoning a minor under Art. 276.

A permanent, conscious and deliberate abandonment is required in this article.

Under the 1st paragraph of Art. 276, the law penalizes the mere abandonment of a child even when his life is not endangered, so long as *there is an interruption of the care and protection he needs by reason of his tender age.*

The abandonment referred to in this article is not the *momentary leaving of the child*, but the abandonment which deprives him of the care and protection from danger to his person. The act must be *conscious* and *deliberate.* (People vs. Bandian, 63 Phil. 530)

Circumstances qualifying the offense.

1. When the death of the minor resulted from such abandonment; or
2. If the life of the minor was in danger because of the abandonment.

Parents guilty of abandoning their children shall be deprived of parental authority.

If the offender is the parent of the minor who is abandoned, he shall be deprived of parental authority. (Art. 332, C.C.)

Art. 277. *Abandonment of minor by person entrusted with his custody; indifference of parents.* — The penalty of *arresto mayor*[5] and a fine not exceeding 500 pesos shall be imposed upon anyone who, having charge of the rearing or education of a minor, shall deliver said minor to a public institution or other persons, without the consent of the one who entrusted such child to his care or, in the absence of the latter, without the consent of the proper authorities.

The same penalty shall be imposed upon the parents who shall neglect their children by not giving them the education which their station in life requires and financial condition permits.

Acts punished under Article 277.

1. By delivering a minor to a public institution or other persons without the consent of the one who entrusted such minor to the care of the offender or, in the absence of that one, without the consent of the proper authorities.
2. By neglecting his (offender's) children by not giving them the education which their station in life requires and financial condition permits.

Elements of abandonment of minor by one charged with the rearing or education of said minor.

a. That the offender *has charge* of the *rearing* or *education* of a minor.

[5]See Appendix "A," Table of Penalties, No. 1.

b. That he delivers said minor to a public institution or other persons.

c. That the one who entrusted such child to the offender has not consented to such act; or if the one who entrusted such child to the offender is absent, the proper authorities have not consented to it.

Only the person charged with "the rearing or education" of the minor is liable.

Thus, one who found a Negrito child in the forest and brought her to Manila where he gave her to another person, as he could not support her, is not guilty under this article, because he was not charged with "the rearing or education" of the minor. (U.S. vs. Payog, 1 Phil. 185)

The word "rear" means to bring to *maturity* by educating, nourishing, etc.: as, to rear children.

Abandonment of minor by person entrusted with custody distinguished from abandonment of a minor under Art. 276.

1. In abandoning a minor under Art. 276, the custody of the offender is stated in general; in Art. 277, the custody of the offender is specific, that is, the custody for the *rearing* or *education* of the minor.
2. In Art. 276, the minor is under 7 years of age; in Art. 277, the minor is under 21 years of age.
3. While in Art. 276, the minor is abandoned in such a way as to deprive him of the care and protection that his tender years need; in Art. 277, the minor is delivered to a public institution or other person.

Elements of indifference of parents:

a. That the offender is a parent.

b. That he neglects his children by not giving them education.

c. That his station in life requires such education and his financial condition permits it.

Obligation to educate children terminates, if mother and children refuse without good reason to live with accused.

Thus, when the accused had to go to another province where he was able to earn a living and his wife and children refused to go with him there, said accused is not liable for abandoning his family and for neglecting his children. (People vs. Miraflores, C.A.-G.R. No. 43384, V. L. J., 382)

Failure to give education must be due to deliberate desire to evade such obligation.

Thus, when the father lost his employment and he had no other means of income and had to rest following medical advice, his failure to give money for the support and education of his children is not a violation of this article. Nobody is obliged to accomplish the impossible. Art. 277 contemplates cases in which the father or mother, having the means, *deliberately fails* to give to their children the education which their station in life requires and financial condition permits. (People vs. Francisco, C.A., 51 O.G. 1941, citing 7 Viada, Codigo Penal 5, ed. 223)

Art. 278. *Exploitation of minors.*— The penalty of *prision correccional* in its minimum and medium periods[6] and a fine not exceeding 500 pesos shall be imposed upon:

1. Any person who shall cause any boy or girl under sixteen years of age to perform any dangerous feat of balancing, physical strength, or contortion.

2. Any person who, being an acrobat, gymnast, rope-walker, diver, wild-animal tamer or circus manager, or engaged in a similar calling, shall employ in exhibitions of these kinds, children under sixteen years of age who are not his children or descendants.

3. Any person engaged in any of the callings enumerated in the next preceding paragraph who shall employ any descendant of his under twelve years of age in such dangerous exhibitions.

4. Any ascendant, guardian, teacher, or person entrusted in any capacity with the care of a child under sixteen years of age, who shall deliver such child gratuitously to any person following any of the callings enumerated in paragraph 2 hereof, or to any habitual vagrant or beggar.

If the delivery shall have been made in consideration of any price, compensation, or promise, the penalty shall in every case be imposed in its maximum period.

In either case, the guardian or curator convicted shall also be removed from office as guardian or curator; and in

[6]See Appendix "A," Table of Penalties, No. 14.

the case of the parents of the child, they may be deprived, temporarily or perpetually, in the discretion of the court, of their parental authority.

5. Any person who shall induce any child under sixteen years of age to abandon the home of its ascendants, guardians, curators, or teachers to follow any person engaged in any of the callings mentioned in paragraph 2 hereof, or to accompany any habitual vagrant or beggar.

Acts punished under this article:

1. By causing any boy or girl under 16 years of age to *perform* any *dangerous feat of balancing, physical strength* or *contortion,* the offender being any person.

2. By *employing* children under 16 years of age who are not the children or descendants of the offender in *exhibitions of acrobat, gymnast, rope-walker, diver,* or *wild-animal tamer,* the offender being an acrobat, etc., or circus manager or person engaged in a similar calling.

3. By *employing* any *descendant* under 12 years of age in dangerous exhibitions enumerated in the next preceding paragraph, the offender being engaged in any of the said callings.

4. By *delivering* a child *under* 16 years of age *gratuitously* to any person following any of the callings enumerated in paragraph 2, or to any *habitual vagrant* or *beggar,* the offender being an ascendant, guardian, teacher or person entrusted in any capacity with the care of such child.

5. By *inducing* any child *under* 16 years of age to abandon the home of its ascendants, guardians, curators or teachers to follow any person engaged in any of the callings mentioned in paragraph 2 or to *accompany* any *habitual vagrant* or *beggar,* the offender being any person.

Exploitation of minors (Art. 278, par. 5) distinguished from inducing a minor to abandon his home (Art. 271).

(1) *If the purpose of inducing the minor* to abandon the home is *to follow* any person engaged in any of the callings of being an acrobat, gymnast, rope-walker, diver, wild-animal tamer or circus manager or to accompany any habitual vagrant or beggar (Art. 278, par. 5), it is exploitation of minors; if there is no *such purpose,* it is inducing a minor to abandon his home under Art. 271.

(2) In inducing a minor to abandon his home under Art. 271, the victim is a minor under 21 years of age; in exploitation of minors, he must be under 16 years of age.

Circumstance qualifying the offense.

If the delivery of the child to any person following any of the callings of acrobat, gymnast, rope-walker, diver, wild-animal tamer or circus manager or to any habitual vagrant or beggar is made in consideration of any price, compensation or promise, the penalty is higher.

Offender shall be deprived of parental authority or guardianship.

In either case, the *guardian* or curator convicted shall also be *removed* as *guardian* or curator; and in the case of the parents of the child, they may be *deprived,* temporarily or perpetually, in the discretion of the court, *of their parental authority.* (Art. 278, par. 4)

Exploitation of minor must refer to act endangering the life or safety of the minor.

The *exploitation* of the minor must be of such nature as to *endanger his life or safety,* in order to constitute the offense described in this article.

Art. 279. ***Additional penalties for other offenses.*** **— The imposition of the penalties prescribed in the preceding articles, shall not prevent the imposition upon the same person of the penalty provided for any other felonies defined and punished by this Code.**

Section Two. — Trespass to dwelling

Art. 280. ***Qualified trespass to dwelling.*** **— Any private person who shall enter the dwelling of another against the latter's will, shall be punished by *arresto mayor*[7] and a fine not exceeding 1,000 pesos.**

If the offense be committed by means of violence or intimidation, the penalty shall be *prision correccional* in

[7]See Appendix "A," Table of Penalties, No. 1.

its medium and maximum **periods**[8] and a fine not exceeding 1,000 pesos.

The provisions of this article shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling, or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose of rendering some service to humanity or justice, nor to anyone who shall enter cafes, taverns, inns, and other public houses, while the same are open.

Elements of trespass to dwelling.

1. That the offender is a *private person.*
2. That he *enters* the dwelling of another.
3. That such entrance is *against* the latter's will.

Circumstance qualifying the offense.

If the offense is committed by means of *violence* or *intimidation,* the penalty is higher.

Offender is private person.

If the offender is a public officer or employee, the entrance into the dwelling against the will of the occupant is violation of domicile. (Art. 128)

Dwelling place, defined.

Dwelling place, as used in this article, means any building or structure exclusively devoted for *rest* and *comfort,* as distinguished from places devoted to business, offices, etc.

In the case of *People vs. Lamahang,* 61 Phil. 703, a store of cheap goods, which was also the dwelling place of the owner thereof, was considered a dwelling. The accused was found guilty of attempted trespass to dwelling.

Whether a building is a dwelling house or not *depends upon the use* to which it is put. A barn may be converted into a dwelling house or a dwelling house into a barn, by a change of use.

[8]See Appendix "A," Table of Penalties, No. 15.

Dwelling includes a room when occupied by another person.

Neither the nature of the crime nor the responsibility of its perpetrator is altered by the fact that the accused was living, as a boarder, in the same house of which the room of the offended occupant he entered was a part. (U.S. vs. Silvano, 31 Phil. 510)

Entrance into dwelling must be against the will of owner or occupant.

Note the word "*against*" used in the law, to distinguish the case from a mere lack of consent of the dweller, because the mere absence of his consent is not enough to constitute the crime of trespass to dwelling.

To commit trespass, the entrance by the accused should be against the *presumed* or *express* prohibition of the occupant, and the lack of permission should not be confused with prohibition. (People vs. De Peralta, 42 Phil. 69)

Lack of permission does not amount to prohibition.

It is not necessary in the ordinary life of men, in order to call at the door of a house or to enter it, to obtain the previous permission from the owner who lives in it. With the utmost good faith, a person, *to whom entrance has not been denied beforehand,* may suppose that the owner of the house has no objection to receiving him in it. (Groizard, cited in People vs. Peralta, 42 Phil. 69)

In general, all members of a household must be presumed to have authority to extend an invitation to enter the house.

Thus, an invitation to enter a dwelling, extended by a girl 12 years old, an inmate thereof, was held sufficient to justify the claim that the entry was not made against the occupant's will, *in the absence of express prohibition* on his part. (U.S. vs. Dulfo, 11 Phil. 75)

There must be opposition on the part of the owner of the house to the entry of the accused.

Thus, where the owner of the house, upon meeting the accused at the door, took the accused by the hand and requested him to be seated, it is clear that there was no trespass to dwelling, because there was no opposition on the part of the owner of the house to the entry of the accused. (U.S. vs. Flemister, 1 Phil. 355; U.S. vs. Dionisio, *et al.*, 12 Phil. 283)

Implied prohibition.

Thus, *early* in the morning, defendant went up the house of the offended party and entered the room of the latter's daughter who was then sleeping. There was no lock to the door to prevent the entrance of any person.

Held: There is trespass to dwelling. Express prohibition is not necessary, because *prohibition in this case is presumed,* considering the *time,* the fact that the door was *closed* and the fact that the daughter was sleeping and the offended party was in the market. (People vs. Clemente C.A.-G.R. No. 43907, Nov., 1936)

It is a well-settled rule that whoever enters the dwelling of another *at late hour of the night* after the inmates have retired and closed their doors does so against their will. Under these circumstances an express prohibition is not necessary, as it is presumed. (U.S. vs. Mesina, 21 Phil. 615; U.S. vs. Panes, 25 Phil. 292)

The fact that the door of the room was only fastened by a string too weak and inadequate to hold it fast, does not alter the fact that the offended party wished it to be understood that she did not desire anyone to enter without her express consent. (U.S. vs. Silvano, 31 Phil. 509)

There was implied prohibition to enter the dwelling in a case where the owner thereof had told the defendants to wait in the open porch and then closed the door behind him as he entered the drawing room. (Gabriel vs. People, 96 Phil. 10)

Prohibition is implied in entrance through the window.

While it is true that the window was open when the defendants passed through it in order to gain entrance into the house, there is an *implied prohibition* when entrance is made through means not intended for ingress. (People vs. Marcial, C.A., 50 O.G. 3122)

Prohibition must be in existence prior to or at the time of entrance.

The facts or circumstances from which the objection of the occupant may be inferred should be in *existence prior to or at the time of the entry.*

In no event can facts arising after entry has been effected with the express or implied consent of the occupant change the character of the entry from one with consent to one contrary thereto. In this case, the accused entered a house by the principal door, which they found half-open. There was no opposition of any kind from the occupant at the time of entrance by the accused. (U.S. vs. Dionisio, *et al.,* 12 Phil. 283)

Distinguish this ruling from that of *U.S. vs. Arceo,* 3 Phil. 381.

In the case of *U.S. vs. Arceo,* there was violence used by the accused *immediately* after entrance without the consent of the owner of the house.

What is intended to be protected and preserved by the law in punishing trespass is the privacy of one's dwelling.

People vs. Almeda, et al.
(75 Phil. 477-479)

Facts: The appellant, in company with other persons, arrived at the house of Honorata Limpo. The latter was thereupon informed by appellant's companion, Potenciano Villano, that they were going to demolish and repair her house, to which Honorata Limpo objected. Unheeding this opposition, and upon express orders by the appellant, his companions Potenciano Villano and Antonio Dysionglo proceeded to gain entry into the house by means of two ladders which they placed against the front wall.

Held: The defense pressed in the appeal is that the opposition registered by Honorata Limpo was directed against the demolition or repair of her house and not against the original entry of the appellant and his companions into her dwelling.

But Honorata Limpo could not have consented to appellant's intrusion into the house, which made him a trespasser, for the very purpose already objected to by her. Moreover, the method employed by appellant's men in effecting entry suggests *prior refusal* on the part of Honorata Limpo to admit them through its stairs.

What is intended to be protected and preserved by the law is the privacy of one's dwelling, and, except in those cases enumerated in the third paragraph of Article 280 of the Revised Penal Code, criminal intent inheres in the unwelcome visit of a trespasser.

Trespass under the 2nd paragraph, of Art. 280.

When the crime of trespass is committed by means of violence or intimidation, it is qualified in the sense that a higher penalty is imposed.

Must violence refer to person only?

There is no question that intimidation refers to person. But there is a conflict of opinion as to whether violence refers also to person or to things only.

In the case of *People vs. Tayag,* 59 Phil. 606, the Supreme Court considered the act of the accused in loosening one of the bars of the door by means of bolo and screw driver as *trespass committed by violence.*

The Court of Appeals in the case of *People vs. Coronel*, CA-G.R. No. 5322, did not hold the same view. In the case of *People vs. Abling*, CA-G.R. No. 4640, March 12, 1940, the Court of Appeals also held that violence does not refer to force upon things.

Trespass by means of violence:

1. Pushing the door violently and *maltreating* the occupants after entering. (U.S. vs. Paray, 17 Phil. 378)
2. Cutting of a ribbon or string with which the door latch of a closed room was fastened. The cutting of the fastenings of the door was an act of violence. (U.S. vs. Lindio, 10 Phil. 192)
3. Wounding by means of a *bolo*, the owner of the house immediately after entrance. (U.S. vs. Arceo, *et al.*, 3 Phil. 381)

Trespass by means of intimidation:

1. Firing a revolver in the air by persons attempting to force their way into a house. (U.S. vs. Ostrea, 2 Phil. 93)
2. The flourishing of a *bolo* against inmates of the house upon gaining entrance. (U.S. vs. Lindio, 10 Phil. 192)

The violence or intimidation may take place immediately after the entrance.

The law which forbids entry (with violence) into the dwelling of another relates not only to the method by which one may pass the threshold of the dwelling of another, but also to the *conduct immediately after entrance* of one who so enters. In this case, although the couple already retired at that time, as it was between 8 and 9 o'clock at night, the wife's sister was still awake and sitting up sewing. But the accused entered the house without first obtaining the permission of any person. Once inside, the accused wounded the husband. *Held:* Qualified trespass was committed. (U.S. vs. Arceo, 3 Phil. 381)

Prohibition, not necessary when violence or intimidation is employed by the offender.

There is qualified trespass as long as there is violence or intimidation employed, notwithstanding the fact that the door of the house *was already open* and there was no *express prohibition to the entry.* (U.S. vs. Abanto, 15 Phil. 223)

In this case, the owner of the house was awakened by the accused on the outside calling him by name; that when the owner of the house

opened the door and sought to recognize the accused, another man, who was already upstairs alongside the staircase, struck the owner of the house on the forehead with a wooden stick; and that as the latter fell backward over a bench inside the house, the accused passed through the door, threw himself upon the owner of the house, and seized him by the throat.

Trespass may be committed by the owner of a dwelling.

Thus, even supposing that the house belonged to the accused, that fact alone did not authorize him to do anything with or enter the house against the will of the *actual occupant.* He could have invoked the aid of the court for the exercise or protection of his proprietary rights. (People vs. Almeda, *et al.,* 75 Phil. 476)

All trespassers ordinarily have intention to commit another crime, but if there is no overt act of the crime intended to be committed, the crime is only trespass to dwelling.

Thus, even if the defendants desired to have carnal relation with a mother and her two daughters when they broke into the house in which the women were living and maltreated them, but the defendants desisted from their original intention and left the house, they were guilty of trespass to dwelling with violence. (U.S. vs. Barnedo, *et al.*, 36 Phil. 851; U.S. vs. Cabaraban, 36 Phil. 251)

The culprit who entered a dwelling through the window to steal personal property, but was caught by the owner of the dwelling before he could take any personal property, is guilty of trespass to dwelling, not attempted robbery.

Where an intruder was caught in the act of forcibly attempting to enter a dwelling, the crime is not attempted robbery but attempted trespass to dwelling. (People vs. Tayag and Morales, 59 Phil. 606, cited in the case of People vs. Lamahang, 61 Phil. 703)

Trespass to dwelling, when separate from other offense committed in the dwelling.

The accused entered the dwelling of a captain by forcing his way through the window. When found inside by the occupants who tried to arrest him, the accused resisted arrest and stabbed the son of the captain, inflicting a mortal wound. In his effort to escape, he also assaulted the captain, his wife and daughter. The son did not die because of the timely and able medical attendance given by a physician.

Held: The accused committed trespass to dwelling through violence, frustrated homicide and less serious physical injuries. (People vs. Medina, 59 Phil. 134)

Note: Two crimes were committed, not complex under Art. 48. If the purpose of the accused was to kill the person injured, it would be frustrated homicide only, but dwelling or that the crime was committed after an unlawful entry would be an aggravating circumstance.

Since in the Medina case, it seems that when the accused entered the dwelling through the window he had no intent to kill any person inside, but that the intent to kill came to his mind when he was being arrested by the occupants thereof, the crime of trespass to dwelling is a separate and distinct offense from frustrated homicide.

Cases to which the provisions of this article are not applicable:

1. If the entrance to another's dwelling is made for the purpose of preventing some serious harm to himself, the occupants of the dwelling or a third person.
2. If the purpose is to render some service to humanity or justice.
3. If the place where entrance is made is a *cafe, tavern, inn* and other public houses, *while the same are open.* (Art. 280, last par.)

Entering a dwelling "for the purpose of rendering some service to x x x justice."

The Meralco line inspectors, who were suspecting that the householder was hiding a transformer used by him in stealing electricity in his house, had no right to enter the house against his will. It cannot be said that the inspectors "rendered a service to justice." (Gabriel vs. People, 96 Phil. 10)

Art. 281. ***Other forms of trespass.*** **— The penalty of** ***arresto menor*** **or a fine not exceeding 200 pesos, or both, shall be imposed upon any person who shall enter the closed premises or the fenced estate of another, while either of them is uninhabited, if the prohibition to enter be manifest and the trespasser has not secured the permission of the owner or the caretaker thereof.**

Elements:

1. That the offender enters the *closed premises* or the *fenced estate* of another.

2. That the entrance is made while either of them is *uninhabited.*
3. That the *prohibition* to enter be *manifest.*
4. That the trespasser has not *secured* the *permission* of the owner or the caretaker thereof.

Meaning of "premises."

"Premises" signifies distinct and definite locality. It may mean a *room, shop, building* or definite area, but in either case, locality is fixed. (Words and Phrases, Vol. 33)

Entering a warehouse may be trespass under this article.

This is so, because the warehouse is a closed premise; and if it is uninhabited, prohibition is manifest and no permission is given, the entrance into the same is other form of trespass.

Distinguished from trespass to dwelling.

1. In trespass to dwelling, the offender is a private person; in other forms of trespass, the offender is any person.
2. In the first, the offender enters a dwelling house; in the second, the offender enters closed premises or fenced estate.
3. In the first, the place entered is inhabited; in the second, the place entered is uninhabited.
4. In the first, the act constituting the crime is entering the dwelling against the will of the owner; in the second, it is entering the closed premises or the fenced estate without securing the permission of the owner or caretaker thereof.
5. In the first, the prohibition to enter is express or implied; in the second, the prohibition to enter must be manifest.

Section Three. — Threats and coercion

Art. 282. *Grave threats.* — Any person who shall threaten another with the infliction upon the person, honor, or property of the latter or of his family of any wrong amounting to a crime, shall suffer:

1. The penalty next lower in degree than that prescribed by law for the crime he threatened to commit, if the offender shall have made the threat demanding money or

imposing any other condition, even though not unlawful, and said offender shall have attained his purpose. If the offender shall not have attained his purpose, the penalty lower by two degrees shall be imposed.

If the threat be made in writing or through a middleman, the penalty shall be imposed in its maximum period.

2. The penalty of *arresto mayor*[9] and a fine not exceeding 500 pesos, if the threat shall not have been made subject to a condition.

Acts punishable as grave threats:

1. By threatening another with the infliction upon his person, honor or property or that of his family of any wrong amounting to a *crime* and *demanding money* or *imposing* any other condition, even though not unlawful, and the offender *attained his purpose.*
2. By making such threat *without the offender attaining his purpose.*
3. By threatening another with the infliction upon his person, honor or property or that of his family of any wrong amounting to a crime, the threat *not* being *subject to a condition.*

The threat must be to inflict a wrong amounting to a crime upon the person, honor, or property of the offended party or that of his family.

Is it necessary that the wrong threatened to be inflicted must amount to any of the crimes against persons, against honor, or against property?

Suppose, *A* threatened *B* that unless the latter send to him P1,000, he would kidnap his son, would it be grave threats, considering that the wrong threatened to be inflicted would amount to a crime against liberty?

It is believed that the crime committed is grave threats. Such a threat *affects the person* of a member of the family of the offended party.

Elements of grave threats where offender attained his purpose:

a. That the offender threatens another person with the infliction upon the latter's *person, honor* or *property,* or upon that of the latter's family, of any *wrong.*

[9]See Appendix "A," Table of Penalties, No. 1.

b. That such *wrong* amounts to a *crime.*

c. That there is a *demand for money* or that any other *condition is imposed,* even though not unlawful.

d. That the offender *attains his purpose.*

Examples:

Threats to commit a crime upon the person of the offended party —

A sent a letter to *B* in which *A* said that unless *B* would send to him P1,000, *A* would kill *B. B* sent P1,000 to *A.* The threat to kill *B* involves a crime against the person of *B,* which is homicide.

Threats to commit a crime upon the property of the offended party —

A sent C to *B* to tell, as in fact he told, the latter that if he would not send P1,000, *A* would burn *B's* house. *B* sent the money to A. The threat to burn the house of *B* involves a crime against his property, which is arson.

Threats to commit a crime upon the honor of the offended party —

A told *B* that unless the latter would give him P1,000, he would place inside his house a tin of opium and then he would report the matter to the police. *B* sent P1,000 to *A.* The threat involves the crime of incriminating an innocent person. (Art. 363)

But threatening to publish a libel and offering to prevent such publication for money is punished under Art. 356, not under Art. 282.

Demand for money —

Note that in the examples above, there is a demand for money.

In a case, the accused sent a letter to an old woman, threatening her with death or the burning of her house unless she gave him P500, which she must deposit in the place indicated to her in the letter. When arrested and searched, the accused had in his pocketbook an envelope on which was written the name of the offended party. It was held that the accused was guilty of grave threats. (U.S. vs. De la Cruz, 28 Phil. 279)

"Or imposing any other condition, even though not unlawful."

A seduced B's daughter. Because A refused to marry her, *B* threatened *A* with death, unless *A* would marry his said daughter. Is *B* liable for grave threats?

Yes. *B* threatened *A* with the infliction upon his person of a wrong amounting to a crime (homicide), imposing a condition (unless *A* would marry his daughter).

It will be noted that the condition imposed is not unlawful. Nevertheless, since a threat to inflict a wrong amounting to a crime was made, B is criminally liable for the crime of grave threats.

Imposing other condition — no demand for money.

A told *B* that if the latter would not give his daughter in marriage to *A*, *A* would kill *B*. There is no demand for money, but a condition consisting in that *B* should give his daughter in marriage to *A* is imposed.

Penalty to be imposed.

If the offender attained his purpose, the penalty one degree lower of the penalty for the crime threatened to be committed shall be imposed.

Thus, if, in the example above, *A* succeeded in having the daughter of *B* marry him, because of the threat, the penalty of *prision mayor* shall be imposed. *Prision mayor* is the penalty one degree lower from *reclusion temporal,* the penalty for homicide. Homicide is the crime, *A* threatened to commit against *B*.

If the offender does not attain his purpose, the penalty is two degrees lower than that provided by law for the crime threatened to be committed.

Thus, if *B* refused to give his daughter to *A* in marriage, and the latter is prosecuted and convicted, the penalty is *prision correccional*.

If the threat is not subject to a condition, the penalty is fixed.

When the threat is not subject to a condition, the penalty does not depend on the penalty for the crime threatened to be committed. The penalty is fixed at *arresto mayor* and a fine not exceeding P500.

Circumstance qualifying the offense.

If the threat is made in writing or through a middleman, the penalty is to be imposed in its maximum period.

Illustration of grave threats where the offender does not attain his purpose.

A was madly in love with *B,* a woman. B rejected *A*. Thereupon, *A* threatened to kidnap or kill *B* if she would not treat him well. Because of

fear, *B* moved to and sought protection in the house of her cousin. *A* wrote a letter and asked C to deliver it to *B*, threatening that if she would not leave her hiding place and go with him, he would kill her and her relatives. When *B* received the letter, she immediately showed it to her cousin and on the same day the matter was reported to the police.

Held: A is guilty of the crime of grave threats. *A* did not attain his purpose for which he wrote the letter, because of the intervention of the police to whom the matter was reported. The purpose not having been attained, the penalty to be imposed upon A should be two degrees lower than that prescribed by law for murder, the crime *A* threatened to commit. The threat having been made in writing, the penalty should be imposed in the maximum period. (People vs. Nerona, C.A., 46 O.G. 314)

Elements of grave threats not subject to a condition:

a. That the offender threatens another person with the infliction upon the latter's *person, honor,* or *property,* or upon that of the latter's family, of any *wrong.*

b. That such *wrong* amounts to a *crime.*

c. That the threat is *not subject to a condition.*

Third form of grave threats must be serious and deliberate.

The third form of grave threats must be serious in the sense that it is *deliberate* and that the offender persists in the idea involved in his threats.

The threats of the third form are those made with the *deliberate purpose of creating in the mind* of the person threatened the belief that the threats will be carried into effect. (U.S. vs. Paguirigan, 14 Phil. 453)

The threat should not be made in the heat of anger, because such threat is punished under Art. 285, par. 2.

In the third form of grave threats, there is no condition imposed or there is no demand for money.

Note that in subdivision No. 2 of Art. 282, the threat "shall not have been made subject to a condition."

If the condition is not proved, it is grave threats under sub-paragraph 2 of Art. 282.

If, as claimed by appellant, Lt. Santos had no right or power to place him under arrest, or if the order to arrest him were unlawful, because he had not committed any offense, then he could, as stated by him, rightfully resist

the arrest even to the extent of using such force as might be necessary to repel that employed in carrying-out the lieutenant's order. But the fact that Lt. Santos had ordered his men to arrest appellant did not excuse or justify the latter in poking his gun into the body of Lt. Santos with the threat to kill him. We do not agree with the Solicitor General that the crime committed by appellant is that defined and punished under paragraph 1 of Article 282 of the Revised Penal Code, it being not correct that the threats uttered by the appellant were "subject to the condition that Lt. Santos would not insist upon arresting appellant and the latter attained his purpose, as he was not arrested till the following day." If appellant was not taken into custody at that time, it was because he succeeded in making good his escape by mixing with the crowd. (People vs. Lustre, *et al.*, 57 O.G. 6457-6458)

Note: The accused was found guilty of grave threats under subparagraph 2 of Art. 282, and sentenced to 4 months and 1 day of *arresto mayor*, and to pay a fine of P200.

Essence of the crime of threats is intimidation.

In the crime of threats, it is essential that there be intimidation.

In the intimidation, there is promise of some *future harm* or *injury*, either to the person, honor or property of the offended party or of his family.

The act threatened to be committed must be wrong.

Note the phrase "threaten another with the infliction x x x of *any wrong*" in the first paragraph of Art. 282. So, the act threatened to be done must be WRONG. In fact, any threat to commit a crime is a threat to inflict a wrong.

A, boarder in the house of *B*, seduced the latter's daughter, 16 years old and a virgin. As *A* was not willing to marry her, *B* threatened to file a criminal action *against him for qualified seduction, unless he would marry her.* Is *B* liable for grave threat? No, because filing a complaint against A is not wrong.

But if *B* threatened to kill *A*, unless he would marry his daughter, *B would be liable for grave threats, because what he threatened to do (to kill A)* was wrong.

Grave threats may be committed by indirect challenge to a gun fight, even if the complainant was absent when the challenge was made.

The accused went in front of the house of Rizal and shouted: "You, Rizal, you fight in a gun duel." The accused fired two warning shots and

thereafter threw stones at the roof of the house of Rizal, but the latter was out having gone to another town. A few moments later, after the accused had left, Rizal returned in a car and stopped in front of his house. After Rizal had alighted from the car, a neighbor reported to him the challenge made by the accused.

It was held that the indirect challenge to a gun fight amounted to intimidation, especially when backed by two warning shots, notwithstanding the fact that the complainant was not present at the time the challenge was made, the Court of Appeals citing Viada, Vol. VI, pp. 54-55, 4th edition. (People vs. Sayon, C.A., 64 O.G. 5089)

As the crime consists in threatening another with some future harm, it is not necessary that the offended party was present at the time the threats were made. It is sufficient that the threats, after they had been made in his absence, *came to the knowledge of the offended party.*

The crime of grave threats is consummated as soon as the threats come to the knowledge of the person threatened.

Where the accused threatened to bury alive the two victims, if they would not give the P50 demanded from each of them, the accused were held guilty of two distinct offenses of grave threats, even if the money was not delivered. The crime of grave threats is consummated as soon as the threat comes to the knowledge of the person threatened. (People vs. Villanueva, *et al.*, C.A., 48 O.G. 1376)

Note: Whether or not the offender attained his purpose, the crime of grave threats is consummated; for if he did not attain his purpose, it is grave threats of the 2nd form.

Threats made in connection with the commission of other crimes, are absorbed by the latter.

Thus, where the defendant struck the offended parties, saying at the same time that he would kill them if they would not return to him the jewelry which they had lost, it was held that the threat was part of the assault. The defendant was convicted of maltreatment. (U.S. vs. Sevilla, 1 Phil. 143)

Threat, employed by the offender to commit acts of lasciviousness or robbery, is not a separate crime, because it is the constitutive element of intimidation in those crimes. Thus, if the accused, after kissing, embracing and touching the private parts of a woman who was resisting, threatened her that if she would not accede, her husband would be killed by his companion who was then guarding him at the first floor of the house, the crime committed is acts of lasciviousness (Art. 336), and the threat is not a

separate crime. (People vs. Timbol, C.A., 47 O.G. 1868) Also, if the culprit, in taking the personal property of the offended party with intent to gain, threatened to kill him and succeeded in depriving the latter thereof, he is liable for robbery only. The threat is not a separate offense.

Note: If there is another crime *actually* committed or the *objective* of the offender is *another crime,* and the threat is only a *means* to commit it or a *mere incident* in its commission, the threat is absorbed by the other crime. But if the threat was made *with the deliberate purpose of* creating in the mind of the person threatened, the belief that the threat would be carried into effect, the crime committed is grave threats, and the minor crime which accompanied it should be disregarded.

The offender in grave threats does not demand the delivery on the spot of the money or other personal property asked by him.

When the act consists in materially taking possession or securing, *on the spot,* the delivery of the money or other personal property, through the effect of fear or fright which the imminence of the injury produces in the mind of the person intimidated, the nature of the penal act is altered and constitutes, not threats, but the crime of robbery with intimidation. (U.S. vs. Osorio, 21 Phil. 237; People vs. Villanueva, *et al,* C.A., 48 O.G. 1376)

Art. 283. *Light threats.*— A threat to commit a wrong not constituting a crime, made in the manner expressed in subdivision 1 of the next preceding article, shall be punished by *arresto mayor.*[10]

Elements:

1. That the offender makes a threat to commit a wrong.
2. That the wrong *does not constitute a crime.*
3. That there is a *demand for money or that other condition is imposed,* even though not unlawful.
4. That the offender has *attained* his purpose or, that he has *not attained his purpose.*

[10]See Appendix "A," Table of Penalties, No. 1.

Light threats are committed in the same manner as grave threats, except that the act threatened to be committed should not be a crime.

Note that light threat is committed "in the manner expressed in subdivision 1 of the next preceding article," except that the wrong threatened to be committed does not constitute a crime.

"Made in the manner expressed in subdivision 1 of the next preceding article."

Light threats in Art. 283 does not include a threat to commit a wrong not constituting a crime, which is not subject to a condition. The reason for this is that Art. 283 states that the threat should be made in the manner expressed in subdivision 1 of Art. 282, which requires that there be a demand for money or that other condition be imposed.

Thus, when A threatens *B* with exposure without a demand for money or other condition, Art. 283 does not apply. When orally made, Art. 285, par. 3, applies, because this provision requires no imposition of condition or demand for money.

Blackmailing may be punished under Art. 283.

Light threats may amount to blackmailing.

Example: A threatens *B* with accusation or exposure, if *B* does not give P1,000 to be deposited at an indicated place.

Within this provision would fall many cases of blackmailing, that is, the unlawful extortion of money by an appeal to the fear of the victim, or by threats of accusation or exposure. (Guevara)

Example of light threats.

People vs. Hao Y. Chao, et al.
(C.A., 54 O.G. 5334)

Facts: According to the employee of Salustiana Dee by the name of Tee Tek Suan, Hao Y. Chao and Sia Sy Ho dropped in her store three or four times sometime in December, 1953, telling said Tee Tek Suan that they knew his employer had bought a parcel of land in Binondo, that she had evaded payment of taxes; and that they were going to report the case to the authorities. When Mrs. Dee was apprised about the matter by Tee Tek Suan, she became fearful, especially because the two were not known to her. She then instructed her employee that should the pair come around again, he should tell them to wait and treat them with drinks. Thus, when Hao Y. Chao and Sia Sy Ho came to the store on December 21, 1953, Tee Tek kept

them waiting. On the other hand, Mrs. Dee contacted the office of the city mayor, reporting the presence of the pair. In response to the call, detectives Florentino Jueco and Gerardo Tamayo were dispatched.

Detective Jueco, who was in civilian clothes, was led into the room of Mrs. Dee, and pretending to be a Chinese customer and reading the Chinese newspaper, he seated himself in a corner. Hao Y. Chao and Sia Sy Ho were then brought inside the office of Mrs. Dee. Hao Y. Chao showed a piece of paper concerning the acquisition of a piece of land in Binondo by Mrs. Dee and, accusing her of tax evasion, threatened to report the matter to the Bureau of Internal Revenue and to the N.B.I. for which she would be prosecuted and deported like Co Pak and others unless she come across with P1,000. Under the circumstances, Mrs. Dee handed P1,000 to Tee Tek Suan who in turn delivered the same to Hao Y. Chao. The money was subsequently turned over to Sia Sy Ho who after wrapping the same with his handkerchief, pocketed it. At that juncture, detective Jueco arrested the pair from whom he recovered the amount of P1,000.

Counsel for appellant Sia Sy Ho maintains that he was erroneously declared guilty of the crime of grave threats, which is committed in the following manner —

"Any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime" * * *. (Art. 282, R.P.C.)

It is argued that the alleged threat upon the complainant, by telling her that she would be reported to the Bureau of Internal Revenue for tax evasion, does not amount to a crime.

Held: We agree with this view. However, Sia Sy Ho, together with his co-accused, committed another crime — that of light threats, contrary to the contention of his counsel that no crime was committed by him.

As the threat made by the accused, that they would report the offended party to the authorities, did not constitute a crime, the crime committed by them when they made the threat demanding money was only light threats, defined and penalized in Article 283 of the Revised Penal Code.

Art. 284. ***Bond for good behavior.*** — In all cases falling within the two next preceding articles, the person making the threats may also be required to give bail not to molest the person threatened, or if he shall fail to give such bail, he shall be sentenced to ***destierro.***[11]

[11]See Appendix "A," Table of Penalties, No. 10.

In what cases may a person be required to give ball not to molest another?

1. When he threatens another under the circumstances mentioned in Art. 282.
2. When he threatens another under the circumstances mentioned in Art. 283.

Compared with Art. 35.

Art. 35 provides for "bond to keep the peace." This article provides for "bond for good behavior." Art. 35 is not made applicable to any particular case; Art. 284 is applicable only to cases of grave threats and light threats.

In "bond to keep the peace," if the offender fails to give bond, he shall be detained for a period not exceeding six months (if prosecuted for grave or less grave felony) or not exceeding 30 days (if prosecuted for light felony); in "bond for good behavior," if he shall fail to give bail, he shall be sentenced to *destierro.*

Bond to keep the peace is a distinct penalty. (See Art. 35)

The giving of bail is an additional penalty.

Note the words "may also be required" in this article, indicating that it is an additional penalty. (Guevara)

Art. 285. *Other light threats.* — The penalty of *arresto menor* in its minimum period[12] or a fine not exceeding 200 pesos shall be imposed upon:

1. Any person who, without being included in the provisions of the next preceding article, shall threaten another with a weapon, or draw such weapon in a quarrel, unless it be in lawful self-defense;

2. Any person who, in the heat of anger, shall orally threaten another with some harm not constituting a crime, and who by subsequent acts shows that he did not persist in the idea involved in his threat, provided that the circumstances of the offense shall not bring it within the provisions of Article 282 of this Code;

[12]From 1 to 11 days.

3. Any person who shall orally threaten to do another any harm not constituting a felony.

Acts punished as other light threats.

1. By threatening another with a weapon, or by *drawing* such weapon *in a quarrel,* unless it be in lawful self-defense.
2. By orally threatening another, in *the heat of anger,* with some *harm* (not) constituting a crime, without persisting in the idea involved in his threat.

   Note: The word "not" in this paragraph is enclosed in parenthesis, because the inclusion of that word in paragraph 2 of Art. 285 is a mistake.
3. By orally threatening to do another any harm not constituting a felony.

"Without being included in the provisions of the next preceding article."

This means that there is no demand for money or that there is no condition imposed when the offender threatens another with a weapon, and that the case does not fall in subdivision No. 2 of Art. 282.

Two acts are punished in paragraph 1.

1. Threatening another with a weapon, even if there is no quarrel; and
2. Drawing a weapon in a quarrel, which is not in lawful self-defense.

Orally threatening another, in the heat of anger, with some harm constituting a crime is punished in paragraph 2.

The phrase "shall orally threaten another with some harm not constituting a crime" is employed in paragraph 2 of Article 285. This is totally at odds with its Spanish counterpart, for what the latter contemplates is clearly "*amenazare a otro con causarle un mal que constituya delito.*" There is accordingly a mistake in the English translation of the law. The word *not* should, therefore, be eliminated from the statute — in English. Hence, a person who, in the heat of anger, threatened to kill another without persisting in the idea involved in his threat is liable under paragraph 2 of Art. 285. (People vs. Untalan, 1 C.A. Rep. 243)

"Who by subsequent acts shows that he did not persist in the idea involved in his threat."

In a quarrel between the wife of the accused and the offended party, the accused took part, threatening to kill the offended party. The accused went home to get his revolver and returned to the place, looking for the offended party, who in the meantime had concealed himself in his house. Later, the accused called at the house of the brother of the offended party and implored pardon, alleging that the threat was uttered without premeditation. It was held that the offense was light threat (U.S. vs. Estrada, 10 Phil. 583), because the accused by subsequent acts showed that he did not persist in the idea involved in his threat.

Art. 285, compared with Art. 282 and Art. 283.

Threats under paragraph 2 of Art. 285 is similar to the third form of grave threats (Art. 282), because the harm threatened to be committed *is a crime.*

Threats under paragraph 3 of Art. 285 is similar to light threats (Art. 283), because the harm threatened to be committed is *not a crime.*

The difference lies in the fact that in other light threats (Art. 285), there is no demand for money or that there is no condition imposed or that the threat is not deliberate.

A person who, flourishing a cane in an *excited* manner, ordered the men engaged in transplanting rice upon the land claimed by him to stop their work and leave, threatening to kill them unless they obeyed, is guilty under paragraph 2 of Art. 285, because (1) the threat was made *in the heat of anger,* and (2) the subsequent acts of the accused showed that *he did not persist* in the idea involved in his threat. (U.S. vs. Paguirigan, 14 Phil. 450)

In a *heated* argument between him and the offended party, the accused said that he would cut her to pieces, making aggressive gestures and trying to attack her with a *bolo.* A person present caught his wrist and held it up tightly. Nothing more happened. The accused was guilty of other light threats under Art. 285, par. 2. (People vs. Padayhag, 36 O.G. 3265, May 15, 1937)

Threats which ordinarily are grave threats, if made in the heat of anger, may be other light threats.

The accused who threatens another, specifically and expressly, with the infliction upon the latter's person of a wrong amounting to a crime ("I will shoot you"), imposing a condition therefor ("If you will not leave the

place"), is, ordinarily, guilty of the crime of grave threats under Article 282(1) of the Revised Penal Code. Where, however, the accused had flung the threat in a *sudden flare of anger* following the offended party's initial disregard of his command to "leave the place," which the offended party had mistaken for a "joke," the crime committed is only other light threats under Article 285 of the same Code. (People vs. Tongco, C.A., 60 O.G. 1422, citing U.S. vs. Paguirigan, 14 Phil. 450; People vs. Bantug, CA-G.R. Nos. 11304-05, Nov. 13, 1956)

Can other light threats be committed where the person to whom it is directed is absent?

Yes, where the threats are directed to a person who is absent and uttered in a temporary fit of anger, the offense is only light threats. (People vs. Fontanilla, G.R. No. 39248, Feb. 3, 1934)

Art. 286. *Grave coercions.* — **The penalty of** *prision correccional*[13] **and a fine not exceeding six thousand pesos shall be imposed upon any person who, without authority of law, shall, by means of violence, threats or intimidation, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.**

If the coercion be committed in violation of the exercise of the right of suffrage, or for the purpose of compelling another to perform any religious act or to prevent him from exercising such right or from so doing such act, the penalty next higher in degree[14] shall be imposed. *(As amended by R.A. No. 7890 which took effect on 20 Febuary 1995)*

Two ways of committing grave coercions.

There are two ways of committing grave coercions:

1. By *preventing* another, by means of violence, threats or intimidation, from doing *something not prohibited by law*.

[13] See Appendix "A," Table of Penalties, No. 10.
[14] See Appendix "A," Table of Penalties. No. 19.

2. By *compelling* another, by means of violence, threats or intimidation, to do something against his will, whether it be *right* or *wrong.*

Elements of grave coercions:

The three elements of the crime of grave coercions are:

1. That a person *prevented* another from doing something *not prohibited by law, or* that he *compelled* him to *do something against his will,* be it *right* or *wrong;*
2. That the prevention or compulsion be effected by *violence,* threats or intimidation; and
3. That the person that restrained the will and liberty of another had not the authority of law or the right to do so, or, in other words, *that the restraint shall not be made under authority of law or in the exercise of any lawful right.* (People vs. Rimando, C.A., 56 O.G. 1687; People vs. Picunada, C.A., 43 O.G. 2222; U.S. vs. Tupular, 7 Phil. 8; and People vs. Camat, *et al.,* CA-G.R. No. 13777-R, prom. Sept. 22, 1955; Timoner vs. People, 125 SCRA 830)

Coercion by preventing.

A was harvesting palay on a disputed piece of land. *B,* claiming to have a right to the property, by means of violence prevented *A* from harvesting the palay.

What is prevented must not be prohibited by law.

Note the phrase "not prohibited by law" in the first paragraph of Art. 286.

The thing prevented from *execution must not be prohibited by law;* otherwise, there will be no coercion. Thus, no coercion is committed by one who prevents a murderer from carrying out his wicked purpose.

In grave coercion, the act of preventing by force must be made at the time the offended party was doing or about to do the act to be prevented. If the act was already done when violence is exerted, the crime is unjust vexation.

People vs. Madrid
(C.A.,53 O.G. 711)

Facts: The Philippine Education Company Employees' Union declared a strike against the Philippine Education Company.

The defendant accosted Oscar Flores and, upon learning that the latter had reported for work, told him not to go to work the next day; that on the next day, Oscar Flores went to work in spite of defendant's advice: and that in the afternoon of that day, the defendant, accompanied by two unidentified persons, approached Oscar Flores, who was walking along Quezon Boulevard, and gave him fist blows on the face, and when the latter fell, kicked him on the chest. There was no evidence of the nature of the physical injuries inflicted.

Do the acts committed by the defendant constitute the crime of grave coercion?

Held: In the crime of grave coercion, the person coercing must have restrained his victim from doing something, not prohibited by law, at the time he wanted to do it. The coercing person must have exerted violence on his victim *at the very moment that the latter is doing or is about to do something* he wants to do. If the defendant, however, had told the complainant not to do something he desired to do, but the complainant went ahead and did it, without the defendant doing anything to prevent him, and after the complainant had finished doing it, the defendant exerted violence on him, the crime committed was unjust vexation, not grave coercion.

Had the defendant waylaid Oscar Flores while he was on his way to work and then prevented him, by means of violence, from going to his work, he would have been guilty of grave coercion.

When the act of preventing is another crime.

A public officer who shall prevent by means of violence or threats the ceremonies or manifestations of any religion is guilty of interruption of religious worship. (Art. 132)

Any person who, by force, prevents the meeting of a legislative body is liable under Art. 143.

Any person who shall use force or intimidation to prevent any member of Congress from attending the meetings thereof, expressing his opinions, or casting his vote is liable under Art. 145.

Coercion by compelling.

The accused took a 60-year-old woman to a grove of *"kamatsile"* trees where they slapped and maltreated her, took off her drawers, and bound her hands and feet, while one of them fired a shot at the ground, to compel her to admit having stolen the clothes of one of the accused.

The accused testified that they merely endeavored to bring the complainant to the *teniente del barrio* for investigation. Such purpose

certainly does not excuse their compelling her to go with them if she was not willing to do so; and they admittedly had no warrant for her arrest or any lawful authorization to force her to go with them. Coercion is committed by the unauthorized compelling of another person against his will to do something, whether *just* or *unjust;* its essence being an attack on the individual liberty. (6 Viada, 5th Ed., p. 80, cited in People vs. Fernando, *et al.,* 43 O.G. 1717)

Compelling another to do something includes the offender's act of doing it himself while subjecting another to his will.

The sergeant of police and the municipal president of a town wanted to cross a private bridge which was closed. They were refused passage because they were on a heavy truck. *What they did was to open the bridge,* grabbed and pushed the caretaker who fell to the ground. One of them pulled out a revolver ready to shoot.

Held: They committed grave coercion. (People vs. Juan, *et al.,* C.A., 36 O.G. 3277)

Note: The caretaker was compelled by means of violence to allow them to cross the private bridge.

When the complainant is in the actual possession of a thing, even if he has no right to that possession, compelling him by means of violence to give up the possession, even by the owner himself, is grave coercion.

U.S. vs. Mena
(11 Phil. 543)

Facts: The three carabaos of A entered the rice paddies of *B*, causing considerable damage thereto. *B* took possession of the three carabaos and refused to return them to A, unless the latter would pay for the damage done. *A* did not deny *B's* right to compensation, but he was not at that time ready to make payment. The next day, *B* and his son set out to take the animals to the justice of the peace for the purpose of depositing them in his care until the question of damages could be settled in court. On the road, they met A in company with some other persons. When A came to know that *B* and his son were taking the carabaos to the justice of peace and refused to give them back to him, *A* drew his bolo, rushed at *B's* son, who was then mounted on one of the carabaos ahead of *B* and leading another carabao with a rope, and cut that rope. With threats of bodily harm, *A* compelled *B* to turn loose the carabao on which he was riding.

Was A guilty of grave coercion?

Held: **Yes. With violence, he compelled *B* to do that which the latter did not desire to do, to turn over the possession of the carabaos to him, and it matters not whether it was right or wrong.**

It is a maxim of the law that no man is authorized to take the law into his hands and enforce his rights with threats or violence except in certain well-defined cases where one acts in the necessary defense of one's life, liberty, or property.

A dispute having arisen as to the right of possession, and the carabaos being *actually* in the possession of *B*, it was the duty of *A*, if he desired to enforce his claim, to seek the aid of the proper judicial authority; and had he thus asserted his claim in the orderly manner provided by law, he would have secured not only the possession of the animals, but damages for their detention, upon proof of the justice of his claim.

Suppose, the carabaos were in *A's possession* and *B* wanted to get them, because they had entered his rice paddies and caused considerable damage thereto, and *A* by means of violence or intimidation prevented *B* from taking them, is *A* liable for grave coercion?

No, because as owner and *actual possessor* of the carabaos, *A* had a right to use such *force* as may be reasonably necessary to *prevent B* from dispossessing him of his property. (Art. 429, Civil Code)

When the act of compelling is another offense.

But a public officer who, not being authorized by law, compels a person to change his residence is liable for expulsion under Art. 127, not for coercion.

Kidnapping the debtor to compel him to pay his debt is not only coercion, but kidnapping for ransom, because in effect, there is a demand for payment that releases from captivity. (Art. 267)

"Whether it be right or wrong."

Note this phrase in the first paragraph of Art. 286.

Facts: ***A*** **entrusted a pig to *B*. Later, *A* wanted to get it back, but *B* refused, claiming that it belonged to another person. *A* took it from *B* by force.**

Held: **Even assuming that it was right for A to have the pig because it was his property, still A cannot, under the law, compel *B* by force to return it to him. (People vs. Bautista, CA-G.R. No. 43390, Dec. 17, 1936)**

Violence, threats or intimidation.

Before Art. 286 was amended by R.A. No. 7659, violence was mentioned as the only means to prevent or to compel an offended party although it was held that to constitute coercion, intimidation is sufficient, without necessity of actually laying hands on the person coerced. (U.S. vs. Tupular, 7 Phil. 8)

As amended by R.A. No. 7659, violence, threats or intimidation may be used to prevent or to compel the offended party.

The taxi driver who threatened to bump his car to kill himself and his female passenger, if she would not go with him to a night club, is guilty of grave coercion.

Patrocinio Tira and Concepcion Julaton boarded a Royal Taxi cab driven by the accused whom they told to drive to General Luna Street near St. Louis School. At the latter place, Concepcion Julaton alighted leaving Patrocinio Tira behind. While on the way to and before reaching Ferguson Road, the accused urged her to go with him to a night club. Patrocinio Tira refused and told the accused to stop so that she could get off and go home even by walking. But instead, the accused increased the speed of the taxicab and at the same time told her that if she would not go with him to the night club he "would bump the car even if we would both die." Fearing that the accused might carry out his threat, she opened the right rear door and jumped out while the taxicab was running. She fell on the pavement and became unconscious. She suffered injuries on the head and bruises on the body.

Held: Under the above circumstances, it is clear that the accused was guilty of the crime of grave coercion as defined and penalized in paragraph 1 of Art. 286. (People vs. Rimando, C.A., 56 O.G. 1687)

Note: In the case of *People vs. Rimando,* the accused wanted the offended party to go with him to a night club *at the time* he made the threat. The accused did not succeed, because the offended party jumped out of the taxicab. The crime of grave coercion is consummated even if the offender failed to accomplish his purpose. The intimidation made by the accused that he "would bump the car even if we would both die" takes the place of, or is equivalent to, the element of violence. The intimidation was intended to control the will of the offended party.

The crime is not grave coercion when the violence is employed to seize anything belonging to the debtor of the offender.

Thus, if a creditor, by means of violence, seized the personal property of his debtor to apply the same to the payment of the debt, the crime is *light coercion* under Art. 287.

Not intimidation by display of force, if arms are not used.

The mere fact that defendant with eight other individuals appeared all armed and told the complainant to desist from constructing the house on a piece of land, and that the said complainant, evidently *afraid of the presence of armed men,* desisted, does not constitute coercion, because those facts do not show violence, and since defendant *did not in any way intimidate* the complainant, there was no display of material force. (People vs. Madamba CA-G.R. No. 1029, Dec. 1937)

Surrounding complainant in a notoriously threatening attitude is sufficient.

But when the defendants presented themselves armed and surrounded the complainant in a notoriously *threatening attitude* and thereby created such a situation that they necessarily intimidated the complainant and compelled him to leave, so that they could freely take the palay already harvested, the defendants are guilty of grave coercion. (People vs. Irlanda, C.A., 40 O.G., Supp. 12, 223)

The force or violence must be immediate, actual or imminent.

The accused threatened the complainant that if he would not pay his debt, he would be taken again and brought to a camp where he would be killed. These threats were made in the house of another person. The *following day,* the complainant returned to the house and delivered the amount due.

Held: **It was contended that the delivery of the money was the effect of a *threat made the day before.* There being no actual or imminent force or violence exerted upon the complainant *when he delivered the amount,* the accused cannot be held liable for coercion. (People vs. Romero, *et al.,* C.A., 44 O.G. 4424)**

Note: **It would seem that there is grave threat in this case, because (1) there was a condition imposed and (2) an act constituting a crime was threatened to be committed.**

"Without authority of law" to prevent or to compel.

The third element is taken from the phrase "without authority of law" in the 1st paragraph of Article 286.

It means that the person who restrains the will and liberty of another *has not the right to do so* as a private person or *does not act in the exercise of a duty* in the case of a person with a duty to perform or *with authority* as a public functionary.

The owner of a thing has no right to prevent interference with it when interference is necessary to avert greater damage.

The owner of a thing has no right to prohibit the interference of another with the same, if the interference is necessary to avert an imminent danger and the threatened damage, compared to the damage arising to the owner from the interference, is much greater. (Art. 432, new Civil Code)

Example of "without authority of law."

Five constabulary soldiers appeared in a house where Easter was being celebrated. They asked the owner of the house if he had a license for the entertainment. As the owner of the house was not able to produce any license, the soldiers broke up the party *by force.*

***Held:* The meeting was not illegal. The meeting was peaceful, it being a mere social gathering. There was no legal ground for dissolving the same. The soldiers had no authority of law to dissolve it. They were guilty of coercion. (U.S. vs. Ventosa, 6 Phil. 385)**

***Note:* The constabulary soldiers may be punished under Art. 131.**

There is right to prevent in this case.

Thus, no coercion is committed by a father who, with violence, prevents his unemancipated son from leaving his home just to loiter around in the streets. Under the law, a father has the right to punish his unemancipated child.

A tenant, who used force to *prevent* himself from being deprived of the possession of a parcel of land which he had already cultivated, is not guilty of grave coercion. (People vs. Reyes, C.A., 40 O.G. 1690) *Note:* This ruling is justified under Art. 429 of the new Civil Code.

There is right to compel in this case.

An insane attempted to enter the house of one sick of cholera. The doctor in attendance, at the request of the wife of the patient, compelled by force and even threatened to shoot the insane man with a revolver in order to compel him to leave the house.

***Held:* The doctor is not liable for coercion. (U.S. vs. Calvo, 4 Phil. 201)**

***Note:* The doctor merely acted in accordance with the exercise of his profession.**

Also, a policeman may by means of violence compel a person, who *committed* a crime *in his presence,* to go with him if that person refused to

be arrested and to go with him to the police station, because under the law the policeman may use reasonable force to impose his authority.

There is no grave coercion when the accused acts in good faith in the performance of his duty.

In a case where the municipal mayor authorized the fencing of a barbershop which has been recommended for closure by the municipal health officer for noncompliance with certain health and sanitation requirements, the Supreme Court held that the mayor incurred no criminal liability for having acted in good faith in the performance of his duty as he merely implemented the recommendation of the health officer. (Timoner vs. People, 125 SCRA 830)

Purpose of the law in penalizing coercion.

The main purpose of the statute in penalizing coercion and unjust vexation is precisely to enforce the principle that no person may take the law into his hands, and that our government is one of law, not of men. (People vs. Espina, *et al.*, C.A., 56 O.G. 1678, citing People vs. Mangosing, CA-G.R. No. 1107-R, April 29, 1948)

A person who takes the law into his hands with violence, is guilty of grave coercion.

Thus, *forcibly ejecting* an occupant from the land bought by the offender, without authority from the court, is coercion. (People vs. Nebreja, *et al.*, 76 Phil. 119)

Also, *forcibly invading* the land claiming to be the owner thereof and taking the palay and *camote* harvested therefrom by the occupant, is coercion. (People vs. Mojico, *et al.*, C.A., 45 O.G. 1818)

Coercion is consummated even if the offended party did not accede to the purpose of the coercion.

The appellant claims that the coercion was not consummated but was frustrated only for the reason that the offended party did not confess the crime attributed to him. This conclusion is contrary to the doctrine laid down by this Court in *U.S. vs. Cusi*, 10 Phil. 413, which says:

"The fact that an individual was maltreated for the purpose of compelling him to confess a crime which was attributed to him, constitutes the crime of consummated coercion, even if the agents of the authorities who carried out the maltreatment did not accomplish their purpose to draw from

him a confession, which it was their intention to obtain by the employment of such means."

This doctrine was reiterated in the case of *U.S. vs. Pabalan* 37 Phil. 352, where it did not appear that the offended party acceded to the purpose of the coercion. (Punzalan vs. People, 99 Phil. 259)

Coercion distinguished from illegal detention.

When the offended party, who was in the house of the accused for three days as servant therein, had the freedom of the house and left it at times to visit her mother, but it was shown that *she was compelled against* her will to leave her mother's house and go with the accused to the latter's house, there is coercion, not illegal detention. (U.S. vs. Quevengco, 2 Phil. 412)

Grave coercion distinguished from frustrated illegal detention.

The essential element of the crime of illegal detention is that there be *actual confinement or restraint* of the person. (U.S. vs. Cabanag, 8 Phil. 64; People vs. Suarez, 82 Phil. 484; People vs. Chiong Suy Siong, *et al.*, G.R. No. L-6174, Feb. 28, 1955) Where the accused, by means of violence, merely dragged and carried the complainant to a distance of *three meters* from the place where she was first grabbed, such acts do not constitute the crime of frustrated illegal detention but rather that of consummated grave coercion defined and punishable under Article 286 of the Revised Penal Code.

The cases of *People vs. Undiana,* 50 Phil. 641, and *People vs. Crisostomo,* 46 Phil. 775, are not applicable. In said cases, the victims were rescued by other persons from the accused; while in the instant case the appellants, after having carried the woman to a distance of only three meters and dropped her because of her struggles, *did not persist* in dragging her away and voluntarily desisted from furthering their purpose and left without anybody pursuing them when during all the time they were in a position to carry out whatever intent they originally entertained, for there was no person present who could have stopped them. (People vs. Marasigan, *et al.*, *C.A.,* 55 O.G. 8297)

Note: In the Undiana case, the victim was dragged by the defendants to a distance of 40 meters from her house. As the charge was *frustrated* abduction, but lewd designs were not proved, the Supreme Court held that the defendants could be convicted only of *frustrated* illegal detention.

In the Crisostomo case, the victim was dragged along and was taken against her will to a rice field, where she was rescued. The defendants were held liable for consummated illegal detention.

Coercion is distinguished from illegal detention, when there is no clear deprivation of liberty, by the purpose of the offender.

People vs. Dauatan, et al.
(C.A., 35 O.G. 450)

Facts: A and *B* were about to be married. *B,* the woman, became disgusted with *A* and stated that she would desist from proceeding with the marriage agreed upon. One night, *A,* with others, carried her away forcibly from her house to his own, where she was kept *not behind closed doors* but *only watched* so she might not escape, the *sole purpose* of *A* being to compel her to proceed with the concerted marriage.

Held: A and his companions did not commit the offense of illegal detention, but that of grave coercion.

When the purpose is to prevent the inmates from leaving the premises.

Where the accused constructed a fence around the house of the offended party, as high as a man's shoulder and *without opening,* and watched the house and *warned* the inmates not to leave the premises *under threat of death,* it was held that the crime was grave coercion, and not illegal detention. (People vs. Peralta, *et al.*, 35 O.G. 1929)

Coercion, distinguished from maltreatment of prisoner.

In extorting a confession or in obtaining an information from the prisoner by means of violence (Art. 235), the act is similar to that of grave coercion; but the difference lies in the fact that in the crime of maltreatment of prisoners, the offended party is a prisoner. If the offended party is not a prisoner, the offense would be grave coercion.

Thus, the policemen who, having suspected that *M* was one of the thieves, went to his house, dragged him out of the house, and hit him with a rifle and a bolo to compel *M* to confess his guilt, are guilty of coercion. (U.S. vs. Cusi, *et al.*, 10 Phil. 413)

Note: In this case of *U.S. vs. Cusi, et al., M,* the suspect, was not yet a prisoner.

Grave coercion, distinguished from unlawful arrest.

While standing at the door of her house, a woman was seized by her wrist by defendant policeman who dragged her from the doorway into the street, along the street for 40 or 50 feet, and, with the assistance of a third person, placed her in a public *carromata* She was arrested, because her

servants had placed two step ladders in the street for the purpose of cleaning the side of her house, which did not constitute a violation of the ordinance relating to the obstruction of streets. It was held that such acts constitute the crime of grave coercion. (U.S. vs. Alexander, 8 Phil. 29)

When there is prevention of the meeting of a legislative body or provincial board or city or municipal council or board, the offenders are not liable for grave coercion through arbitrary detention, even if there is compulsion and detention.

Thus, the *arrest* of the vice-president who was presiding over the meeting of the municipal council, preceded by firing a shot in the air by the municipal president as the latter was ordering his arrest, and the detention of the vice-president in jail until 2:00 a.m. when he was released by the governor, do not constitute a complex crime of grave coercion through arbitrary detention, but simply a violation of Art. 143. (People vs. Alipit, *et al,* 44 Phil. 910)

When prision mayor shall be imposed.

1. if the coercion is committed in violation of the exercise of the right of suffrage;
2. if the coercion is committed to compel another to perform any religious act;
3. if the coercion is committed to prevent another from performing any religious act.

In violation of the exercise of the right of suffrage.

Example: A is running against *B* for mayor of a certain municipality. *C, A's* bodyguard, learns that the residents of barangay *D* shall all vote for *B* during the elections. *C* orders the residents of barangay *D* not to vote during the elections with the threat that the houses of those who shall vote shall be burned.

The second paragraph of Art. 286 prevents and punishes religious intolerance.

An essential element of the crime punished under the second paragraph of Art. 286, is the intent to coercively control the religious beliefs of another. (U.S. vs. Balcorta, 25 Phil. 273)

Thus, where the procession of the Catholics was disbanded by force by certain followers of the Aglipayan Church, acting in the belief that the Aglipayan faith should be the only one to predominate in the locality, it was

held that the accused were guilty of grave coercion (U.S. vs. Morales, *et al.* 37 Phil. 364) under the second paragraph of Art. 286.

Art. 287. *Light coercions.*— Any person who, by means of violence, shall seize anything belonging to his debtor for the purpose of applying the same to the payment of the debt, shall suffer the penalty of *arresto mayor* in its minimum period[15] and a fine equivalent to the value of the thing, but in no case less than 75 pesos.

Any other coercion or unjust vexation shall be punished by *arresto menor* or a fine ranging from 5 to 200 pesos, or both.

Elements:

1. That the *offender* must be a *creditor.*
2. That he *seizes* anything belonging to his debtor.
3. That the seizure of the thing be accomplished by means of *violence* or a display of *material force* producing intimidation.
4. That the *purpose* of the offender is to apply the same to the *payment of the debt.*

Illustration:

The accused demanded payment from a Chinaman of the latter's *debt,* but he had no money with which to pay him. With *his cargadores,* the accused took from the store of the Chinaman all the goods which the latter had. The accused ignored the opposition of the Chinaman who could not do anything because the accused had a revolver. The goods were *forcibly* taken away by the accused. (U.S. vs. Tupular, 7 Phil. 8)

Paragraph 1 of Art. 287 is limited to a case where the offender seized anything belonging to his debtor by means of violence to apply the same to the payment of the debt.

Thus, if the offender seized anything belonging to his debtor by means of violence to hold it merely as *security* for the payment of the debt, Art. 287, par. 1, is not applicable.

[15]See Appendix "A," Table of Penalties, No. 2.

The offender must be a creditor of the offended party.

Thus, when it is evident that the accused *did not act as a creditor* toward the offended party, when he seized a cow jointly owned by them, but his conduct was that of a *co-owner* who wished to exercise the right of redemption with which unquestionably he was civilly vested, the accused is not guilty of light coercion. (U.S. vs. Caballero, 25 Phil. 357)

Taking possession of the thing belonging to the debtor, through deceit and misrepresentation, for the purpose of applying the same to the payment of the debt, is unjust vexation under the second paragraph of Art. 287.

Thus, if it was alleged in the information that the accused, through *deceit* and *misrepresentation,* willfully seized and took possession of a passenger jeep of the offended party, for the purpose of applying said jeep to the payment of the debt of the offended party, the coercion alleged would fall under the second paragraph of Art. 287 (People vs. Reyes, 98 Phil. 646), because there was no violence employed in seizing the jeep.

Actual physical violence need not be employed.

It is sufficient that the attitude of the offender in seizing the property of his debtor is notoriously menacing as to amount to a grave intimidation, or create such a situation that necessarily would intimidate the victim. (People vs. Lacdan, C.A., 51 O.G. 2441)

Unjust vexation — other light coercion (Art. 287, par. 2).

Unjust vexation includes any human conduct which, although *not* productive of some *physical* or *material* harm would, however, unjustly annoy or vex an *innocent person.* (Guevara)

The paramount question to be considered, in determining whether the crime of unjust vexation is committed, is whether the offender's act caused *annoyance, irritation, vexation, torment, distress* or *disturbance* to the mind of the person to whom it is directed. (People vs. Gozum, C.A., 54 O.G. 7409)

Kissing a girl, without performing acts of lasciviousness, is unjust vexation.

A man who kissed a girl and held her tightly to his breast is guilty of unjust vexation. (People vs. Climaco, C.A., 46 O.G. 3186)

But the conduct of the accused should not be lascivious, for otherwise he is liable for acts of lasciviousness under Art. 336. (People vs. Añonuevo, C.A., 36 O.G. 2018)

There is no violence or intimidation in unjust vexation.

Light coercion under the first paragraph will be unjust vexation if the *third element* (employing violence or intimidation) is absent.

The act of the accused in nailing some wooden barricades on one of the sides of the market stall of the offended party for failure or refusal of the latter to pay increased rentals and in warning the latter thus: "We have closed this portion of the door. Do not open it or else something may happen to you," as claimed by the offended party, does not constitute such a serious threat or intimidation amounting to grave coercion, but merely the crime of unjust vexation penalized under paragraph 2 of Article 287 of the Revised Penal Code. (People vs. Banzon, *et al,* C.A., 66 O.G. 10533)

Grave coercion distinguished from unjust vexation.

Where the first and the third elements of the crime of grave coercion under paragraph 1 of Art. 286 are present, *but the second element thereof,* which is the use of violence upon the offended party in preventing or compelling him to do something against his will, *is lacking,* the crime committed by the accused falls under the second paragraph of Art. 287. (People vs. Sebastian, *et al.*,C.A., 40 O.G. 2498)

When the act of the accused has no connection with his previous acts of violence, it is only unjust vexation.

The accused was taking a sack of palay belonging to the offended party upon instruction of a lieutenant commandeering palay. The offended party pulled it back. A fight between them ensued. The two were taken to the lieutenant, while the sack of palay was left in the place where they fought. Later, the accused went back to the place and took the sack of palay.

Held: The taking of the palay constitutes an independent and separate act that cannot be linked with the previous acts of violence of the accused. The offended party was not coerced to turn over to him the sack of palay at the time it was taken. At most, the offense was unjust vexation with respect to the taking of the sack of palay. (People vs. Picunada, C.A., 43 O.G. 2222)

Art. 288. *Other similar coercions* — ***(Compulsory purchase of merchandise and payment of wages by means of tokens).*** — The penalty of *arresto* ***mayor***[16] or a fine ranging from 200

[16] See Appendix "A," Table of Penalties, No. 1.

to 500 pesos, or both, shall be imposed upon any person, agent, or officer of any association or corporation who shall force or compel, directly or indirectly, or shall knowingly permit any laborer or employee employed by him or by such firm or corporation to be forced or compelled, to purchase merchandise or commodities of any kind.

The same penalties shall be imposed upon any person who shall pay the wages due a laborer or employee employed by him, by means of tokens or objects other than the legal tender currency of the Philippine Islands, unless expressly requested by the laborer or employee.

Acts punished as other similar coercions:

1. *By forcing* or *compelling,* directly or indirectly, or *knowingly permitting* the forcing or compelling of the laborer or employee of the offender to *purchase* merchandise or commodities of any kind from him.
2. By *paying* the wages due his laborer or employee by *means of tokens* or *objects* other than the legal tender currency of the Philippines, unless *expressly requested* by such laborer or employee.

Elements of No. 1:

a. That the offender is any person, agent or officer of any association or corporation.

b. That he or such firm or corporation has employed laborers or employees.

c. That he *forces* or *compels,* directly or indirectly, or knowingly permits to be forced or compelled, any of his or its laborers or employees to *purchase* merchandise or commodities of any kind *from him or from said firm or corporation.*

Elements of No. 2:

a. That the offender *pays* the wages due a laborer or employee employed by him by means *of tokens or objects.*

b. That those tokens or objects are *other than the legal tender* currency of the Philippines.

c. That such employee or laborer *does not expressly* request that he be paid by means of tokens or objects.

Right of laborers or employees to receive just wages in legal tender.

As a general rule, wages shall be paid in legal tender and the use of tokens, promissory notes, vouchers, coupons, or any other form alleged to represent legal tender is absolutely prohibited even when expressly requested by the employee. (Section 1, Rule VIII, Book III, Omnibus Rules Implementing the Labor Code) No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages. He shall not in any manner force, compel, oblige his employees to purchase merchandise, commodities or other property from the employer or from any other person. (Art. 112, Labor Code)

Compelling an employee to purchase merchandise or commodities of the employer or compelling him to receive tokens or objects in payment of his wages are punished under the Revised Penal Code.

Not coercion or threat under the Revised Penal Code.

Inducing an employee to *give up any part of his wages* by *force, stealth, intimidation, threat* or by any other means is unlawful under Article 116 of the Labor Code, not under the Revised Penal Code.

Art. 289. ***Formation, maintenance, and prohibition of combination of capital or labor through violence or threats.*** **— The penalty of** *arresto* ***mayor***[17] **and a fine not exceeding 300 pesos shall be imposed upon any persons who, for the purpose of organizing, maintaining, or preventing coalitions of capital or labor, strike of laborers, or lockout of employers, shall employ violence or threats in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work, if the act shall not constitute a more serious offense in accordance with the provisions of this Code.**

Elements:

1. That the offender employs *violence* or *threats,* in such a degree as to *compel* or *force* the *laborers* or *employers* in the free and legal exercise of their industry or work.

See Appendix "A," Table of Penalties, No. 1.

2. That the *purpose* is to *organize, maintain* or *prevent coalitions* of capital or labor, *strike* of laborers or *lockout* of employers.

The act should not be a more serious offense.

The act should not constitute a more serious offense in accordance with the provisions of this Code. (Art. 289)

If death or some serious physical injuries are caused in an effort to curtail the exercise of the rights of the laborers and employers, the act should be punished in accordance with the other provisions of the Code.

Peaceful picketing, not prohibited.

Peaceful picketing is part of freedom of speech and, therefore, cannot be prohibited.

Picketing in a peaceful and orderly manner is absolutely legal. It cannot be prohibited for it is part and parcel of the freedom of speech guaranteed by the Constitution. (Mortera, *et al.* vs. CIR, *et al.*,79 Phil. 345-346)

Employing violence or making threat by picketers may make them liable for coercion.

The acts of the picketers in stopping a truck emerging from the company's premises, their refusal to allow its driver to proceed peacefully on his way, their voiced threat that if he would go on his way he would be hurt; all these, notwithstanding the fact that the truck did not belong to the company but to a private individual, are clearly constitutive of the crime of coercion. (People vs. Carballo, *et al.*, C.A., 53 O.G. 5232, citing 31 Am. Jur. 925-926)

The picketers' act of remaining in the passageway when the trucks of the company were going inside its premises is not a part of the picketing protected by law. (People vs. Calip, *et al.*,3 C.A. Rep. 808)

The right to picket should be confined strictly and in good faith to gaining information and to peaceful persuasion and argument. Assuming that the laborer's cause is right and legal, reforms in the management of the affairs of the union could be effected by taking the proper remedies through legal processes and not by resorting to coercion and intimidation. (People vs. Carballo, *et al,* C.A., 53 O.G. 5253, citing Liberal Labor Union vs. Phil. Can Co., 91 Phil. 72)

Preventing employee from joining any registered labor organization is punished under the Labor Code, not under the Revised Penal Code.

It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

x x x

(Article 248, Labor Code)

Unfair labor practice shall be punished by a fine of not less than One Thousand Pesos (P1,000.00) nor more than Ten Thousand Pesos (P10,000.00), or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment, at the discretion of the court. (See Art. 288, Labor Code)

Chapter Three

DISCOVERY AND REVELATION OF SECRETS

Three kinds of discovery and revelation of secrets.

1. **Discovering secrets through seizure of correspondence. (Art. 290)**
2. **Revealing secrets with abuse of office. (Art. 291)**
3. **Revealing of industrial secrets. (Art. 292)**

Art. 290. ***Discovering secrets through seizure of correspondence.*** **— The penalty of *prision correccional* in its minimum and medium periods[1] and a fine not exceeding 500 pesos shall be imposed upon any private individual who, in order to discover secrets of another, shall seize his papers or letters and reveal the contents thereof.**

If the offender shall not reveal such secrets, the penalty shall be *arresto mayor*[2] and a fine not exceeding 500 pesos.

This provision shall not be applicable to parents, guardians, or persons entrusted with the custody of minors with respect to the papers or letters of the children or minors placed under their care or custody, nor to spouses with respect to the papers or letters of either of them.

Elements:

1. **That the offender is *a private individual* or even a public officer not in the exercise of his official function.**
2. **That he *seizes* the papers or letters of another.**

[1] See Appendix "A," Table of Penalties, No. 14.
[2] See Appendix "A," Table of Penalties, No. 1.

3. That the *purpose* is *to discover* the secrets of such another person.

4. That offender is *informed* of the contents of the papers or letters seized. (People vs. Singh, C.A., 40 O.G., Supp. 5, 35)

Meaning of the word "seize."

The word *"seize"* means *"to place in the control of someone a thing or to give him the possession thereof* and accordingly, it is not necessary that in the act, there should be force or violence.

But stating it correctly, there must be *taking possession* of papers or letters of another, even for a short time only. Thus, if the accused accepted from a messenger of the RCA a radiogram addressed to another person, he *did not seize* the radiogram, because it was *voluntarily delivered* to him. (People vs. Singh, C.A., 40 O.G., Supp. 5, 35)

The purpose of the offender must be to discover the secrets of another.

People vs. Otto, Jr.
(C.A., 50 O.G. 3127)

Facts: When the accused entered his office, he found cablegrams and letters in closed envelopes piled upside down on his table, among which was a cablegram to the Amalgamated Minerals, Inc. referring to certain transmitted money from the United States, which he opened by mistake. He then instructed his secretary to call RCA and have it redelivered to the proper party. Later, when the Amalgamated Minerals, Inc. wanted to collect the money transmitted, it was already garnished in the case, which had been filed by the accused against the Amalgamated Minerals, Inc.

Held: Before opening a closed paper, the accused must be dictated by the desire to discover secrets. Since the accused opened the cablegram by mistake, he could not have possibly seized it for the purpose of discovering a secret. He is not liable under Art. 290.

The offender must be informed of contents of papers or letters.

People vs. Singh
(C.A., 40 O.G., Supp. 5, 35)

Facts: The accused received from the messenger of the Radio Corporation of America a telegram addressed to another watchman in the San Miguel Brewery and accepted the trust to deliver to him said dispatch. The telegram was not delivered to the addressee, because as claimed by the

accused, he kept it inside one of the pockets of his coat which was later sent to the laundry and the telegram disappeared.

Held: The crime defined in Art. 290 requires that the act of seizure be *impelled* by a *desire to discover the secrets* of another and that the accused is *informed of the contents* of papers or letters.

Prejudice is not an element of the offense.

This article does not require that the offended party be prejudiced.

Circumstance qualifying the offense.

When the offender *reveals* the contents of such paper or letters of another to a third person, the penalty is higher. (Art. 290, par. 2)

Hence, revealing the secrets is not an element of the offense.

Art. 290 is not applicable to letters of minors or spouses.

This article is not applicable to *parents, guardians,* or persons entrusted with the custody of minors with respect to papers or letters of the children or minors placed under their care or custody, or to *spouses* with respect to the papers or letters of either of them. (Art. 290, par. 3)

Distinguished from public officer revealing secrets of private individual.

In Art. 230, the public officer *comes to know* the secrets of any private individual by *reason of his office.* It is not necessary that the secrets are contained in papers or letters. The public officer reveals such secrets without justifiable reason.

In Art. 290, the offender who is a private individual seizes the papers or letters of another to discover the secrets of the latter. It is not necessary that there be a secret and, if there is a secret discovered, it is not necessary that it be revealed.

Sec. 2756 of the Administrative Code punishes the unlawful opening of mail matter.

Any person, who is not an officer or employee of the Bureau of Posts, who shall unlawfully open any mail matter which has been in any post office or in the charge of any person employed in the Bureau of Posts, or shall unlawfully take any mail matter before it is given into the actual possession of the addressee, shall be punished by a fine of not more than P1,000.00 or by imprisonment for not more than one year, or both.

Art. 291. ***Revealing secrets with abuse of office.*** **— The penalty of** ***arresto mayor***[3] **and a fine not exceeding 500 pesos shall be imposed upon any manager, employee, or servant who, in such capacity, shall learn the secrets of his principal or master and shall reveal such secrets.**

Elements:

1. **That the offender is a** ***manager, employee or servant.***
2. **That he** ***learns*** **the** ***secrets*** **of his principal or master** ***in such capacity.***
3. **That he** ***reveals*** **such secrets.**

Secrets must be learned by reason of their employment.

The secrets must have come to their knowledge by ***reason of their office or position,*** **and it makes no difference that a secret was communicated by the principal or master to the employee or servant.**

The secrets must be revealed by the offender.

Art. 291 states that the offender shall "learn the secrets of his principal or master ***and shall reveal such secrets.***" **If the offender does not reveal the secrets, the crime is not committed.**

Damage is not necessary.

Damage **is not necessary under this article.**

Art. 292. ***Revelation of industrial secrets.*** **— The penalty of** ***prision correccional*** **in its minimum and medium periods**[4] **and a fine not exceeding 500 pesos shall be imposed upon the person in charge, employee, or workman of any manufacturing or industrial establishment who, to the prejudice of the owner thereof, shall reveal the secrets of the industry of the latter.**

[3]See Appendix "A," Table of Penalties, No. 1.
[4]See Appendix "A," Table of Penalties, No. 1.

Elements:

1. That the offender is a *person in charge, employee* or *workman* of a manufacturing or industrial establishment.
2. That the manufacturing or industrial establishment has a *secret of the industry* which the offender has learned.
3. That the offender *reveals such* secrets.
4. That prejudice is caused to the owner.

Secrets must relate to manufacturing processes.

The secrets here must be those relating to the manufacturing processes invented by or for a manufacturer and used only in his factory or in a limited number of them; otherwise, as when such processes are generally used, they will not be secret. (Albert)

The act constituting the crime is revealing the secret of the industry of employer.

Thus, if the person in charge, employee or workman of a manufacturing or industrial establishment used the secret of the industry for his own benefit, without revealing it to others, he is not liable under this article.

The revelation of the secret might be made after the employee or workman had ceased to be connected with the establishment.

Art. 292 does not state the time of the revelation of the industrial secrets. Therefore, the employee or workman who revealed the secrets of the industry of his employer, after he had been dismissed or separated from the establishment, may be held liable under this article.

What is important is that he was an employee or workman of the manufacturing or industrial establishment when he learned the secrets.

Prejudice is an element of the offense.

Prejudice is an *essential element* in this offense, because Article 292 says "to the prejudice of the owner thereof."

Title Ten

CRIMES AGAINST PROPERTY

What are the crimes against property?

They are:

(1) Robbery with violence against or intimidation of persons. (Art. 294)

(2) Attempted and frustrated robbery committed under certain circumstances. (Art. 297)

(3) Execution of deeds by means of violence or intimidation. (Art. 298)

(4) Robbery in an inhabited house or public building or edifice devoted to worship. (Art. 299)

(5) Robbery in an uninhabited place or in a private building. (Art. 302)

(6) Possession of picklocks or similar tools. (Art. 304)

(7) Brigandage. (Art. 306)

(8) Aiding and abetting a band of brigands. (Art. 307)

(9) Theft. (Art. 308)

(10) Qualified theft. (Art. 310)

(11) Theft of the property of the National Library and National Museum. (Art. 311)

(12) Occupation of real property or usurpation of real rights in property. (Art. 312)

(13) Altering boundaries or landmarks. (Art. 313)

(14) Fraudulent insolvency. (Art. 314)

(15) Swindling. (Art. 315)

(16) Other forms of swindling. (Art. 316)

(17) Swindling a minor. (Art. 317)

(18) Other deceits. (Art. 318)

(19) Removal, sale or pledge of mortgaged property. (Art. 319)

(20) Destructive arson. (Art. 320)

(21) Other forms of arson. (Art. 321)

(22) Arson of property of small value. (Art. 323)

(23) Crimes involving destruction. (Art. 324)

(24) Burning one's own property as means to commit arson. (Art. 325)

(25) Setting fire to property exclusively owned by the offender. (Art. 326)

(26) Malicious mischief. (Art. 327)

(27) Special cases of malicious mischief. (Art. 328)

(28) Damage and obstruction to means of communication. (Art. 330)

(29) Destroying or damaging statues, public monuments or paintings. (Art. 331)

Chapter One

ROBBERY IN GENERAL *

Art. 293. *Who are guilty of robbery.* — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

Robbery, defined.

Robbery is the taking of personal property belonging to another, with intent to gain, by means of violence against, or intimidation of any person, or using force upon anything.

Classification of robbery.

1. Robbery with violence against, or intimidation of persons. (Arts. 294, 297 and 298)

2. Robbery by the use of force upon things. (Arts. 299 and 302)

Elements of robbery in general.

a. That there be (1) *personal property;* (2) *belonging to another;*

b. That there is (3) *unlawful taking* of that property;

c. That the taking must be (4) *with intent to gain;* and

d. That there is (5) *violence against or intimidation of any person,* or *force upon anything.*

Personal property.

The property taken must be personal property, for if real property is occupied or real right is usurped by means of violence against or intimidation of person, the crime is usurpation. (Art. 312)

* See P.D. No. 1612 under Art. 19, Book I.

Prohibitive articles may be the subject matter of robbery; opium, for instance.

U.S. vs. Sana him
(28 Phil. 404)

Facts: While several persons were perfecting the purchase and sale of several tins of opium, certain police officers, conspiring together with some Chinese to obtain possession of said opium, came to the scene and by means of intimidation seized the opium, without causing the prosecution of the offenders, and thereafter said police officers appropriated the opium.

Held: Robbery was committed.

Belonging to another.

Thus, one who, by means of violence or intimidation, took *his own* property from the depositary is not guilty of robbery.

Since the personal property must belong to another, a *co-owner* or a *partner* cannot commit robbery or theft with regard to the co-ownership or partnership property.

Art. 293 uses the phrase "belonging to another" which means that the property taken does not belong to the offender. The person from whom the personal property is taken need not be the owner. Possession of the property is sufficient.

In the commission of the crime of robbery, it is not necessary that the person from whom the property is taken by means of threats and violence, shall be the owner thereof. It is sufficient if the property is taken from him by means of threats and violence, *for the purpose of gain,* on the part of the person appropriating it. The possession of the property is sufficient. Ownership is not necessary. Robbery may be committed from a bailee or from a person who himself has stolen it. It has even been held that the taking of clothing from the body of a dead person constitutes robbery, as the property of the executor. Even the owner of property may be guilty of robbery when, for instance, he takes it from the possession of a bailee, with the intent to charge the bailee with its value. (U.S. vs. Albac, 29 Phil. 86)

Does the phrase "belonging to another," in relation to the property taken, mean that the naming of the owner is a matter of essential description of the crime?

Yes, if the crime charged is robbery with homicide in view of the capital punishment attached to the crime. But when the accused is prosecuted for robbery with intimidation or violence resulting only in physical injuries, or

for robbery by the use of force upon things, the name of the real owner is not essential so long as the personal property taken does not belong to the accused.

In the case of *U.S. vs. Lahoylahoy, et al.*, 38 Phil. 330, the accused were prosecuted for robbery with multiple homicide. While the information alleged that the property taken belonged to Roman Estriba, the proof showed that the person robbed was Juana Seran. For lack of conformity between the allegation and the proof respecting the ownership of the property, the Supreme Court held that it was impossible to convict the accused of robbery. The accused are each convicted of four separate homicides.

In the case of *People vs. Santo Tomas*, 49 O.G. 2905, the Court of Appeals explained the ruling, as follows:

The case of *U.S. vs. Lahoylahoy*, relied upon by the defense, is predicated upon facts entirely different from the facts of the instant case. In that case, the allegation of the real offended party in the robbery case was an essential description of the crime because if the robbery was not proven, the complex crime of robbery with homicide, to which the capital punishment is attached, could not be sustained. The Supreme Court in that case construed the law strictly in favor of the accused because of the seriousness of the crime.

In robbery, the personal property of another is taken by the offender against the will of the owner.

Robbery can be committed only by taking personal property of another against the latter's will. Where the accused *received* certain jewels in trust or for safekeeping from the owner's agent, said accused cannot be held liable for robbery, because she did not "take" the jewels. (U.S. vs. Alcantara, 6 Phil. 387)

If A *delivered* a package containing an article to *B* by mistake and, when A asked for the return thereof, *B* threatened to kill him if A would get it back, *B* is not liable for robbery even if he had intent to gain and employed intimidation, because he did not take the property from A.

The taking of personal property must be unlawful.

Thus, a secret service agent who made search for and seized moneys in a dwelling house, under lawful orders from his superiors, and appropriated a part thereof to his own use before turning over the balance to his superiors is not guilty of robbery.

The *unlawful taking* of personal property is an essential part of the crime of robbery, and where the taking was lawful and the unlawful

misappropriation was subsequent to such taking, the crime is estafa or malversation. (U.S. vs. Atienza, 2 Phil. 242)

But in a case where four Chinese, a municipal treasurer, a police sergeant and two policemen pretended to purchase opium from certain Moros, and when the opium was to be delivered, the municipal officials arrested the carrier of the opium and they, together with the four Chinese, appropriated the opium, it was held that they were guilty of robbery. While the seizure of the opium and the arrest of its carrier by the agents of the authorities were lawful, it was *not lawful* for said agents to *seize* the opium *in order to appropriate it.*

The fact that the agents of the authorities, apparently acting in compliance with the law, but really with intent to obtain unlawful gain, did, with intimidation, seize a forbidden article, constitutes robbery. As long as the authorities or their agents *have not legally taken charge* of the forbidden article, it continues to be *private property,* and they have acted, not as agents of the authorities in the fulfillment of their duties, but merely as *private parties.* Ownership of the forbidden article passes to the government only after *legal seizure* thereof.

Hence, if the agents of the authorities, in the beginning, lawfully seized the forbidden article and conceived the idea of misappropriating it only *after* it came into their possession, then the crime would be estafa. (U.S. vs. Sana Lim, 28 Phil. 404)

Note: It should be malversation, not estafa.

Unlawful taking, when complete.

1. *As to robbery with violence against or intimidation of persons.*

From the moment the offender *gains possession* of the thing, even if the culprit has had no opportunity to dispose of the same, the unlawful taking is complete. The fact that the defendant in his flight threw away the property stolen or that it fell without his knowledge, does not affect the nature of the crime.

Defendant saw his victim put money into his coat pocket. The next day defendant held him up and deprived him of the coat, but finding the money was not there, defendant threw away the coat. *Held:* Guilty of robbery of the coat, the offense having been complete when defendant forcibly deprived his victim thereof. (Brown vs. State, 61 Tex. Cr. 334, 136 SW 265)

2. *As to robbery with force upon things.*

When the culprit had already broken the floor of the bodega, had entered it, and had removed one sack of sugar from the pile, but was caught in the act of taking out the sack of sugar through the opening on the floor, it was frustrated robbery only. (People vs. Del Rosario, C.A., 46 O.G. 4332)

Note: It would seem that in this kind of robbery, the thing must be taken out of the building to consummate the crime.

"Taking," as an element of robbery, means depriving the offended party of ownership of the thing taken with the character of permanency.

A was the owner of a gun kept in a drawer which was locked. *B*, *A's* son, destroyed the drawer's lock and obtained the gun in order to threaten *A* with it, as in fact *B* threatened *A* with said gun.

Held: B had no intention of depriving *A* of the ownership of the gun with any character of permanency, negativing therefore the essential element of "taking" in the crime of robbery. (People vs. Kho Choc, C.A., 50 O.G. 1667)

Note: The accused in this case was convicted of grave threats (Art. 282), for threatening the offended party with the said gun, demanding money, but without attaining his purpose, because the offended party reported the matter to the police.

Intent to gain.

Intent to gain is *presumed* from the *unlawful taking* of personal property.

The intent to gain, being an internal act, cannot be established by direct evidence, except in case of confession by the accused. It must, therefore, be deduced from the circumstances surrounding the commission of the offense. As a general rule, however, the unlawful taking of personal property belonging to another involves intent to gain on the part of the offender. (People vs. Sia Teb Ban, 54 Phil. 52)

The taking of personal property belonging to another should not be under claim of ownership. One who takes property *openly* and *avowedly* under *claim of title* proffered in good faith is not guilty of robbery even though the claim of ownership is untenable. (U.S. vs. Manluco, *et al.*, 28 Phil. 360)

Absence of intent to gain will make the taking of personal property *grave coercion* if there is violence used. (Art. 286)

The element of "personal property belonging to another" and that of "intent to gain" must concur.

1. If the accused, with intent to gain, took from another, personal property which turned out to be his own property, *the property not*

belonging to another, he cannot be held liable for robbery, even if in taking it, the accused used violence against or intimidation of person, or force upon anything.

2. If he took personal property from another, believing that it was his own property, but in reality it belonged to the offended party, there being no *intent to gain,* he cannot be held liable for robbery, even if the accused used violence against or intimidation of person, or force upon anything.

Violence or intimidation, as an element of robbery.

The violence must be against the person of the offended party, not upon the thing taken.

Theft, not robbery, was committed in a case where the accused cut with a bolo the strings tying the opening of a sack containing palay and then took the palay. (People vs. Adame, C.A., 40 O.G., Supp. 12, 41)

The reason for this ruling is that Art. 293 states that the taking of any personal property belonging to another must be, among other means, by means of violence *against* x x x any person."

People vs. Villar
(C.A., GR. No. 14289-R, July 29, 1955)

Facts: The offended party was heading for Oregon Street when the accused from behind, snatched the bag she was then carrying. The accused ran away after snatching the bag.

Held: The crime committed is theft. In taking away the bag, the accused did not use "violence against or intimidation of any person." In *U.S. vs. Samonte* (8 Phil. 286), the case was found to be robbery because, after snatching the money from his hand, the offended party was *pushed* to prevent him from recovering the seized property. In *U.S. vs. Blanco* (10 Phil. 298), besides snatching the pawn ticket from the hand of the offended party, the offender used *intimidation* on the despoiled party. In *People vs. Mallari, et al.* (60 Phil. 400), the offenders *grabbed the hands of the victim* and *wrested* the wallet from him.

The intimidation exists when it causes the fear or fright of the victim. Thus, a threat of arrest and prosecution, pointing a gun or a knife to the victim, and the like — are forms of intimidation.

Intimidation need not be threat of bodily harm.

People vs. Palabao
(C.A., 51 O.G., 790)

Facts: The chief clerk in the office of the municipal treasurer dropped at the sari-sari store of a couple to inspect their petty sales book which was allegedly defective because certain sales were not entered. The chief clerk took with him the sales book. The same night, the accused went to the store bringing with him the sales book which had been confiscated by the chief clerk. The accused demanded P25 for its return, telling the couple that the municipal treasurer needed the amount and threatened the spouses that if they would not give this amount, they would have to pay P60 fine and to close the store. The accused was able to take from the spouses P5.00, the only amount they had, and one dozen eggs.

Held: There is sufficient intimidation. The spouses were intimidated to make their choice between two alternatives, to wit: either to part with their money or close their store and pay a fine of P60. The accused succeeded in taking the money and eggs through the effect of fear or fright.

The violence or intimidation must be present before the taking of personal property is complete.

If there is violence or intimidation at any time *before* asportation *is complete,* the taking of personal property is qualified to robbery. It is not *necessary* that *violence* or *intimidation* should be present from the very beginning.

Defendants entered a house by cutting the rope that tied the door, opened the trunk and were about to take money in the amount of P36 from the trunk. When discovered, one of them struck the owner in the mouth. *Held:* Robbery with violence was committed. (People vs. Campa, *et al.*, C.A., 37 O.G. 1482; U.S. vs. Nueca, 7 Phil. 511)

But if *A* picked the pocket of *B* and ran away with the latter's wallet, containing money bills, and when *B* chased and overtook him, *A* turned around and boxed the face of *B*, inflicting slight physical injuries, or intimidated *B* with a knife, the crime committed is not robbery with violence against or intimidation of persons. *A* committed two crimes: (1) theft (Art. 308); and (2) slight physical injuries (Art. 266), or grave threats (Art. 282, par. 2) for intimidating *B* with a knife.

Exception:

But when the violence results in: (1) homicide, (2) rape, (3) intentional mutilation, or (4) any of the serious physical injuries penalized in paragraphs

1 and 2 of Art. 263, the taking of personal property is robbery complexed with any of those crimes under Art. 294, even if the taking was already complete when the violence was used by the offender.

In defining the special complex crimes penalized in paragraphs 1, 2 and 3 of Art. 294, the phrase "*by reason*" or "*accompanied by*" is used, which indicates that even if the violence resulting in homicide, rape, intentional mutilation, or serious physical injuries is *used* by the offender *after the taking* of personal property belonging to another, the crime is still robbery complexed with any of those crimes.

Although the killing of Evaristo Tuvera by the robbers was perpetrated after the consummation of the robbery and after the robbers had left the victim's house, the homicide is still integrated with the robbery or is regarded as having been committed "by reason or on the occasion" thereof. (People vs. Barut, 89 SCRA 14)

Note: Evaristo Tuvera was one of those who constituted themselves as rescue party and repaired to the vicinity of the house of Francisco Lazaro, the victim of the robbery.

But the taking of personal property need not be immediately after the intimidation.

The complainant was told by the accused, who called himself one from the Secret Service Division of the Philippine Constabulary, that he was apprehended because he was sending a letter outside of the Philippines, an act which was against the law, and that he would be taken to the camp. They asked from him P5,000.00, otherwise he would be deported. Being ignorant of the law, he thought, as he was made to believe, that he did something wrong. He haggled with them until the amount demanded was reduced to P2,000.00. They promised him that "should I finally give the amount then the alleged case against me would be dropped." Securing the money from someone, he gave it to the accused who in turn gave the letter to him. *Held:* The accused is guilty of robbery by means of intimidation. (People vs. Chiong, C.A., 69 O.G. 8671)

"Using force upon anything."

Robbery is also committed by using force upon anything in taking personal property belonging to another with intent to gain.

But the use of force upon things will *not* make the taking of personal property robbery, if the culprit *never entered* a house or building. Thus, removing by force the tires of an automobile while parked on the street and taking them away is not robbery, because the culprit did not use force to enter a house or building.

Breaking the glass of the show-window of a bazar and thereafter taking forty watches of various makes valued at P627.50, is not robbery, it appearing that the accused did not enter the building but merely *introduced his hand through the broken glass* in order to remove the watches from the show-window. (People vs. Adorno, C.A., 40 O.G. 567)

Entrance into the building must be effected by any of the means described in Arts. 299 and 302.

But *such entrance* into the building is *not necessary* when the robbery is committed *by breaking* wardrobes, chests, or any other kind of locked or sealed furniture or receptacle inside an inhabited house, a public building or an edifice devoted to religious worship, or *by taking* such furniture or objects away to be broken or forced open outside (subdivision [b] of Art. 299) or when the robbery in an *uninhabited building, other than* a public building or edifice devoted to religious worship, is committed by *breaking* any wardrobe, chest, or any sealed or closed furniture or receptacle, or *by removing* a closed or sealed receptacle even if the same be broken open elsewhere. (paragraphs 4 and 5 of Art. 302)

Distinctions between effects of employment of violence against or intimidation of person and those of use of force upon things.

(1) Whenever violence against or intimidation of any person is used, the taking of personal property belonging to another is always robbery. If there is no *violence* or *intimidation,* but only force upon things, the taking is *robbery* only if the force is used either to *enter the building* or *to break doors, wardrobes, chests,* or any other kind of *locked* or *sealed* furniture or receptacle *inside the building* or to force them open outside *after taking the same from the building.* (Arts. 299 and 302)

(2) In robbery with violence against or intimidation of any person, the value of the personal property taken is immaterial. (U.S. vs. Granadoso, *et al.,* 16 Phil. 419; People vs. Daos, *et al.,* 60 Phil. 143) The penalty depends (a) on the result of the violence used, as when homicide, rape, intentional mutilation or any of the serious physical injuries resulted, or when less serious or slight physical injuries were inflicted, which are only evidence of simple violence, and (b) on the existence of intimidation only.

But in robbery with force upon things, committed in an inhabited house, public building, or edifice devoted to religious worship, the penalty is based (a) on the value of the property taken and (b) on whether or not the offenders carry arms; and in robbery with force upon things, committed in an uninhabited building, the penalty is based only on the value of the property taken.

Classification of robbery when both violence or intimidation and force upon things are present.

When the offender, in taking personal property belonging to another with intent to gain, employs violence against or intimidation on any person, the crime is *robbery with violence against or intimidation of persons,* even if the robbery was committed in a *dwelling house* after the offender had entered the same *through a window,* or after breaking its door or wall. The offender cannot be held liable for robbery with force upon things under Art. 299.

The lower court erred in convicting appellant under article 299 of the Revised Penal Code, as amended, and in applying to him the penalty therein provided. Aside from the fact that the information to which appellant pleaded guilty does not allege that the robbery was committed under any of the circumstances enumerated in said article, such as entering the house through an opening not intended for entrance or egress, the breaking of doors, etc., it is now settled that where robbery, though committed in an inhabited house, is characterized by intimidation, this factor "supplies the controlling qualification," so that the law to apply is Article 294 and not Article 299 of the Revised Penal Code. This is on the theory that "robbery which is characterized by violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things, because where violence or intimidation against the person is present, there is greater disturbance to the order of society and the security of the individual." (U.S. vs. Turla, 38 Phil. 346; People vs. Baluyot, 40 Phil. 89) And this view is followed even where, as in the present case, the penalty to be applied under Article 294 is lighter than that which would result from the application of Article 299. In accordance with this view, appellant should have been declared guilty of robbery under paragraph 5 of Article 294 of the Revised Penal Code, as amended by Republic Act No. 18, since the charge to which he pleaded guilty alleges robbery through intimidation of persons. (People vs. Sebastian and Pangilinan, 85 Phil. 603-604)

Republic Act No. 6539, approved August 26, 1972, is the law applicable when the property taken in robbery is a motor vehicle.

Republic Act No. 6539 defines *carnapping* and provides penalty therefor.

"Carnapping" is the taking, with intent to gain, of motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things.

Sec. 14. *Penalty for Carnapping.* — Any person who is found guilty of carnapping, as this term is defined in Section two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not

less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of person, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person or force upon things; and the penalty *of reclusion perpetua* to death shall be imposed when the owner, driver or occupant of the carnapped vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof. (As amended by R.A. No. 7659)

Section One. — Robbery with violence against or intimidation of persons

Art. 294. *Robbery with violence against or intimidation of persons — Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua to* death,[2] when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson;

2. The penalty of *reclusion temporal* in its medium period to *reclusio perpetua*,[3] when by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted;

3. The penalty of *reclusion temporal*,[4] when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted;

4. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its medium period,[5] if the violence or intimidation employed in the commission of the robbery

[2]See Appendix "A," Table of Penalties, No. 37.
[3]See Appendix "A," Table of Penalties, No. 33.
[4]See Appendix "A," Table of Penalties, No. 28.
[5]See Appendix "A," Table of Penalties, No. 27.

shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said Article 263;

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases. ***(As amended by Republic Act No. 7659)***

Acts punished as robbery with violence against or intimidation of persons:

1. **When by reason or on occasion of the robbery (taking of personal property belonging to another with intent to gain), the crime of homicide is committed;**
2. **When the robbery is accompanied by rape or intentional mutilation or arson;**
3. **When by reason or on occasion of such robbery, any of the physical injuries resulting in insanity, imbecility, impotency or blindness is inflicted;**
4. **When by reason or on occasion of robbery, any of the physical injuries resulting in the loss of the use of speech or the power to hear or to smell, or the loss of an eye, a hand, a foot, an arm, or a leg or the loss of the use of any such member or incapacity for the work in which the injured person is theretofore habitually engaged is inflicted;**
5. **If the *violence* or intimidation employed in the commission of the robbery is carried to a *degree clearly unnecessary* for the commission of the crime;**
6. **When in *the course of its execution,* the offender shall have inflicted upon any person *not responsible* for the commission of the robbery any of the physical injuries in consequence of which the person injured becomes *deformed* or loses any other member of his body or loses the use thereof or becomes *ill* or *incapacitated* for the performance of the work in which he is habitually engaged for *more than 90 days* or the person injured becomes *ill or incapacitated* for labor for more than *30 days;***
7. **If the violence employed by the offender *does not cause* any of the *serious physical injuries* defined in Art. 263, or if the offender employs intimidation only.**

The crime defined in this article is a special complex crime.

Art. 48, defining complex crime, does not apply to the crimes covered by Art. 294. Art. 294 already provides a specific penalty for each kind of robbery with violence against persons in the first, second, third and fourth paragraphs thereof. There is only one penalty prescribed, even if two crimes are committed. Art. 48 applies only when a complex crime is not punished with a specific penalty.

"On the occasion" or "by reason" of the robbery.

Note the phrases *"on the occasion"* and *"by reason"* of the robbery. These phrases mean that the homicide or serious physical injuries defined in paragraphs 1 and 2 of Art. 263 must be committed *in the course* or *because of the robbery*.

The crime of homicide committed on the occasion of the robbery.

Where the *victim* was *killed* on the occasion *when* the four *accused were taking the chickens* under the house of the victim, the offense is robbery with homicide, not theft and homicide. (People vs. Mabasa, 65 Phil. 568)

Robbery and homicide are separate offenses, when the homicide was not committed "on the occasion" or "by reason" of the robbery.

In the case of *People vs. Atanacio, et al.*, G.R. No. L-11844, Nov. 29, 1960, the Supreme Court stated:

The *motive for the killing* on the part of the Atanacios is not wanting. The Atanacios had been *nursing grudge* and *hard feelings* against the Villasis family. It appears that on three previous occasions, the carabao of Perfecto had been foraging or destroying the plantation of the Atanacios; and that after several promises, he failed to pay the damages caused. It seems also that the Atanacio family had wanted to harass the Villasis family who were reputed to be witches, and were boasting to be the richest family in the barrio. Anent the robbery, it has been proved that after killing Perfecto, the appellants surrounded his body and searched his pockets turning them inside out, and cut off the watch pocket which contained the P100.

However, two separate offenses were committed, to wit: murder qualified by evident premeditation, with no modifying circumstance to consider, and robbery.

Where the original design comprehends robbery, and homicide is perpetrated by reason or on occasion of the consummation of the former, the crime committed is robbery with homicide.

In several cases, the Court has already ruled that a conviction for robbery with homicide requires certitude that the robbery was the main purpose and objective of the criminals and that the killing was merely incidental, resulting merely by reason or on the occasion of the robbery. (People vs. Salazar, 277 SCRA 67 [1997])

In the cases of *People vs. Elizaga,* 86 Phil. 364, and *People vs. Glore,* 87 Phil. 739, where the victims were killed, not for the purpose of committing robbery, and the idea of taking money and other personal property of the victims was conceived by the culprits only after the killing, it was held that the culprits committed two separate crimes of homicide or murder (qualified by abuse of superior strength) and *theft.*

The rule is that where the *original design* comprehends *robbery* in a dwelling (or elsewhere), and homicide is perpetrated with a view to the consummation of the robbery, the offense committed is the special complex crime of robbery with homicide, even though homicide precedes robbery by an appreciable time. If the *original design is not to commit robbery,* but robbery is committed after the homicide *as an afterthought* and *a minor incident* in the homicide, the criminal acts should be viewed as two distinct offenses. (People vs. Toleng, 91 SCRA 382) Robbery with homicide arises only when there is a direct relation, an intimate connection, between the robbery and the killing, even if the killing is prior to, concurrent with, or subsequent to the robbery. (People vs. Salazar, 277 SCRA 67 [1997])

PARAGRAPH 1: ROBBERY WITH HOMICIDE

This is a special complex crime, punished as a single crime, although robbery and homicide are committed by the offender.

Meaning of "homicide".

The term "homicide" as used in paragraph No. 1 of Art. 294, is to be understood in its generic sense as to include parricide and murder.

The juridical concept of robbery with homicide does not limit the taking of life to one single victim or to ordinary homicide.

The juridical concept of robbery with homicide does not limit the taking of life to one single victim making the slaying of human beings in excess of that number punishable as separate, independent offense or offenses. All the homicides or murders are merged in the composite, integrated whole

that is robbery with homicide so long as all the killings were perpetrated by reason or on the occasion of the robbery. (People vs. Madrid, 88 Phil. 2)

There is no special complex crime of robbery in band with double homicide and/or serious, less serious or slight physical injuries under the present Code. If robbery with homicide (or with the other crimes enumerated above) is committed by a band, the indictable offense would still be robbery with homicide under Art. 294(1), but the circumstance that it was committed by a band is not an element of the crime but is merely a generic aggravating circumstance which may be offset by mitigating circumstances. The homicides or murders and physical injuries, irrespective of the numbers, committed on the occasion or by reason of the robbery are merged in the composite crime of "robbery with homicide." (People vs. Pedroso, 115 SCRA 599)

The robbery with homicide absorbed the physical injuries. (People vs. Roberto Mendoza, 76 O.G. 8264, Nov. 3, 1980, citing People vs. Maranan, 121 Phil. 620) Where injuries were committed apart from robbery and homicide, the crime is only robbery with homicide, physical injuries being absorbed by the former. (People vs. Veloso, 112 SCRA 173)

There is no such crime as robbery with murder.

Treachery cannot be considered as a qualifying circumstance of murder, because the crime charged is the special crime of robbery with homicide. The treachery which attended the commission of the crime must be considered not qualifying but merely as a generic aggravating circumstance. (People vs. Mantawar, *et al.*, 80 Phil. 817; People vs. Abang, G.R. No. L-14623, Dec. 29, 1960)

Robbery with homicide in a dwelling does not require that robbery with force upon things is first committed.

Is it necessary that a robbery has actually taken place first, and the homicide is committed on the occasion or by reason thereof? No, it is not required.

What makes the crime of robbery with violence against person, is the *injuring* or *killing of a person* on the occasion or by reason of the *taking* of personal property belonging to another, with intent to gain.

Thus, when the culprits first asked for permission to enter the house and asked for food from the victims in the house, and then when already inside they began to massacre the victims, the entrance is not with force upon things. But when they had the intention to take personal property in the house which was the reason for killing the victims, and in fact took away personal property, they committed robbery with homicide. (U.S. vs. Villorente, 30 Phil. 59)

Robbery with homicide need not be committed inside a building. Thus, the culprits who killed the *victim on the street* to get, as in fact they got, the latter's personal belongings are guilty of robbery with homicide.

In *People vs. Pacala,* 58 SCRA 370, it is stated: "In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide is committed."

With due respect, the statement is not accurate.

An intent to take personal property belonging to another with intent to gain must precede the killing.

If the idea of taking the personal property of another with intent to gain came to the mind of the offender *after he had killed the victim,* he is guilty of two separate crimes of homicide or murder, as the case may be, and theft.

This is the ruling in the cases of *People vs. Atanacio, et al., People vs. Elizaga,* and *People vs. Glore, supra.*

The crime is robbery with homicide, even if the motive of the offenders was that of robbery as well as vengeance.

But when the intent to commit robbery *preceded* the taking of human life, it is *immaterial* that the offenders *had also a desire to avenge grievances* against the person killed. They are liable for the special complex crime of robbery with homicide. (U.S. vs. Villorente and Bislig, 30 Phil. 59; People vs. Luna, 58 SCRA 198; People vs. Damaso, 86 SCRA 370)

Homicide may precede robbery or may occur after robbery.

Killing *first* the victim and then *afterwards* taking the money from the body of the deceased is robbery with homicide. (People vs. Hernandez, 46 Phil. 48) But the offender must have the intent to take personal property *before* the killing.

Killing the victim after taking him out to sea *several hours after* the robbery was committed in another place, is still robbery with homicide. (U.S. vs. Ibañez, *et al.,* 19 Phil. 463)

Note: The phrase "by reason" covers homicide committed *before* or *after* the taking of personal property of another, as long as the motive of the offender (in killing a person *before* the robbery) is to deprive the victim of his personal property which is sought to be accomplished by eliminating an *obstacle* or *opposition,* or (in killing a person *after* robbery) *to do away* with a witness or to *defend* the *possession* of the stolen property.

It is immaterial that the death of a person *supervened by mere accident* provided that the homicide be produced by reason or on the occasion of the robbery, inasmuch as it is only the result, *without reference* or *distinction* as to the *circumstances, causes, modes* or *persons intervening* in the commission of the crime that has to be taken into consideration. (People vs. Mangulabnan, *et al.*, 99 Phil. 992) Thus, in the case of *People vs. Guiapar*, 129 SCRA 539, it was held that the death of the guard resulting from the injury he sustained during the robbery, qualifies the offense to robbery with homicide. As long as homicide resulted during, or because of, the robbery, even if the killing is by mere accident, robbery with homicide is committed.

Homicide, to eliminate an obstacle to the commission of robbery.

One of the accused asked the deceased for money, threatening to shoot him if he would refuse. The deceased replied that he had no money and as he turned his back and started to go home, he was fired upon by two of the accused. After shooting him down, the accused went to the house of the deceased, threatened his wife there, took their trunk, broke it open, and took therefrom P400.00.

As the *killing* and the *robbery* were *not committed in the same place*, the accused contended that the crime committed cannot be robbery with homicide.

Held: The accused had the intention of robbing the deceased when they asked him for money and they shot him down to *eliminate an obstacle* to the effectuation of their unlawful design which was shown by the fact that they repaired to his house which was nearby, and by force took his money therefrom. There is direct connection between the killing and the robbery. (People vs. Libre, *et al.*, 93 Phil. 5)

Homicide, committed to remove opposition or to suppress evidence.

When all the four homicides were perpetrated with the sole end in view of removing *opposition* to the robbery or *suppressing* evidence thereof, it is robbery with homicide. (People vs. Madrid, 88 Phil. 1; People vs. Cocoy, *et al.*, 94 Phil. 91)

Cases decided by the Supreme Court of Spain:

1. A priest was robbed of the money, which he carried with him at the time, and tied to a tree. One of the robbers, *fearing that he was recognized by the priest,* turned back and killed him. It was held that the crime was robbery with homicide.
2. One of the robbers returned to the place where the robbery had been committed, for the purpose of closing the gate of a corral from which

the cattle had been stolen in order that the remaining cattle might not get out. He was seen by the man in charge of the cattle, who, *up to that time, had not noticed that any of the cattle had been stolen.* He upbraided the robber, and the latter assaulted and killed him. It was held that the killing was independent of the robbery because the man was not killed to do away with a witness. He was killed because he upbraided the robber. (Cited in U.S. vs. Palmadres, 7 Phil. 120)

Homicide, necessary to defend possession of stolen goods.

When the accused were coming out of the store and were carrying away the stolen goods, the deceased stopped and attacked them. Two or three of the offenders returned the attack and killed the deceased. *Held:* Robbery with homicide. The homicide was committed to defend the possession of the stolen property. (People vs. Salamuddin, 52 Phil. 670)

Killing a person to escape after the commission of robbery is robbery with homicide.

Pacifico Gardon, Catalino Astillero, Amador Altis and Antonio Rodrigo were accused of robbery in band with homicide and serious physical injuries.

While the robbery was going on, the bell of the local chapel began to ring as if giving a general alarm. Alarmed and fearful of their safety, the robbers attempted to escape by the back door but they found it closed. Then the door of the store was opened and finding a chance to escape, Altis and Rodrigo hurriedly came out through that door towards the beach, followed later by their companions Gardon and Astillero. While Gardon *was trying* to *escape,* he met on the way Engracio Manga and Emilio Fuentes who went to the store because of the general alarm, and upon seeing Fuentes, he immediately stabbed him on the abdomen causing his instantaneous death.

The defense contends that the robbery was committed independently of the crime of homicide, for the reason that the plan preconceived by appellants was merely confined to the commission of robbery and did not include that of homicide. But this contention evidently is unsustainable for it cannot be denied that the killing of Fuentes took place practically in the course, if not as a necessary consequence, of the commission of the robbery. Said acts should therefore be considered as constituting the special crime of robbery with homicide. (People vs. Gardon, *et al.,* C.A., 56 O.G. 3404)

Is it robbery with homicide if the person killed is a robber himself?

It would seem that it is still robbery with homicide, if, in the course of the robbery, another robber is killed by his companion who wanted to get a

lion's share of the loot. The law does not require that the person killed is the owner of the property taken. The opening sentence of Art. 294 says: "Any person guilty of robbery *with the use of violence against* x x x *any person.*" Paragraph No. 1 says: 'when by reason or on the occasion of the robbery, the crime of *homicide shall have been committed.*' The killing of any person by reason or on the occasion of robbery should be punished with the highest penalty regardless of the person killed.

There is robbery with homicide, even if the person killed was an innocent bystander and not the person robbed. (People vs. Disimban, 88 Phil. 120) The law does not require that the victim of the robbery be also the victim of the homicide. (People vs. Carunungan, CA-G.R. No. 9986-R, Oct. 17, 1957; People vs. Barut, 89 SCRA 16)

It is robbery with homicide even if the death of a person supervened by mere accident.

People vs. Mangulabnan, et al.
(99 Phil. 992)

Facts: The defendant removed the iron bar from the door leading to the balcony and after opening said door, two persons whose identities were not ascertained, entered. One of the two unidentified marauders searched the person of Monica del Mundo and took from her P200 in cash and a gold necklace valued at P200. But not contented with the loot, the same individual asked Monica del Mundo to give her diamond ring, which the latter could not produce, and for this reason, he struck her twice on the face with the butt of his gun. One of the small children of Vicente Pacson who was terrified, called to his mother and that unidentified person irked by the boy's impudence, made a move to strike him, but Monica del Mundo warded off the blow with her right arm. At this juncture, the second unidentified individual put his companion aside and, climbing on the table, fired his gun at the ceiling. Afterwards, the defendant and his two unidentified companions left the place.

After they were gone, Cipriana Tadeo called to her husband Vicente Pacson, and receiving no answer, she climbed the ceiling and found him lying face downward, already dead.

Held: It may be argued that the killing of Vicente Pacson was an unpremeditated act that surged on the spur of the moment and possibly without any idea that Vicente Pacson was hiding therein, and that the English version of Article 294, No. 1, of the Revised Penal Code, which defines the special, single and indivisible crime of robbery with homicide, states that it is committed *when by reason or on the occasion of the robbery the crime of homicide shall have been committed,* but this English version is

a poor translation of the prevailing Spanish text of said paragraph, which reads as follows:

> "1. *Con la pena de reclusion perpetua a muerte, cuando con motivo o con ocasion del robo resultare homicidio."*

We see, therefore, that in order to determine the existence of the crime of robbery with homicide, it is enough that a homicide *resulted* by reason or on the occasion of the robbery. (Decisions of the Supreme Court of Spain of Nov. 26, 1892, and Jan. 7, 1878)

Where homicide and physical injuries were perpetrated to remove opposition to robbery or suppressing evidence thereof, the crime is robbery with homicide only.

The physical injuries inflicted upon Prudencio Tizon, as well as the killing of Filomena Tizon, should be merged in the composite, integrated whole, that is, robbery with homicide, it being evident that the killing and the physical injuries were perpetrated with the sole end in view of removing opposition to the robbery or suppressing evidence thereof, or both. (People vs. Genoguin, 56 SCRA 181)

When homicide is not proved, the crime is only robbery.

Thus, if the victim after having been deprived of his personal property with intimidation while in a banca, was dumped overboard and thereafter was never heard of or seen, the fact of his death is not sufficiently established, because he might have survived by swimming to the bank of the river. In this case, the accused is liable only for robbery, because there is no sufficient evidence to prove the homicide.

When robbery is not proved, the crime is only homicide.

When the prosecution fails to show that robbery was committed, because there is no evidence that certain personal property was taken by the accused, the latter should be convicted of double homicides, if two persons were killed by the culprits. (People vs. Bulan, *et al.*, G.R. No. L-14934, July 25, 1960)

Outside of the confessions, no sufficient evidence stands to prove that anything was stolen from the house of the victims. While there is testimony that victim had money four or five days before the incident, the hiatus between the reception of the money and the delict itself was long enough for the deceased to send the money elsewhere. Without separate proof of *corpus delicti,* the extrajudicial confessions will not support conviction for robbery. (Sec. 3, Rule 133, Rules of Court) Since robbery was not proved, conviction

for robbery with homicide becomes impossible. (People vs. Manobo, G.R No L-19798, September 20, 1966)

In robbery with homicide, must the person charged as accessory have knowledge of the commission, not only of robbery, but also of homicide?

In *People vs. Doble*, 114 SCRA 131, it was held that where the accomplices knew merely that a gang which took them as banca drivers would stage a robbery and they were left at the beach by the gangmen, the fact that the latter killed several people in escaping will not make them liable as accomplices. Their complicity must accordingly be limited to the robbery, not with the killing. Having been left in the *banca*, they could not have tried to prevent the killings as is required of one seeking relief from liability for assault committed during the robbery.

Similarly, in *People vs. Adriano Sanguesa*, 95 SCRA 107, it was held that the most that could be found against Pedro Bernardo is that he knew of the robbery only, but not of the killing. He knew that the money turned over to him for safekeeping was the product of robbery. He should, therefore, be held as accessory only of simple robbery, not of the grave offense of robbery with homicide.

Note: Article 53 provides that the penalty to be imposed upon the accessories to the commission of a consummated felony is the penalty *lower by two degrees* than that *prescribed by law for the consummated felony.*

If the consummated felony is robbery with homicide, there is no legal basis for imposing upon the accessory the penalty lower by two degrees than that prescribed for robbery only. Robbery cannot be separated from homicide, because they are merged in the composite, integrated whole — the special complex crime of robbery with homicide punishable with one penalty.

All who participated in the robbery as principals are principals in robbery with homicide.

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same. (People vs. Carrozo, 342 SCRA 600 [2000]; People vs. Verzosa, 294 SCRA 466 [1998], People vs. Hernandez, G.R. No. 139697, June 15, 2004)

Robbery with Homicide Distinguished from Highway Robbery.

The trial court erred in convicting accused-appellant of the crime of highway robbery with homicide. To be sure, the crime accused-appellant committed was robbery with homicide, not highway robbery as defined in P.D. 532. Conviction for highway robbery requires proof that several accused were organized for the purpose of committing it indiscriminately.

In the case at bar, there is no proof that accused-appellant and "Johnny" organized themselves to commit highway robbery. The prosecution established only a single act of robbery against a particular person. This is not what is contemplated under P.D. 532, the objective of which is to deter and punish lawless elements who commit acts of depredation upon persons and properties of innocent and defenseless inhabitants who travel from one place to another, thereby disturbing the peace and tranquility of the nation and stunting the economic and social progress of the people.

Consequently, accused-appellant should be held liable for the special complex crime of robbery with homicide. Under Article 294 of the Revised Penal Code, when homicide is committed by reason or on the occasion of robbery, the penalty to be imposed is *reclusion perpetua* to death. (People vs. Pascual, Jr., G.R. No. 132870, May 29, 2002)

PARAGRAPH 2: ROBBERY WITH RAPE

As regards the special complex crime of robbery with rape, the law uses the phrase "when the robbery shall have been *accompanied* by rape."

But like in robbery with homicide, the offender must have the intent to take the personal property belonging to another with intent to gain, and *such intent* must *precede* the rape.

Rape committed on the occasion of the robbery.

This is usually committed when, while some robbers are ransacking for personal property in the house, the other is raping a woman in the same house.

Even if the rape was committed in another place, it is still robbery with rape.

In the case of *U.S. vs. Tiongco et al.*, 37 Phil. 951, two of the offenders compelled two women, living in the house where the robbery was committed. to go with them and while on the way to the place where they had their banca hidden, the two men separated themselves from the *hand* and took the I wo women to a *place near the river* where, through force and intimidation.

they raped them. Thereafter, the two men left the women and joined their companions. *Held:* Robbery with rape was committed. It is not necessary that the rape be committed prior to or simultaneously with the robbery. So the law says, in the definition of the crime, that when the robbery is *accompanied* by rape or mutilation, etc.

Note: But if the rape is committed against a woman in a house *other than that* where the robbery is committed, the rape should be considered a separate offense.

•

Rape was committed before taking of personal property.

At about one o'clock in the morning of June 28, 1946, the appellant and Gil Sayuco, together with two unidentified companions, went to the house of Magdaleno Berti. After tying Magdaleno to the wall, the appellant entered the room of Benedicta Berti, a 17-year-old daughter of Magdaleno. The appellant dragged her out and, with the aid of Gil Sayuco, brought her downstairs under a mango tree. Notwithstanding the girl's cries for help, her father and mother could not come to her rescue, the first being then tied to the wall and the second having been pushed away whenever she attempted to intervene. In spite of Benedicta's resistance, the appellant, with the help of his three companions, was able to have sexual intercourse with Benedicta. Gil Sayuco then took his turn in raping the girl, followed in succession by the other two companions. Not contented with merely satisfying their lust, the appellant, Gil Sayuco, and another companion *returned* to the house *and took away* a rice bowl, some rice and four chickens, all worth about fifteen pesos. (People vs. Canastre, 82 Phil. 482)

In this case, the intention of the culprits from the beginning was to take personal property. Even if the rape was committed before the taking of the rice and chickens, they were guilty of robbery with rape. Rape was not their primary objective.

There is no such crime as robbery with attempted rape.

Art. 294, par. 2, which punishes robbery with rape (consummated) does not cover robbery with attempted rape.

The crime cannot be a complex crime of robbery with attempted rape under Art. 48, because a robbery cannot be a necessary means to commit attempted rape; nor attempted rape, to commit robbery. Both crimes cannot be the result of a single act. (See People vs. Cariaga, C.A., 54 O.G. 4307)

When the taking of personal property of a woman is an independent act following defendant's failure to consummate the rape, there are two distinct crimes committed: attempted rape and theft.

People vs. Buena
(C.A., 52 O.G. 4698)

Facts: A suddenly grabbed *B,* a woman, by the shoulder, pushed her to the side of the soad which was covered by tall *talahib* grass and *B* shouted for help, tenaciously resisting the assault. *A* embraced her, took hold of her body, placed his hands around her neck and gave her a fist blow on the right cheek just below the eye. *B* fell to the ground face upward. Thereupon, *A* sat on her legs and pulled her dress upward. He attempted to loosen her drawers, which were tightly tied around her waist with a piece of cloth. Unsuccessful, he attempted to pull the drawers downward.

All along, *A* kept on kissing and embracing *B* who continued offering resistance. *B* was able to release her legs. She kicked A, as a result of which the latter loosened his hold on her. *B* was able to stand up. It was while *B* was in the act of running away that A snatched her vanity case from her hand.

Held: The crime at bar is not one of robbery with rape, especially and specifically penalized by Article 294, paragraph 2, of the Revised Penal Code. Article 48 of the Revised Penal Code does not find application in the instant case because we are not here confronted with a single act which constitutes two or more grave or less grave felonies, and the attempted rape is not a necessary means of committing the theft or vice versa. The theft was committed as an independent act following appellant's failure to consummate the rape.

The lower court is correct in declaring that two crimes were committed by appellant, namely, attempted rape and theft.

Additional rapes committed on the same occasion of robbery will not increase the penalty.

There are cases holding that the additional rapes committed on the same occasion of robbery will not increase the penalty. (People vs. Cristobal, G.R. No. 119218, April 29, 1999; People vs. Martinez, 274 SCRA 259; People vs. Lutao, 250 SCRA 47; People vs. Precioso, 221 SCRA 748) In *People vs. Martinez, supra,* accused Martinez and two other unidentified persons, who remained at large, were charged with the special complex crime of robbery with rape where all three raped the victim. The Court imposed the penalty of death after considering two aggravating circumstances, namely, *nocturnidad* and use of a deadly weapon. However, the Court did not

consider the two rapes as aggravating holding that "(T)he special complex crime of robbery with rape has, therefore, been committed by the felonious acts of appellant and his cohorts, with all acts of rape on that occasion being integrated in one composite crime."

There are likewise cases which held that the multiplicity of rapes committed could be appreciated as an aggravating circumstance. (People vs. Candelario, G.R. No. 125550, 28 July 1999; People vs. Pulusan, 290 SCRA 353; People vs. Salvatierra, 257 SCRA 489) In *People vs. Candelario, supra,* where three of the four armed men who robbed the victim "alternately raped her twice for each of them," the Court, citing People vs. Obtinalia, 38 SCAD 651, ruled that "(T)he characterization of the offense as robbery with rape, however, is not changed simply because there were several rapes committed. The multiplicity of rapes should instead be taken into account in raising the penalty to death."

It should be noted that there is no law providing that the additional rape/s or homicide/s should be considered as aggravating circumstances. The enumeration of aggravating circumstances under Article 14 of the Revised Penal Code is exclusive as opposed to the enumeration in Article 13 of the same Code regarding mitigating circumstances where there is a specific paragraph (Article 10), providing for analogous circumstances.

It is true that the additional rapes (or killings in the case of multiple homicide on the occasion of the robbery) would result in an "anomalous situation" where from the standpoint of the gravity of the offense, robbery with one rape would be on the same level as robbery with multiple rapes. However, the remedy lies with the legislature. A penal law is liberally construed in favor of the offender and no person should be brought within its terms if he is not clearly made so by the statute. (People vs. Regala, G.R. No. 130508, April 5, 2000)

When the taking of property after the rape is not with intent to gain, there is neither theft nor robbery committed.

If rape was the primary objective of the accused, and his taking of the jewels of the victim was not with intent to gain but just to have some tokens of her supposed consent to the coition, the accused committed two distinct crimes of rape and unjust vexation. (People vs. Villarino, CA-G.R. No. 6342-R, Nov. 26, 1951)

Civil liability for robbery with rape.

In a case of robbery with rape, the accused should pay the offended party the value of the stolen property and indemnify the offended woman for damages. The civil liability for rape in robbery with rape has been set at

P50,000.00. (People vs. Limbauan, G.R. No. 99868, 235 SCRA 476 [1994]; and People vs. Miranda, G.R. No. 92369, 235 SCRA 202)

If the accused is married, he should be sentenced also to support the offspring, but not to acknowledge the offspring on account of his married status. (People vs. Belandres, *et al.*, 85 Phil. 874)

When rape and homicide co-exist in the commission of robbery.

When the accused committed robbery in a house, killed the head of the family there and raped his wife in the ricefield to which she had been taken, the crime is robbery with homicide and rape under paragraph 1 of Art. 294, the rape to be considered as an aggravating circumstance only. (People vs. Ganal, *et al.*, 85 Phil. 743; People vs. Bacsa, 104 Phil. 136; People vs. Villa, 93 SCRA 716)

The trial court correctly designated the crime as robbery with homicide, with rape being considered as an aggravating circumstance. In the two instances when the assailants struck, their overriding intention was to commit robbery. After the children had been hogtied in the Semacio's premises, one of the armed men demanded money and jewelry. Thereafter, they started to ransack the house. When the husband of Zenaida arrived, the robbers went out and promptly killed him and his luckless companions. In the house of the Samoy's, all the male occupants were asked to come out first. Only then did the men begin to ransack the place. After ransacking the house, the male occupants were shot to death. As for the rapes committed then, the trial court was correct in treating the raping of Elvira Samoy and Zenaida Semacio as an aggravating circumstance. (People vs. Timple, 237 SCRA 52)

Robbery with serious physical injuries under Art. 263, par. 2 (Art. 294, par. 3).

In a case, the accused assaulted the victim and robbed him of P17.00. The victim lost the hearing of one ear, as a result of one of the blows he received from the accused. The Supreme Court held that the accused was guilty of robbery under Art. 294, par. 3, the physical injuries inflicted being covered by Art. 263, par. 2. (People vs. Luncay, 49 Phil. 464)

Note: This ruling is inconsistent with the ruling in the case of *People vs. Hernandez,* 94 Phil. 49, as regards the crime of serious physical injuries committed. In that case, it was held that as the offended party may still hear through his left ear, the case falls under Art. 263, par. 3.

Had the ruling been the same as that in the Hernandez case, the robbery would have been punished under Art. 294, par. 4.

Robbery with unnecessary violence and intimidation (Art 294, par 4).

Tying the victim after wounding him and leaving him tied to the trunk of a tree on the craggy ground after taking his money constitutes unnecessary violence and intimidation referred to in par. 4 of Art. 294. (People vs. Manzanilla, *et al.*, 43 Phil. 167)

The violence need not result in serious physical injuries. All that the first clause in par. 4 of Art. 294 requires is that the violence be unnecessary for the commission of the robbery.

When the violence or intimidation is necessary, par. 4 of Art. 294 is not applicable.

Although one of the victims was bound and beaten with the butt of a gun, this would not constitute unnecessary violence under paragraph 4 of Art. 294, because it appears that the beating was for the purpose of compelling him to show the place where he kept his money, something he refused to do at first, and which the robbers would not have been able to ascertain had they not resorted to the violence. (U.S. vs. De los Santos, 6 Phil. 411)

Inflicting serious physical injuries defined in subdivisions 3 and 4 of Art. 263 "upon any person not responsible for its commission."

Suppose that in the course of the execution of the crime of robbery, one of the offenders inflicted upon another robber, who wanted to get all the loot, physical injuries which resulted in the latter's deformity, is the crime, robbery with serious physical injuries? Note the wording of the law as regards this question. It says: *"upon any person not responsible for its commission."* It would seem that the penalty prescribed in paragraph 4 of Art. 294 should not be applied. The offender who inflicted on another robber, physical injuries which later resulted in deformity, would be liable for two crimes, namely: (1) robbery, and (2) serious physical injuries under Art. 263, paragraph 3.

The serious physical injuries defined in subdivisions 3 and 4 of Art. 263, inflicted in connection with the robbery, must be inflicted "in the course of its execution."

Hence, if the victim became deformed or lost any other part of his body or the use thereof, or became ill or incapacitated for his work for more than 90 days (Art. 263, par. 3), or became ill or incapacitated for labor for more than 30 days (Art. 263, par. 4), it is necessary to determine whether the physical injuries were inflicted *in the course of the execution* of the robbery.

If they were inflicted *after* the taking of the personal property had been *complete,* the serious physical injuries mentioned should be considered as separate offense.

In paragraph 4 of Art. 294, the phrase "by reason" is not used.

Requisites of robbery under the second case of paragraph 4 of Art. 294.

1. That any of the physical injuries defined in paragraphs 3 and 4 of Art. 263 was inflicted *in the course of the robbery;* and
2. That any of them was inflicted upon any person *not responsible* for the commission of the robbery.

Robbery with the use of violence against or intimidation of any person under paragraph 5 of Art. 294.

The robbery under this paragraph is known as simple robbery, because the use of violence against any person does not result in homicide, rape, intentional mutilation, or any of the serious physical injuries defined in Art. 263, which may give rise to special complex crime.

When the injury inflicted upon the offended party on the occasion of robbery can be qualified only as *less serious physical injuries* (U.S. vs. Barroga, 21 Phil. 161) or *slight physical injuries* (People vs. Mandia, 60 Phil. 372; People vs. Magramo, *et al.*, 62 Phil. 307), the crime is that defined and penalized in par. 5 of Art. 294.

There is violence, even if the physical force employed by the offender merely consists in his pushing the victim. (U.S. vs. Samonte, 8 Phil. 286)

Violence or intimidation need not be present before or at the exact moment when the object is taken.

Violence or intimidation may enter at any time before the owner is *finally deprived of his property.* This is so, because *asportation* is a complex fact, a whole divisible into parts, a series of acts, in the course of which personal violence or intimidation may be injected.

Thus, where a person picked the pocket of another who, becoming aware of it, tried to recover his property, but a companion of the thief prevented him by using force and violence, the crime committed is robbery, because violence was used before the owner is finally deprived of the property. (People vs. Omambong, C.A., G.R. No. 44645, June 3, 1936)

Robbery with violence or intimidation "in other cases" referred to in par. 5 is committed by:

1. Snatching money from the hands of the victim and *pushing* her to prevent her from recovering the seized property. (U.S. vs. Samonte 8 Phil. 286)

2. Grabbing pawn ticket from the hands of another and *intimidating him.* (U.S. vs. Blanco, 10 Phil. 298)

When the act of snatching a thing from his hands did not result in violence against the person of the offended party, the crime of robbery is not committed.

In a case where the accused snatched from behind the bag which the offended party was then carrying, it was held that, there being no violence against the offended party immediately before, after, or at the time the bag was snatched from her, the accused was not liable for robbery, but only for theft. (People vs. Villar, CA-G.R. No. 14289, July 29, 1955)

Where there is nothing in the evidence to show that some kind of violence had been exerted to accomplish the snatching, and the offended party herself admitted that *she did not feel anything at the time her watch was snatched from her left wrist,* the crime committed is not robbery but only simple theft. (People vs. Joson, C.A., 62 O.G. 4604)

Intimidation exists in the following cases:

1. When the complainant was on her way home after selling a ring in a market, Sope pointed a revolver at her while Cruz poked her back with a hard object. Then, Cruz and Dimalanta pretended to be peace officers, apprehending her for unlawfully dealing in U.S. Army goods and pointing to her a bag with such goods which they themselves had brought along, with the result that the complainant gave them P200. (U.S. vs. Sope, *et al.*, 75 Phil. 812)

2. The accused, in a guerrilla uniform, told the complainant to hand him all his money and personal belongings, and when the complainant replied he had no money, the accused told him to stand up and searched his watch pocket, from which he took P40 in paper currency. The complainant allowed the accused to search him because the accused was armed. The accused kept on pushing him back and forth and looked as if he was going to strike him. It was held that the acts performed by the accused in their nature inspired the victim with fear and restricted and hindered the free exercise of his will. (People vs. Lim Ho Peng, G.R. No. L-229, Aug. 29, 1946)

3. Even if the quarrel had arisen from some personal *disagreement,* the act of the defendants in threatening to kill the offended party with a deadly weapon and taking away his personal property which they later misappropriated, constitutes robbery. (People vs. Buenacosa, CA-G.R. No. 3632, Jan. 25, 1939)

Intimidation exists when the acts executed or words uttered by the offender are capable of producing fear in the person threatened. (People vs. Gococo, CA-G.R. No. 512-R, Nov. 29, 1950)

In robbery with intimidation, there must be acts done by the accused which, either by their own nature or by reason of the circumstances under which they are executed, inspire fear in the person against whom they are directed.

Indeed, the trial court admitted that such threatening acts or words have not been proven when it stated in the decision appealed from that "In situations like this, it is not necessary that actual acts or words of threat and intimidation be employed." And the complainant himself was positive that the fear — that the accused Judge might change the decision should he not give the sum allegedly demanded — only occurred to his mind or came from himself alone. In other words, as the complainant has admitted, only his thoughts put fear in him. His fear was not inspired by any threats, either by acts, spoken words, or gestures, employed by the accused.

"The fright of him who is robbed must be under the law an objective fright, as contradistinguished from subjective fright; *it must have been due,* in short, *to some act on the part of the accused, and not arise from the mere temperamental timidity of the person* whose property happens to be stolen from his person or presence." (State vs. Weinhardt, 253 Mo. 629, 161 S.W. 1151, cited in State vs. Parker, L.R.A., 1915C 123) "Statutes defining crime of extortion and providing punishment therefor must be read together, and 'fear,' within statute defining term as obtaining of property from another with his consent induced by 'fear,' must be induced by threats, and *hence, threat is necessary ingredient of crime."* (People vs. Imbao, *et al.*, C.A., 60 O.G. 8487, citing State vs. Anderson, 267 N.W. 121, 124, 66 N.D. 522; Words and Phrases Perm. Ed., Vol. 16, p. 476)

In robbery with intimidation of persons, "the intimidation consists in causing or creating a fear in the mind of a person or in bringing in a sense of mental distress in view of a risk or evil that may be impending really or in imagination" and such fear of injury to person or property must continue to operate on the mind of the victim at the time of the delivery of the money. Where the complainant knew of the plan laid down for the entrapment of the accused, at the same time participating in the execution thereof, and he delivered the money to the accused, not from fear, but for the purpose

of bringing the accused to justice, the accused is not liable for robbery with intimidation of persons. (People vs. Marco, 12 C.A. Rep. 377)

Threats to extort money distinguished from robbery thru intimidation.

In both crimes, there is intimidation by the offender. The purpose, when threat is made to extort money, is identical — to obtain gain.

The differences are:

(1) In robbery, the intimidation is *actual* and *immediate;* whereas in threats, the intimidation is *conditional* or *future,* that is, not immediate;

(2) In robbery, the intimidation is *personal,* while in threats, it may be through an intermediary;

(3) In threats, the intimidation may refer to the person, honor or property of the offended party or that of his family; while in robbery, the intimidation is directed only to the person of the victim;

(4) In robbery, the gain of the culprit is *immediate;* whereas in threats, the gain of the culprit is *not immediate.* (People vs. Moreno, C.A., G.R. No. 43635, April 30, 1936)

Robbery with violence distinguished from grave coercion.

(1) In both crimes, there is violence used by the offender;

(2) While in robbery, there is intent to gain, such element is not present in coercion.

The only distinction between these two crimes is just a matter of intention. If the purpose of the accused in taking somebody's property by force or intimidation is to obtain gain, the crime is robbery; but if his purpose is to compel another to do something against his will, without authority of law, but believing himself to be the owner or creditor, and thereby seizes property, then the crime is grave coercion. (People vs. Zanoria, *et al.*, C.A., 53 O.G. 5266, citing U.S. vs. Vega, 2 Phil. 167; People vs. Mojica, *et al.*, C.A., O.G. 1818; U.S. vs. Villa-Abrille, 36 Phil. 807; and People vs. Luciano, CA-G.R. No. 2374-R, October 28, 1949)

Problem:

A lost his watch. One day, A saw *B* using the watch. *A,* recognizing the watch, asked *B* to give it to him because it was his property. Because *B* refused, A, with drawn pistol, told him that if *B* would not give him the

watch, *A* would kill him. Because of fear for his life, *B* gave the watch to *A* against *B's* will.

Is the crime committed by *A* robbery, grave threats or grave coercion?

It is grave coercion, because *B* was compelled to do something against his will, whether it be right or wrong.

It cannot be threats, because in the crime of threats, the intimidation is not actual and immediate. It is true that there was a sort of a condition made, that is, *B* would be killed if he would not give *A* the watch. But in threats, the intimidation must promise some future harm or injury. When the *effect* of the intimidation is *immediate* and the offended party is compelled thereby to do something against his will, whether it be right or wrong, the crime committed is grave coercion.

It cannot be robbery, because there is no intent to gain, as *A* believed that the watch he was taking was his own property.

Robbery and bribery distinguished.

(1) It is robbery when the victim *did not commit a crime* and he is intimidated with arrest and/or prosecution to deprive him of his personal property; it is *bribery* when the victim *has committed a crime* and gives money or gift to avoid arrest or prosecution. The reason is, when the victim did not commit any crime, there is nothing that would have required the public officer to exercise his duty or function. On the other hand, if the victim committed a crime and the public officer accepted bribe, the latter thereby *agreed to refrain from* doing something which it was his official duty to do.

Thus, where an agent of authority took away from its owner, against his will, one fish valued at P10, making the threat that if he would not give him the fish he would be taken to the headquarters to explain why he was selling fish caught by means of dynamite, and because of the threat, he gave the fish to the agent, although the fish was not caught by means of dynamite, the crime committed is robbery under paragraph 5 of Art. 294.

If the owner of the fish in that case in fact used dynamite in catching the fish and he gave the fish to the agent to avoid prosecution under the Fisheries Act, the crime would be bribery. (People vs. Munar, C.A., 47 O.G. 2461)

(2) In robbery, the victim is deprived of his money or property by force or intimidation; in bribery, he parts with his money or property in a sense voluntarily. (U.S. vs. Flores, 19 Phil. 178)

When it is not certain that the victim committed a crime.

The accused was a sanitary inspector who inspected the merchandise in the store of the offended party. The accused found a blackish substance in the lard. The accused demanded P2.00 from the offended party, accompanying the demand with threats of arrest and prosecution. *Held:* The principal distinction between the two offenses is that in bribery, the transaction is *mutual* and *voluntary;* in the case of robbery, the transaction is neither voluntary nor mutual, but is consummated by the use of force or intimidation. If the offended party in the present case had voluntarily offered to pay the defendant P2.00, the transaction would have constituted bribery. But such is not in this case. The defendant demanded the payment of P2.00, accompanying the demand with threats of arrest and prosecution, and is therefore guilty of robbery. (People vs. Francisco, 45 Phil. 819)

Art. 295. ***Robbery with physical injuries, committed in an uninhabited place and by a band, or with the use of firearm on a street, road or alley.*** **— If the offenses mentioned in subdivisions three, four, and five of the next preceding article shall have been committed in an uninhabited place or by a band or by attacking a moving train, street car, motor vehicle or airship, or by entering the passengers' compartments in a train or, in any manner, taking the passengers thereof by surprise in the respective conveyances, or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm, the offender shall be punished by the maximum period of the proper penalties.** ***(As amended by Republic Act No. 12, Sec. 2, and Republic Act No. 373)***

When is robbery with violence against or intimidation of persons qualified?

If any of the offenses defined in subdivisions 3, 4 and 5 of Art. 294 is committed

1 in an uninhabited place, or

(2) by a band, or

(3) by attacking a *moving* train, street car, motor vehicle, or airship, or

(4) by entering the passengers' compartments in a train, or in any manner taking the passengers thereof by surprise in the respective conveyances, or

(5) on a street, road, highway, or alley, and the intimidation is made with the use of firearms, the offender shall be punished by the maximum periods of the proper penalties prescribed in Art. 294.

Must be alleged in the information.

Any of these five qualifying circumstances of robbery with physical injuries or intimidation must be alleged in the information and proved during the trial.

Being qualifying, it cannot be offset by a generic mitigating circumstance.

Any of these qualifying circumstances cannot be offset by a generic mitigating circumstance.

If robbery *by a band* is committed in an *uninhabited place,* "*by a band*" is qualifying and "*uninhabiteplace*" would be generic aggravating circumstance only. (See U.S. vs. Gapas, 18 Phil. 629)

The intimidation with the use of firearm qualifies only robbery on a street, road, highway or alley.

This is indicated in the head note of the article which says: "or with the use of firearm on a street, road, highway, or alley."

Art. 295 does not apply to robbery with homicide, or robbery with rape, or robbery with serious physical injuries under par. 1 of Art. 263.

Art. 295 provides for different cases in which robbery with *violence against or intimidation of persons is qualified.*

This article does not apply:

(1) When by reason or on occasion of the robbery, the crime of homicide is committed (subdivision 1, Art. 294);

(2) When the robbery is accompanied by *rape* or *intentional mutilation, or arson* (subdivision 1, Art. 294); or

(3) If by reason or on occasion of robbery, any of the serious physical injuries resulting in *insanity, imbecility, impotency* or *blindness* is inflicted (subdivision 2, Art. 294).

The reason is that this article mentions subdivisions 3, 4 and 5 of Art. 294, omitting subdivisions 1 and 2 which refer to robbery with homicide, robbery with rape, robbery with intentional mutilation, and robbery with

serious physical injuries resulting in insanity, imbecility, impotency or blindness of the victim.

Thus, when *robbery with homicide* was committed by attacking a motor vehicle or moving train, or on the street, road, highway or alley with the use of firearms, the penalty prescribed by subdivision 1 of Art. 294 *shall not be imposed* in the maximum period. The same is true with respect to robbery with rape or robbery with intentional mutilation.

However, if there is no mitigating circumstance to offset it, the fact that robbery with homicide or robbery with rape is committed in an uninhabited place or by a band will have the effect of increasing the penalty to the maximum period, because it will be considered as an aggravating circumstance under Art. 14.

Art. 295 is inapplicable to robbery with homicide, rape, intentional mutilation, and *lesiones graves* resulting in insanity, imbecility, impotency or blindness. If the foregoing classes of robbery which are described in Art. 294 (1) and (2) are perpetrated by a band, they would not be punishable under Art. 295, but then, *cuadrilla* would be generic aggravating circumstance under Art. 14 of the Code. (People vs. Salip Mania, 30 SCRA 389; People vs. Damaso, 86 SCRA 370)

Art. 296. ***Definition of a band and penalty incurred by the members thereof.*** — When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum period of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm.

Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same. *(As amended by Republic Act No. 12)*

Outline of the provisions.

1. When at least four armed malefactors take part in the commission of a robbery, it is deemed committed by a band.

2. When *any of the arms used* in the commission of robbery is not licensed, the penalty *upon all the malefactors* shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such firearms.

3. *Any member of* a band who *was present at the commission of a robbery by the band,* shall be *punished* as *principal* of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same.

Requisites for liability for the acts of the other members of the band.

A member of the band is liable for *any of the assaults* committed by the other members thereof, when the following requisites concur:

1. That he was a *member* of the band.
2. That he was *present at the commission of a robbery* by that band.
3. That the *other members* of the band committed an assault.
4. That *he did not attempt to prevent* the assault.

There must be proof that he made an *endeavor to prevent the* assault committed by another member of the band, in order that he may not be held liable for such assault. (People vs. Mendoza, *et al.*, 84 Phil. 148)

Inasmuch as the crime committed is robbery in band and the accused, who denies all intervention therein, admits having been present at the commission of the crime without having done anything to prevent the murder of three people, his liability is the same as that of the principals in the crime of robbery with homicide. (People vs. Gallemos, *et al.*, 61 Phil. 884)

When is the robbery deemed committed by a band?

Art. 296 provides that when *more than three* armed malefactors take part in the commission of robbery, it shall be deemed to have been committed by a band. At least *four armed* persons must take part in the commission of robbery.

Clubs are arms.

The clubs are arms which, in the hands of the members of a band, may be as dangerous to the life of one who would resist the depredations of the band as are revolvers or bolos. (U.S. vs. De la Cruz, *et al.*, 12 Phil. 87)

When the robbery was not committed by a band, the robber who did not take part in the assault by another is not liable for that assault.

Thus, in the case where *three* persons committed robbery in a house two of the robbers committed rape upstairs, while the third guarded the owner of the house downstairs, the first two were convicted of robbery with rape, while the third was convicted of robbery only. (People vs. Pascual G.R. No. L-4801, June 30, 1953, 93 Phil. 1114)

Note: The case of *People vs. Basisten,* 47 Phil. 493, in which it was held that only the one who killed the victim was guilty of robbery with homicide and the others were guilty of robbery by a band, not robbery with homicide, was decided before Article 296 was amended. Before its amendment, it was required that the robbery be committed *by a band and in an uninhabited place.* (People vs. Gallemos, 61 Phil. 884)

When the robbery was not by a band and homicide was not determined by the accused when they plotted the crime, the one who did not participate in the killing is liable for robbery only.

When Balmeo and Caymo hurried out of the victim's house after the robbery, Pelagio had fled from his lookout post. It was only Balmeo and Caymo who walked together to the place where Manalang was waiting inside a taxi and it was only when the taxi was about to leave when the shooting of Pat. Trinidad happened.

Held: When the homicide was committed, Pelagio could not have had the least participation as might justify penalizing him likewise for the said killing. The conspirators were agreed only on the commission of robbery; there is no evidence that homicide besides was determined by them when they plotted the crime. All these warrant the exclusion of Pelagio from any responsibility for the said killing.

Considering that those who actually participated in the robbery were *only three,* Pelagio included, and only one of them was armed, the same evidently was not "in band." It is indeed questionable to hold Pelagio similarly responsible as Caymo and Balmeo for the killing of Pat. Trinidad. It is only when the robbery is in band that all those present in the commission of the robbery may be punished for any of the assaults which any of its members might commit. (People vs. Pelagio, *et al.*,20 SCRA 153)

But when there is conspiracy to commit homicide and robbery, all the conspirators, even if less than four armed men, are liable for the special complex crime of robbery with homicide.

The conspiracy among the appellants in the commission of the crime, is evident upon the facts as proven. Their acts, collectively and individually

executed, have demonstrated the existence of a common design towards the accomplishment of the same unlawful purpose and objective. The killing of Alfonso Yu and Victor Yu, bears a direct relation and intimate connection between the robbery and the killing, for the killing happened during and on the occasion of the robbery. Whether the latter be prior or subsequent to the former, for the element of conspiracy having been proven, it is unquestionable that the complex crime of robbery with homicide has been committed, and all the appellants are liable therefor. (People vs. Fontillas, *et al.*,G.R. No. L-25298, April 16, 1968)

When a group of malefactors conspire to commit robbery and arm themselves for the purpose, no member of the group may disclaim responsibility for any act of violence that is perpetrated by reason or on the occasion of the robbery. Such violence is always reasonably to be expected, either to overcome active opposition or to forestall it altogether by disabling the victim at the very outset, or even to silence him completely thereafter. In the instant case, the group that set out for Batac to rob Ko Pian was provided with lethal weapons — a dagger, an ice pick and a gun. These instruments were intended to facilitate the commission of the robbery, and if their use resulted in homicide, the liability therefor attached to the entire group. (People vs. Espejo, *supra)* Similarly, where a group of persons armed themselves to hold up jeepney passengers, no member of the group can disclaim responsibility for any violent act taken by anyone of them. (People vs. Vallente, 144 SCRA 495)

All of those who conspired to commit the crime of robbery, knowing that members of the group were armed for the purpose of attaining their unlawful objective, should be responsible for the consequences of the criminal act, in this case, the death of the victim. As conspirators, they cannot afterwards claim that they planned to rob only and not to kill and that if someone in the group killed in the course of the robbery, he alone should be responsible. Any person with ordinary foresight can foresee that committing robbery with the use of force upon person always entails the danger of injuring or killing the victim, especially if the conspirators plan to commit, and did commit, their dastardly act while armed and in a group. (People vs. Sumayo y Bersebal, 70 SCRA 488)

"Any member of a band who is present at the commission of a robbery by the band."

A principal by inducement, who did not go with the band at the place of the commission of the robbery, is not liable for robbery with homicide, but only for robbery in band, there being no evidence that he gave instructions to kill the victim or intended that this should be done.

The Supreme Court held: "When Ciriaco Ibañez furnished the transportation for the other defendants, he did so for the purpose of having the

said defendants rob the two stores. The robbery was his principal object It is true that homicide resulted on the occasion of this robbery but there is nothing in the record which shows, or tends to show, that Ciriaco gave instructions to kill the Chinaman or intended that this should be done. When the Chinaman was killed, the robbery had already been committed. The murder was an incident to the robbery, which places the crime, so far as the other accused are concerned, in a different class. Yet under these facts and circumstances, Ciriaco can not be held to be a principal in the commission of this crime or class of robbery, but he is a principal in the commission of the other class, robbery in band. There is nothing in the record to show that he planned or conspired to commit the murder. It has been suggested that as he, Ciriaco, entered into an agreement with the other defendants to commit this crime of robbery, he is responsible for all the result of that crime, as he knew that death might be a necessary incident to the carrying into effect of this plan. If the death of the Chinaman had occurred *in the very act or at the very time that the robbery took place, or while it was going on, and if it had been necessary to kill the Chinaman in order to successfully rob* the stores, then the question might have been different (a question which we do not now decide), but as the actual taking of the property had already terminated, we think, in the absence of proof showing that *the murder was a part of the original plan,* that the foregoing holding is the correct one." (U.S. vs. Ibañez, 19 Phil. 475)

Note: Art. 296 is not applicable to principal by induction, who was not present at the commission of the robbery, if the agreement was only to commit robbery. The article speaks of more than three armed malefactors (who) *"take part in the* commission of *robbery"* and member of a band *"who is present at the commission of a robbery by* a *band."*

But the principal by induction would be liable for the homicide or other crimes that might have resulted, if he also ordered the killing of a particular person or any one who would resist the robbery, or the commission of other crimes.

Conspiracy was for robbery only but homicide was also committed on the occasion thereof — all members of the band are liable for robbery with homicide.

The culprits formed a band. They agreed to commit robbery only. While ransacking for the loot in a store, a patrolman arrived, and there was an exchange of shots. The patrolman was killed.

Held: As all the accusedwere present when the homicide occurred, and none of them attempted to prevent the homicide, all are liable for robbery with homicide. (People vs. Evangelista, *et al.*, 86 Phil. 112)

Whenever homicide is committed as a consequence of or on the occasion of a robbery, all those who took part in the commission of the robbery are also guilty as principals in the crime of homicide unless it appears that they endeavored to prevent the homicide. (People vs. Escober, 157 SCRA 541; People vs. Pecato, 151 SCRA 14)

Proof of conspiracy is not necessary when four or more armed persons committed robbery.

Proof of conspiracy is not essential to hold a member of the band liable for robbery with homicide actually committed by the other members of the band. (People vs. De la Rosa, *et al.*, 90 Phil. 365)

There is no crime as "robbery with homicide in band."

With the present wording of Art. 295, there is no crime as "robbery with homicide in band." If the robbery with homicide is committed by a band, the indictable offense would still be denominated as "robbery with homicide" under Art. 294(1), but the circumstance that it was committed by a band would be appreciated as an *ordinary aggravating circumstance.* (People vs. Apduhan, Jr., 24 SCRA 798)

The denomination of the offense in the case of *People vs. Garduque, et al., infra,* should be "robbery with rape" under Art. 294(2). There is no crime as "robbery in band with multiple rape."

Robbery by a band — all are liable for any assault committed by the band, unless the others attempted to prevent the assault.

People vs. Garduque, et al.
(104 Phil. 1049)

Facts: **While the inhabitants of the house were asleep, six men armed with revolver, bolos and Batangas knives, entered the house. The malefactors forced open the trunks in the house and took jewels, money and clothes kept therein. They also looted the store. Afterwards, they took turns in ravishing the three maidservants. In their defense, two of the defendants merely denied having raped the maidservants.**

Held: **Even assuming for a moment that they did not participate in raping the maids, they are nonetheless guilty as principals in the complex crime of robbery in band with multiple rape as provided for in par. 2 of Art. 296 of the Revised Penal Code, because there is no showing that they ever attempted to prevent the commission of the crime (multiple rape) which has been clearly established by the evidence on record.**

When rape is not considered "any of the assaults committed by the band."

But where in the course of the robbery by a band, the offended woman was taken by one of the accused to a *place away from the house,* where the robbery was committed, and there he raped her *without the knowledge* of his companions, he alone is guilty of robbery with rape. His companions would be guilty only of simple robbery by a band. (People vs. Hamiana, 89 Phil. 225)

Note: **The members of the band liable for the assault must be present at the commission of the robbery, not necessarily at the commission of the assault.**

"Without prejudice to the criminal liability for illegal possession of such unlicensed firearm."

In addition to his criminal liability for robbery by a band, the accused is also liable for illegal possession of firearm which is penalized by P.D. No. 1866.

Rep. Act No. 8294 considers use of an unlicensed firearm in murder or homicide merely a special aggravating circumstance, and not a separate crime.

Violation of PD 1866 is an offense distinct from murder or homicide and the accused is culpable for two separate offenses. RA 8294 amended PD 1866 by reducing penalties and considering the use of an unlicensed firearm simply as an aggravating circumstance in murder or homicide. (People vs. Quijada, 259 SCRA 191)

The third paragraph of Section 1, RA 8294, provides: "If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance."

With the passage of RA 8294 on 6 June 1997, the use of an unlicensed firearm in murder or homicide is now considered, not as a separate crime, but merely a special aggravating circumstance. (People vs. Castillo, G.R. Nos. 131592-93, 15 February 2000)

The special aggravating circumstance of use of unlicensed firearm is not applicable to robbery with homicide committed by a band.

Art. 296 in its entirety is designed to amplify and modify the provision on *robbery in band* which is nowhere to be found but in Art. 295 in relation to subdivisions 3, 4, and 5 of Art. 294. Verily, in order that the aforesaid special aggravating circumstance of use of unlicensed firearm may be appreciated to justify the imposition of the maximum period of the proper penalty, it is

a condition *sine qua non* that the offense charged be *robbery* committed by a band within the contemplation of Art. 295. To reiterate, since Art. 295 does not apply to subdivisions 1 and 2 of Art. 294, then the special aggravating factor in question, which is solely applicable to robbery in band under Art. 295, cannot be considered in fixing the penalty imposable for robbery with homicide under Art. 294(1), even if the said crime was committed by a band with the use of unlicensed firearms. (People vs. Apduhan, Jr., 24 SCRA 798)

In view of the ruling in the case *of People us. Apduhan, supra,* the use of unlicensed firearm is not a special aggravating circumstance in robbery with rape or intentional mutilation, and in robbery with physical injuries defined in subdivision 1 of Article 263.

The use of firearm, whether licensed or unlicensed, in making the intimidation is a qualifying circumstance when the robbery defined in any of paragraphs 3, 4 and 5 of Art. 294 is committed on a street, road, highway, or alley.

Art. 295 makes no distinction as regards the firearm used in making the intimidation to commit robbery. Hence, the firearm may be licensed or unlicensed. But the offense committed *should not be robbery* with homicide, robbery with rape, robbery with intentional mutilation, or robbery with serious physical injuries where the injured person became insane, imbecile, impotent, or blind. The robbery must be that defined and penalized in any of paragraphs 3, 4 and 5 of Art. 294, and committed on a street, road, highway or alley. (Art. 295)

In robbery defined in any of the paragraphs 3, 4 and 5 of Art. 294, perpetrated *by a band* using *unlicensed firearms,* the penalty is the maximum of the maximum period of the proper penalty. It is *not* an ordinary aggravating circumstance. (People vs. Valeriano, 90 Phil. 15)

Art. 297. *Attempted and frustrated robbery committed under certain circumstances.* — When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by *reclusion temporal* in its maximum period to *reclusion perpetua,*[6] unless the homicide committed shall deserve a higher penalty under the provisions of this Code.

[6] See Appendix "A," Table of Penalties, No. 34.

The term "homicide" is used in a generic sense.

The term "homicide" in Art. 297 is used in a generic sense. (People vs. Manuel, 44 Phil. 333) Hence, it includes multiple homicides, murder, parricide, or even infanticide, as where the offenders killed a child two days old which was disturbed in its sleep and began to cry when they were about to take personal property in the house.

The penalty is the same, whether the robbery is attempted or frustrated.

As long as homicide is committed by reason or on occasion of an attempted or frustrated robbery, the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed.

"Unless the homicide committed shall deserve a higher penalty."

The clause "unless the homicide committed shall deserve a higher penalty under the provisions of this Code" may be illustrated thus: In an attempted or frustrated robbery, the killing of the victim is qualified by treachery or relationship. The proper penalty for murder or parricide shall be imposed because it is more severe.

Attempted robbery with homicide.

People vs. Carunungan, et al.
(G.R. No. 13283, Sept. 30, 1960)

Facts: Lorenzo Vivas, his son Hermogenes and daughter-in-law were awakened by the presence, below their house, of appellants who asked for some water to drink. Serapio Carunungan, Manuel Buceta and Felipe Mendoza went up and forced their way to the house. Carunungan *made a demand to the inmates of the house to bring out their money.* Lorenzo got hold of his own firearm and confronted the trio. All of a sudden, the intruders started firing at Lorenzo who returned the fire. After the gunfire stopped, Lorenzo Vivas and Felipe Mendoza were found dead.

Held: The Court agrees with the Court of Appeals that the crime committed is attempted robbery with homicide. The demand made by Carunungan to the inmates of the house to bring out their money constitutes an overt act which would lead to the commission of the robbery. If the robbery was not committed, it was because of armed resistance. The killing was apparently an offshoot of the plan to carry out the robbery.

When there is no overt act of robbery.

But where an armed band tried to stop a passenger bus, and the driver, sensing that the *band might commit robbery,* did not stop the bus but drove it faster, and the members of the band then fired at it, killing one passenger and wounding another passenger and the driver, the crime does not constitute attempted robbery with homicide, because no overt acts pointing to robbery were established. The offenses committed are the separate crimes of murder, frustrated murder and physical injuries. (People vs. Olaes, 105 Phil. 502)

Frustrated robbery with homicide.

The accused agreed to rob two LCM boats from the Navy boat pool with the idea of selling them for profit. They disarmed the guard and when they failed to take the boats, because they could not start the motor, they killed the guard. (People vs. Ramires, G.R. No. L-5875, May 15, 1953, 93 Phil. 1109)

Art. 296 is applicable to attempted robbery with homicide by a band.

Art. 296 is applicable when the crime of attempted robbery with homicide is committed by a band.

A, B, C and *D* agreed to commit robbery. By their agreement, A and *B* went to the hut to watch the inmates, while *C* and *D* were to take away the carabaos. While C and *D* were untying the carabaos, they heard the scream: "Oh! save my life!" which was interrupted by a pistol shot by *A*. Fearing that the shot might summon help, the accused escaped without taking the carabaos, although one of them had already been untied.

Held: All are liable for the crime of attempted robbery with homicide, even if C and D did not enter the hut and did not take part in the assault. (People vs. Morados, 70 Phil. 558; People vs. Dagundong, *et al.,* 108 Phil. 682)

Special complex crime.

Robbery with homicide and attempted or frustrated robbery with homicide are special complex crimes, not governed by Art. 48, but by the special provisions of Arts. 294 and 297, respectively.

When Art. 48 is applicable in robbery.

When the offense committed is attempted or frustrated robbery with serious physical injuries, Art. 48 is applicable, since the felony would fall

neither under Art. 294 which covers consummated robbery with homicide nor under Art. 297 which covers attempted or frustrated robbery with homicide. (People vs. Villanueva, CA-G.R. No. 2676, May 31, 1939)

When the crime committed is robbery with frustrated homicide, the penalty for the more serious crime, which is frustrated homicide, should be imposed in its maximum period, as provided in Art. 48. (People vs Cagongon, C.A., 74 O.G. 59, No. 1, Jan. 2, 1978)

There is only one crime of attempted robbery with homicide even if slight physical injuries were inflicted on other persons on the occasion or by reason of the robbery.

People vs. Casalme, et al.
(101 Phil. 1249)

Facts: **On March 22, 1954, at about 9:00 in the evening, the defendants, on the pretext that a companion needed treatment, gained entrance in the house of Isidro Tolentino, a quack doctor. When asked who among them needed treatment, defendant Casalme suddenly and without warning, shot the old man Isidro with a garand rifle, inflicting a wound from which Isidro died the next morning. Honorata Barquilla, wife of Isidro, grabbed a bolo and proceeded to hack the defendant Gamboa. Awakened by the commotion, and upon seeing Gamboa struggling with his mother, Lucas Tolentino took hold of a knife and stabbed Gamboa in the back. One of the defendants tried to force open their *aparador* where the spouses kept their money and valuables but Honorata prevented him from doing so. Because of the resistance offered by mother and son, the intruders hurriedly left the house. Honorata and her son suffered slight physical injuries inflicted by the culprits. Prosecuted, defendants were found guilty.**

Held: **The trial court found the defendants guilty of three separate crimes, namely: attempted robbery with homicide for the killing of Isidro Tolentino, the complex crime of attempted robbery with slight physical injuries for the wounding of Honorata Barquilla, and the same crime for the wounding of Lucas Tolentino, as a result of which three separate penalties were imposed. Appellants are guilty of only one crime, namely, attempted robbery with homicide and slight physical injuries, under Article 297 of the Revised Penal Code, penalized with *reclusion temporal* in its maximum period to *reclusion perpetua,* and that due to the aggravating circumstances of nighttime, dwelling, and craft, without any mitigating circumstances to offset the same, the greater penalty should be imposed, namely, *reclusion perpetua.***

Note: **The slight physical injuries should be disregarded in the designation of the offense, for there is no such crime as attempted robbery**

with homicide and slight physical injuries. Art. 297 speaks of attempted or frustrated robbery with homicide.

Art. 298. ***Execution of deeds by means of violence or intimidation.***—Any person who, with intent to defraud another, by means of violence or intimidation, shall compel him to sign, execute, or deliver any public instrument or document, shall be held guilty of robbery and punished by the penalties respectively prescribed in this Chapter.

Elements:

1. That the offender has *intent to defraud* another.
2. That the offender *compels* him to *sign, execute,* or *deliver any public* instrument or document.
3. That the compulsion is by means of violence or intimidation.

"Shall be held guilty of robbery and punished by the penalties respectively prescribed in this chapter."

If the violence used resulted in the death of the person to be defrauded, the crime is robbery with homicide and the penalty for that crime as prescribed in paragraph 1 of Art. 294 shall be imposed.

If the execution of deeds by means of violence is only in the attempted or frustrated stage and the violence used resulted in the death of the person to be defrauded, the penalty prescribed in Art. 297 shall be imposed.

Must the document be public?

The Spanish test of this article says "*escritura publica o documento.*"

The adjective "public" must therefore describe the word "instrument" only. Hence, this *article applies* even if the document signed, executed or delivered is *a private* or *commercial* document.

Art. 298 is not applicable if the document is void.

Art. 298 is not applicable if the document is void (II Cuello Calon, Codigo Penal, 10th Ed., pp. 820-824)

If a person, by means of violence or intimidation and with intent to defraud, compelled another to sign a *void* document, would he be liable for grave coercion? No, because in grave coercion, the offender does not have

intent to gain. It seems that he would be liable for physical injuries, if the violence resulted in physical injuries, or grave threats under subdivision No. 2 of Art. 282, if there is only intimidation.

Distinguished from coercion.

When the offended party is under obligation to sign, execute or deliver the document under the law, there is no robbery. There will be coercion if violence is used in compelling the offended party to sign or deliver the document.

Thus, one who, having bought and fully paid the price of a car, compelled the seller by means of violence or intimidation to sign, execute and deliver the corresponding deed of sale, would be guilty of grave coercion, not robbery since there is no intent to defraud.

Section Two. — Robbery by the use of force upon things

This is the other kind of robbery. The person liable for robbery by the use of force upon things, does not use violence against or intimidation of any person in taking personal property belonging to another with intent to gain, for, otherwise, he will be liable under Art. 294.

Robbery by the use of force upon things is committed only when either (1) the offender *entered a house* or *building* by any of the means specified in Art. 299 or Art. 302, or (2) even if there was no entrance by any of those means, he *broke* a wardrobe, chest, or any other kind of locked or closed or sealed furniture or receptacle *in the house or building,* or he *took* it *away to be broken* or *forced open outside.* In any of such cases, the taking of personal property belonging to another with intent to gain from the broken furniture or receptacle, or the taking away of the locked or closed or sealed furniture or receptacle to be broken or forced open outside the house or building would be robbery.

What are the two kinds of robbery with force upon things?

They are:

1. Robbery in an *inhabited house* or *public* building or edifice *devoted to religious worship.* (Art. 299)
2. Robbery in an *uninhabited* place or in *a private building.* (Art. 302)

One essential requisite of robbery with force upon things under Articles 299 and 302 is that the malefactor should enter the building or dependency where the object to be taken is found. Articles 299 and 302

clearly contemplate that the malefactor should enter the building *(casa habitada o lugar habitado o edificio).* If the culprit did not enter the building, there would be no robbery with force upon things. (People vs. Jaranilla, 55 SCRA 563)

Art. 299. ***Robbery in an inhabited house or public building or edifice devoted to worship.*** — Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by ***reclusion temporal,***[7] if the value of the property taken shall exceed 250 pesos, and if —

(a) The malefactors shall enter the house or building in which the robbery is committed, by any of the following means:

1. Through an opening not intended for entrance or egress;

2. By breaking any wall, roof, or floor or breaking any door or window;

3. By using false keys, picklocks, or similar tools;

4. By using any fictitious name or pretending the exercise of public authority.

Or if —

(b) The robbery be committed under any of the following circumstances:

1. By breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle;

2. By taking such furniture or objects away to be broken or forced open outside the place of the robbery.

When the offenders do not carry arms and the value of the property taken exceeds 250 pesos, the penalty next lower in degree[8] shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed 250 pesos.

[7] See Appendix "A," Table of Penalties, No. 28.
[8] See Appendix "A," Table of Penalties, No. 19.

When said offenders do not carry arms and the value taken does not exceed 250 pesos, they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum **period.**[9]

If the robbery be committed in one of the dependencies of an inhabited house, public building, or building dedicated to religious worship, the penalties next lower in degree than those prescribed in this article shall be imposed. *(As amended by Republic Act No. 18)*

Robbery with force upon things under Art. 299 are of two kinds.

Note that Art. 299 has two subdivisions; they are subdivision (a) and subdivision (b).

ROBBERY WITH FORCE UPON THINGS UNDER SUBDIVISION (A).

Elements:

1. That the offender *entered* (a) an inhabited place, or (b) public building, or (c) edifice devoted to religious worship.
2. That the *entrance* was effected by any of the following means:
   a. Through an opening not intended for entrance or egress;
   b. By breaking any wall, roof, or floor or breaking any door or window;
   c. By using false keys, picklocks or similar tools; or
   d. By using any fictitious name or pretending the exercise of public authority.
3. That once *inside* the building, the offender took personal property belonging to another with intent to gain.

The offender must "enter the house or building in which the robbery is committed."

Thus, if the offender merely inserted his hand through an opening in the wall or used a pole through the window to get the clothes inside the room, while the offender remained outside the house or building, the crime committed is theft, not robbery.

[9]See Appendix "A," Table of Penalties, No. 20.

There must be evidence or the facts must show that the accused entered the dwelling house or building by any of the means enumerated in subdivision (a) of Art. 299.

In the case of *U.S. vs. Callotes,* 2 Phil. 16, it was held that in the absence of evidence to show how the offenders effected an entrance into the convent where they took personal property, there can be no conviction under Art. 508 of the Penal Code (now Art. 299 of the Revised Penal Code).

The reason for this ruling is that one of the elements of robbery with force upon things under Art. 299 states that the entrance is effected by any of the means described in subdivision (a) of that article.

Thus, where the manner of entrance into the house was not proven, the crime is theft and not robbery. (People vs. Aurillo, C.A., 46 O.G. 2169)

This ruling applies where both the outside door and a window of the house are open, so that it is possible that the accused might have passed through the door.

But if at the time of the discovery of the loss of personal property in the house, the outside door remained locked and not destroyed and a window was opened or broken open, there is circumstantial evidence of unlawful entry sufficient to establish robbery with force upon things.

In entering the building, the offender must have an intention to take personal property.

The accused, by means of a bolo and screw driver, began to open the door of the store which also served as the dwelling of a Chinaman. After loosening one of the bars of the door and becoming aware that the inmates therein had been awakened, the accused tried to escape, but were arrested by the policemen who had been watching them all the time.

Held: It is not correct to convict the accused of attempted robbery. There is no evidence to show that the intention of the accused was to commit robbery, or that they knew that they would find money inside the store. There still remains a sufficient indication of the existence of an intention different from that of committing robbery. The crime committed is attempted trespass to dwelling under Art. 280, par. 2. (People vs. Tayag, *et al.*,59 Phil. 606)

The place entered must be a house or building.

When the culprit enters the parked automobile through the window, the glass of which he broke, the crime is theft if personal property is taken therefrom, because the automobile is not a house or building.

What inhabited house includes.

Inhabited house is any shelter, ship or vessel constituting the dwelling of one or more persons even though the inhabitants thereof are temporarily absent therefrom when the robbery is committed. (Art. 301)

What public building includes.

Public building is every building owned by the Government or belonging to a private person but used or rented by the Government, although temporarily unoccupied by the same. (Art. 301)

The burnt edifice had not been inaugurated, but was to be used as a public school. The evidence shows that said edifice had already been delivered by the contractor to the municipality of Bigaa. What makes a building public is not its inauguration for the purpose intended, but the fact of the State or any of its agencies having the title thereto. (People vs. Constantino, 46 Phil. 745)

Robbery in a public building.

Where the defendant entered through the window of a public high school building and took from the building two microscopes, he was guilty of robbery under the first paragraph of Art. 299. (U.S. vs. Acacio, 37 Phil. 70)

But if the building belonged to a *private* school, the crime is robbery under Art. 302, because it is either an uninhabited place or a building other than those mentioned in the first paragraph of Art. 299.

Robbery in an edifice devoted to religious worship.

Where the accused, by means of a small lever or nail, forced open the top of the poor box in the church, took the money therein contained and appropriated it to himself, the crime committed was robbery with force upon things committed in an edifice devoted to religious worship under paragraph (b), No. 1, of Art. 299.

Any of the four means described in subdivision (a) of Art. 299 must be resorted to by the offender to enter a house or building, not to get out.

Note the opening sentence of subdivision (a) which states, "The malefactors shall enter the *house* or *building* in which the robbery is committed, by any of the following means:"

1. Through an opening not intended for entrance or egress.

The window or a hole through the wall already in existence is not intended for entrance or egress. If the culprit enters the building through

such opening and once inside he takes personal property belonging to the occupants therein, the crime committed is robbery.

In the case of *People vs. Co Cho*, 62 Phil. 828, the offenders entered the house of the offended party, by passing through the window of the closet, and once inside, took the watch and money of the offended party. The offenders were convicted of robbery.

But if the culprit had entered the house through an open door, and the owner, not knowing that the culprit was inside, closed and locked the door from the outside and left, and the culprit, after taking personal property in the house, went out through the window, it is only theft, not robbery.

The whole body of culprit must be inside the building to constitute entering.

When the accused only introduced his hand through the broken glass of a show window which he had broken in order to remove the watches therefrom, there is no robbery, because no entrance of his body was made. (People vs. Adorno, C.A., 40 O.G. 567)

2. By breaking any wall, roof, or floor or breaking any door or window.

Note the word *"breaking"* used in this means of entering the building. The force used in this means must be actual, as distinguished from that in the other means which is only constructive force.

The wall must be an outside wall.

The wall broken must be an outside wall, not a wall between rooms in a house or building, because the breaking of the wall must be for the purpose of entering the *house* or *building* where the robbery is committed.

But if a room is occupied by a person as his separate dwelling, the breaking of its inside wall may give rise to robbery.

The outside door must be broken.

The accused pried the door out of the groove in which it ran and pushed it inward. Once inside, he took personal property belonging to the occupants of the store.

Held: The Spanish text of paragraph (a) 2 of Article 299 of the Revised Penal Code is as follows: *"Por rompimiento de pared, techo o suelo, a fractura de puerta o ventana."* The words *"fractura de puerta o ventana"* clearly mean "the breaking of a door or window," and imply more than the mere forcing

open of a door or window. If the defendant had forced open a window and entered in that way, he would, of course, be guilty of robbery because of having entered the house through an opening not intended for entrance: but in the case at bar, the defendant entered by forcing open the door by means of some instrument. It was neither alleged nor proved that the door was broken. The accused not having entered the store by any of the means specified in Article 299 of the Revised Penal Code, the crime committed by him was theft. (People vs. Fernandez, 58 Phil. 674)

Where the door itself was intact, and the accused entered the store by removing the hinges or hooks to which the padlocks were attached, as well as the lock of the door knob, the crime committed was simple theft. Where entrance is effected through a means intended for entrance or egress, in order to qualify the crime as robbery, there must be an actual breaking or smashing in opening the door. Removing the hook or the contraption to which the padlock is placed to lock the door, or using an article to open the lock attached to the door knob, is certainly not the "breaking" contemplated by Articles 299 and 302, Revised Penal Code. (People vs. Lising, C.A., 62 O.G. 9819)

The term "door" used in paragraph No. 2 of subdivision (a) of Art. 299 refers to an *outside door.* It is mentioned as one of the means of entering the house or building and it can be no other than the *main* or *back door* which must first be opened to effect entrance by that means.

3. By using false keys, picklocks or similar tools.

False keys are genuine keys stolen from the owner or any keys other than those intended by the owner for use in the lock forcibly opened by the offender. (Art. 305)

Picklocks or similar tools are those specially adopted to the commission of the crime of robbery. (See Art. 304)

The genuine key must be stolen, not taken by force or with intimidation, from the owner.

Thus, where the offenders intimidated the inmates then outside the house, requiring them to produce the key to the main door, once in possession thereof they used it to open the door, and entered the house where they took personal property, the crime committed was robbery with intimidation of person under paragraph 5 of Art. 294, not robbery with force upon things by using a false key. (See U.S. vs. Cabamngan, 7 Phil. 191; U.S. vs. Macamay. 36 Phil. 893)

The false key or picklock must be used to enter the building.

The use of false key or picklock refers to the mode of *entering* the house or building and not to the method of opening a trunk in the house (U.S. vs. Macamay, 36 Phil. 893) or to the method of opening the drawer of the cabinet. (People vs. Lasam, CA-G.R. No. 14362-R, Feb. 14, 1956)

It is only theft when the false key is used to open wardrobe or locked receptacle or drawer or inside door.

1. The use of a false key in opening a wardrobe from which the offender took personal property cannot give rise to robbery, for as regards the wardrobes, chests, or any other kind of locked or sealed furniture or receptacle, Art. 299(b) requires that the same be *broken,* not merely opened.

2. Opening the money drawer by using the stolen key is not robbery. (People vs. Fernandez, 58 Phil. 674)

3. If the false key or picklock was used to open an inside door, like the door of a room, and once inside the culprit took therefrom personal property of another of another, it is only theft.

   But if the room is a separate dwelling place of a person, or a family, the use of false key to open its door may give rise to robbery.

The use of a fictitious name or the act of pretending to exercise authority must be to enter the building.

This takes place when the robbers represented themselves as detectives by displaying metal badges similar to those worn by regular police officers and once inside, took the money of the offended party. (People vs. Urbano, *et al.*, 50 Phil. 90)

Note: In the case of *People vs. Urbano, et al.*, the facts show that the accused were *already inside* the store of a Chinaman when they represented themselves as detectives. It seems that using the fictitious names or pretending the exercise of public authority must be the efficient cause of the opening by the offended part of the door of his house to the accused.

ROBBERY WITH FORCE UPON THINGS UNDER SUBDIVISION (B) OF ART. 299.

Elements:

1. That the offender is inside a dwelling house, public building, or edifice devoted to religious worship, regardless of the circumstances under which he entered it;

2. That the offender takes personal property belonging to another, with intent to gain, under any of the following circumstances:

   a. by the *breaking* of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle; or

   b. by *taking* such furniture or objects *away to be broken* or *forced* open *outside* the place of the robbery.

Entrance into the building by any of the means mentioned in subdivision (a) of Article 299 is not required in robbery under subdivision (b) of same article.

It will be noted that the robbery defined in Article 299 is committed in two ways, as stated in subdivisions (a) and (b). Subdivisions (a) and (b) are separated by the words "or if, indicating thereby that each subdivision is independent of the other.

Hence, to commit the robbery defined in subdivision (b) of Article 299, it is not necessary that the offender should have entered the building by any of the means mentioned in subdivision (a).

Thus, a guest in the house of the offended party or a servant in that house may be guilty of this kind of robbery if he breaks open a locked wardrobe or chest inside that house or if he takes it outside to be broken, and once broken, takes therefrom personal property.

The term "door" in paragraph No. 1, subdivision (b) of Art. 299, refers only to "doors, lids, or opening sheets" of furniture or other portable receptacles — not to inside doors of house or building.

The reason for this ruling is that paragraph No. 2 of the same subdivision and article speaks of "taking such furniture or objects away to be broken or forced open outside the place of the robbery," in contrast and as distinguished from the door indicated in paragraph No. 2, subdivision (a) of same Art. 299, which refers to the doors of the building, the breaking of which is resorted to by the malefactors to gain entrance into the building. (People vs. Puzon and Martinez, C.A., 48 O.G. 4878)

Note: The wisdom of this ruling is doubted. It is believed that the term "doors" in subdivision (b) of Art. 299 refers to inside doors of the house or building. Under the above ruling, the word "doors" would be unnecessary in subdivision (b) of Art. 299, because the breaking of furniture or other receptacle may include the breaking of its door, lid or opening sheet.

Breaking the keyhole of the door of a wardrobe, which is locked, is breaking a locked furniture.

Art. 299, subsection (b) 1, speaks of, among others, the breaking of "locked or sealed furniture or receptacle," not "breaking of the lock" as argued by appellant. Breaking or destroying the keyhole of the door of an *aparador* which was locked is virtually destroying a "locked furniture." True indeed, the Revised Penal Code does not state, as one of the modes of committing robbery, the "destruction of a keyhole." But the destruction of a keyhole of an *aparador* is itself a destruction of a locked furniture. Just as one who hurts his finger, hurts his hand. (People vs. Tupaz, *et al.*, C.A., 50 O.G. 11249)

When sealed box or receptacle is taken out of the house or building for the purpose of breaking it outside, it is not necessary that it is actually opened.

A person who carries away a sealed box or receptacle *for the purpose* of breaking the same and taking out its contents outside the place of robbery is guilty of consummated robbery *even though he does not succeed in opening the box.*

The phrase "to be broken or forced open outside" in subdivision (b), paragraph 2, of Art. 299, only indicates the *objective element* of the offense.

It is estafa or theft, if the locked or sealed receptacle is not forced open in the building where it is kept or taken therefrom to be broken outside.

A person who opens by force a certain locked or sealed receptacle which has been *confided into his custody* and takes the money contained therein, *is guilty of estafa* and *not robbery,* because the accused does not commit the act in the house of the offended party or the accused does not take the receptacle out from the house of its owner. And it is *theft* when a locked receptacle is found on the side of the street and it is forcibly opened and the contents thereof are taken.

The penalty for robbery with force upon things in inhabited house, public building or edifice devoted to religious worship depends on the value of property taken and on whether or not offender carries arm.

When the robbery is committed —

1. By ARMED person and the value of property taken EXCEEDS P250 - RECLUSION TEMPORAL.

2. By UNARMED person and the value of property taken EXCEEDS P250 - PRISION MAYOR.
3. By ARMED person but the value of property taken DOES NOT exceed P250 - PRISION MAYOR.
4. By UNARMED person and the value of property taken DOES NOT exceed P250 - PRISION MAYOR MINIMUM.
5. In a DEPENDENCY of inhabited house, public building, or edifice devoted to religious worship — penalty NEXT LOWER in degree than those SPECIFIED ABOVE.

A bolo is not an arm when used by a servant to open a trunk in his master's house.

Thus, a servant who used a bolo in breaking open a trunk then in the house of his master and took money therefrom was guilty of robbery committed by an unarmed person. (U.S. vs. Saludo, 9 Phil. 213)

Arm carried must not be used to intimidate.

The weapon carried by the offender must *not* have been used to intimidate a person, for the reason that once the circumstance of intimidation enters in the commission of the crime, it is sufficient to remove the offense from Art. 299 and place it within the purview of Art. 294.

Even those without arms are liable to the same penalty.

The liability for *carrying arms* while robbing an *inhabited house is extended to each of the offenders* who take part in the robbery, even if some of them do not carry arms. (Guevara, citing Dec. Sup. Ct. of Spain, Oct. 27, 1882)

Reason why heavier penalty is imposed for robbery in a dwelling house.

Note that the penal law punishes more severely the robbery in a house used as a dwelling than that committed in an uninhabited place, because of the possibility that the inhabitants in the former might suffer bodily harm during the commission of the robbery. (U.S. vs. Bajet, 25 Phil. 105)

Art. 300. ***Robbery in an uninhabited place and by a band.*** — The robbery mentioned in the next preceding article, if

committed in an uninhabited place and by a band, shall be punished by the maximum period of the penalty provided therefor.

Robbery in an inhabited house, public building or edifice devoted to religious worship is qualified when committed by a band AND in an uninhabited place.

The robbery *mentioned in Art. 299,* if committed *in an uninhabited place* AND *by a band,* shall be punished by the maximum period of the penalty provided therefor.

The two qualifications (uninhabited place *and* by a band) must concur. (U.S. vs. Morada, *et al.,* 23 Phil. 477)

The fact that the robbery with force upon things in inhabited house or public building or edifice devoted to religious worship was committed in an uninhabited place and by a band *must be alleged in the information* to qualify the offense.

The inhabited house, public building, or edifice devoted to religious worship must be located in an uninhabited place.

The robbery mentioned in Art. 299, is committed in an *inhabited house, public building* or *edifice* devoted to religious worship. Such house, building or edifice must be located in an *uninhabited place.*

In the case of *U.S. vs. Morada, supra,* it is said: "In this case, it does not appear that the house wherein the robbery was perpetrated was *located in an uninhabited place."*

Distinction between the two classes of robbery as to their being qualified.

Robbery with *force upon things* (Art. 299), in order to be *qualified,* must be committed in an uninhabited place *and* by a band (Art. 300); while robbery with violence *against* or *intimidation of persons* must be committed in an uninhabited place *or* by a band. (Art. 295)

Art. 301. ***What is an inhabited house, public building, or building dedicated to religious worship and their dependencies.*** — Inhabited house means any shelter, ship, or vessel constituting the dwelling of one or more persons, even

though the inhabitants thereof shall temporarily be absent therefrom when the robbery is committed.

All interior courts, corrals, warehouses, granaries, barns, coachhouses, stables, or other departments, or enclosed places contiguous to the building or edifice, having an interior entrance connected therewith and which form part of the whole, shall be deemed dependencies of an inhabited house, public building, or building dedicated to religious worship.

Orchards and other lands used for cultivation or production are not included in the terms of the next preceding paragraph, even if closed, contiguous to the building, and having direct connection therewith.

The term "public building" includes every building owned by the Government or belonging to a private person but used or rented by the Government, although temporarily unoccupied by the same.

Robbery in sunken ship.

A steamship containing silver currency and paper money sank. The following day, the defendant, discovering the location of the sunken ship, dived down there, entered the same, and took therefrom the sum of P15,000, enclosed in *sealed boxes.* The ship was not yet abandoned by its owner.

Held: The defendant was guilty of robbery. (U.S. vs. Rey, 8 Phil. 500)

Note: A ship is covered by the term "inhabited house." The *boxes* which *were taken from the ship* were reinforced with iron straps and nails. They were *broken* by the defendant in order to take possession of the money contained therein. The robbery committed is covered by Art. 299, subdivision (b), No. 2.

The place is still inhabited house even if the occupant was absent.

A stored several trunks containing merchandise in a house belonging to B. B was *not livingin said house,* but A used to sleep there at night as B's caretaker. A *failed to sleep* in said house one night. That night, certain persons entered the same through the window and took therefrom two trunks containing personal property.

Is this robbery in an uninhabited place? No, the place is an inhabited house, although A was absent therefrom when the robbery took place. (U.S. vs. Bajet, 25 Phil. 105)

Notwithstanding the fact that for a period of almost a *month,* the house where the robbery was committed was actually *uninhabited,* it is still robbery in an inhabited house within the meaning of Arts. 299 and 301, because the building in question was ordinarily inhabited and *intended* as a dwelling. (People vs. Ganir, C.A., 51 O.G. 856)

Dependencies, defined.

***Dependencies* of an inhabited house, public building or building dedicated to religious worship — are all interior courts, corrals, warehouses, granaries or inclosed places *contiguous* to the building or edifice, *having an interior entrance connected therewith,* and *which form* part of the whole. (Art. 301, par. 2)**

***Note:* Three requisites:**

(1) Must be *contiguous* to the building;

(2) Must have an *interior entrance* connected therewith;

(3) Must form *part of the whole.*

Thus, if the information alleges that the robbery was committed in a garage situated in the premises of house No. 1572, General Luna street, that allegation is not equivalent to a charge that the robbery was committed in a dependency of an inhabited house, for a garage may or may not be a dependency of the house. It will be a dependency of the house if the three requisites mentioned are present.

The place where the robbery was committed was not *a dependency* of a public building, because the storeroom where the property taken was kept does not seem to be a structure *contiguous* to the building. (People vs. Puzon, *et al.*, C.A., 48 O.G. 4878)

Example of a dependency.

A small store located on the ground floor of the house, belonging to the owner of the store, is a dependency of the house, because the house and the store *form one single whole,* there being no partition between them and that the inmates in going to the main stairway have to *enter the store* which has a door. (U.S. vs. Ventura, *et al.*, 39 Phil. 523)

Orchards and lands used for cultivation, not dependencies.

Orchards and other lands used for cultivation or production are not included in the term "dependencies." (Art. 301, par. 3)

Art. 302. ***Robbery in an uninhabited place or in a private building.*** — Any robbery committed in an uninhabited place or in a building other than those mentioned in the first paragraph of Article 299, if the value of the property taken exceeds 250 pesos shall be punished by ***prision correccional*** in its medium and maximum **periods,**[10] provided that any of the following circumstances is present:

1. If the entrance has been effected through any opening not intended for entrance or egress;

2. If any wall, roof, floor, or outside door or window has been broken;

3. If the entrance has been effected through the use of false keys, picklocks, or other similar tools;

4. If any door, wardrobe, chest, or any sealed or closed furniture or receptacle has been broken;

5. If any closed or sealed receptacle, as mentioned in the preceding paragraph, has been removed, even if the same be broken open elsewhere.

When the value of the property taken does not exceed 250 pesos, the penalty next lower in **degree**[11] shall be imposed.

In the cases specified in Articles 294, 295, 297, 299, 300, and 302 of this Code, when the property taken is mail matter or large cattle, the offender shall suffer the penalties next higher in degree than those provided in said articles. *(As amended by Com. Act No. 417)*

Elements:

1. That the offender *entered an uninhabited place* or a *building* which was *not* a dwelling house, *not* a public building, or *not* an edifice devoted to religious worship.
2. That any of the following circumstances was present:

[10] See Appendix "A," Table of Penalties, No. 15.
"See Appendix "A," Table of Penalties, No. 8.

a. The entrance was effected through an opening not intended for entrance or egress;

b. A wall, roof, floor, or *outside door* or window was broken;

c. The entrance was effected through the use of false keys, picklocks or other similar tools;

d. A door, wardrobe, chest, or any sealed or *closed* furniture or receptacle was *broken;* or

e. A *closed* or *sealed* receptacle was *removed,* even if the same be *broken* open *elsewhere.*

3. That with intent to gain, the offender took therefrom personal property belonging to another.

The "uninhabited place" is an uninhabited building.

The *"uninhabited place"* mentioned in Art. 302 is a *building,* because paragraphs Nos. 1 and 3 speak of *"entrance,"* which necessarily refers to a building. Paragraph No. 2 speaks of parts of building.

In *U.S. vs. Galuran,* 12 Phil. 339, it was held that a robbery committed in a *warehouse* belonging to the Smith Bell & Co., *in the City of Manila,* is one committed in an uninhabited place.

There is an inaccuracy in the English translation of Article 302. *Robo en lugar no habitado o edificio particular.* — "El robo cometido en un lugar no habitado o en un edificio que no sea de los comprendidos en el parrafo primero del articulo 299, x x x." (Tomo 26, Leyes Publicas 479) The term "lugar no habitado" is erroneously translated as "uninhabited place," a term which may be confounded with the expression "uninhabited place" in Articles 295 and 300 of the Revised Penal Code, which is the translation of *despoblado* and which is different from the term *lugar no habitado* in Article 302. The term *lugar no habitado* is the antonym of *casa habitado* (inhabited house) in Article 299. (People vs. Jaranilla, 55 SCRA 563)

"Building other than those mentioned in the first paragraph of Art. 299."

The place where the robbery is committed under Art. 302 must be a building which is not an inhabited house or public building or edifice devoted to religious worship.

Although a store may be used as a dwelling, to sustain a conviction for robbery in an inhabited house, the information must allege that the store was used and occupied as a dwelling (People vs. Tubog, 49 Phil. 620, 624), otherwise the robbery should be considered as having been perpetrated in

an uninhabited place defined and penalized under Article 302 of the Revised Penal Code. (People vs. Angeles, 14 C.A. Rep. 946)

What the term "building" includes.

Under the term "building" is included any kind of structure used for storage or safekeeping of personal property, such as (a) *freight car* and (b) *warehouse.* (U.S. vs. Magsino, 2 Phil. 710; U.S. vs. Roque, *et al.*, 4 Phil. 242) A pigsty is not a building within the meaning of Art. 302 which refers to habitable buildings.

Entrance through an opening not intended for entrance or egress, or after breaking a wall, roof, floor, door or window, or through the use of false keys, picklocks, or other similar tools is not necessary, if there is breaking of wardrobe, chest, or sealed or closed furniture or receptacle, or removal thereof to be broken open elsewhere.

Paragraphs Nos. 4 and 5 of Art. 302 do not require that the offender must have entered the uninhabited building through an opening not intended for entrance or egress, or after breaking a wall, roof, floor, door or window, or through the use of false keys, picklocks, or other similar tools. The word "entrance" in paragraphs Nos. 1 and 3 is not used in said paragraphs Nos. 4 and 5. While it is true that the word "entrance" is not also used in paragraph No. 2, yet it can be inferred that entrance is required under that paragraph. (See People vs. Adorno, C.A., 40 O.G. 567, cited under Art. 299)

Unnailing of cloth over door of freight car is, breaking by force.

The unnailing of a piece of cloth which was nailed over the door so as to seal it, the customary manner of sealing a freight car, is held to be breaking by force. (U.S. vs. Magsino, 2 Phil. 710) *Note:* Compare this case with the case of *People vs. Fernandez, supra,* where it was held that the door must be broken.

Breaking padlock is use of force upon things.

The crime committed by the accused who entered into a warehouse by *breaking the padlock* of the door and took away personal property is robbery. (People vs. Mesias, 38 O.G. No. 23)

Note: This ruling does not seem to be justified by any of the paragraphs of Art. 302. It cannot be under breaking outside door, because only the padlock, not the door, was broken. It cannot be under use of false key, because no false key was used.

The decision of the Court of Appeals on this point is different from that of the Supreme Court.

In the case *of People vs. Puzon, et al.*, 48 O.G. 4778, the Court of Appeals held that the accused who destroyed the padlock of the door of the garage of the District Engineer's Office and took therefrom 35 tires, was guilty of theft, because the door or the lock thereof was not broken, for it was *only* the detachable accessory gadget — the *padlock* — which *was broken.*

Use of fictitious name or pretending the exercise of public authority, not in this article.

The use of fictitious name or pretending the exercise of public authority is not a means of entering the building under this article, because the place is uninhabited and no person could be deceived thereby.

The receptacle must be "closed" or "sealed."

The furniture or receptacle here is *"sealed or closed."* In Art. 299, it is either *"locked or sealed."*

If a person, who had entered a warehouse, opened *without breaking, a closed* but not locked chest and took therefrom personal property, would that be robbery? It would seem that it is theft only, because paragraphs Nos. 4 and 5 use, respectively, the phrases *"has been broken"* and *"be broken open"* implying that there must be breaking of the receptacle to constitute robbery.

A receptacle is a container.

It would seem that an example of *sealed or closed receptacle* is a crate which contains article or merchandise. Thus, the breaking of a crate containing a television set inside a building at the pier, and taking its contents, is robbery.

Example of robbery in an uninhabited house.

The servant of the owner of an oil mill who takes away the key of the *warehouse* and hands it to another, who in turn opens the warehouse with that key and steals and takes away oil from the warehouse, is also guilty of robbery in an uninhabited house as principal by conspiracy.

"If any closed or sealed receptacle has been removed, even if the same be broken open elsewhere."

Is the mere removal of closed or sealed receptacle sufficient under paragraph 5 of Art. 302?

It seems that it is not sufficient. Although the phrase, "even if the same be broken open elsewhere," does not indicate a condition or requisite that the closed or sealed receptacle be broken after removing it, this kind of robbery requires at least an intention to open it by force.

Closed or sealed receptacle removed and broken open elsewhere.

Two persons at night entered the office and store of a corporation, located at M. de Comillas, Manila. Entrance was effected through the door, *without using force to open it.* A closed steel safe was removed from the building and taken to a place where it was forced open. The two persons took the contents thereof. The crime committed is robbery under par. 5 of Art. 302. (People vs. Nuas, C.A., 52 O.G. 6264)

Taking of mail matter or large cattle in any kind of robbery makes the penalty higher by one degree.

When the property taken is a *mail matter* or *large cattle* during any of the robbery defined in Arts. 294, 295, 297, 299, 300 and 302, the penalties *next higher* in degree than those provided in said article shall be imposed. (Art. 302, last par.)

Is this qualified robbery? There is no such name of crime, but since the penalty is one degree higher, it may be called qualified robbery.

Motor vehicle, coconuts and fish are not included.

Note that only mail matter and large cattle are mentioned in Art. 302. Motor vehicle, coconuts in the plantation, and fish in the fishpond are not included.

Thus, if the culprit breaks the door of the garage which is a dependency of a dwelling house and took from the garage a jeep, the penalty for the crime committed is not one degree higher.

Penalty is based only on value of property taken.

Note also that the offender's *being armed* is not important under this article for the reason that there is no person who can be injured or killed. This circumstance is important under Art. 299 for graduating the penalty, because when the offender is armed, there is the danger of the inmates being injured or killed.

Robbery in a store — when punishable under Art. 299 or under Art. 302.

1. If the store is *used as a dwelling* of one or more persons, the robbery committed therein would be considered as committed in an *inhabited house* under Art. 299. (People vs. Suarez, G.R. No. L-6431, March 29, 1954)
2. If the store was not actually occupied at the time of the robbery and was *not used as a dwelling,* since the owner lived in a separate house, the robbery committed therein is punished under Art. 302. (People vs. Silvestre, C.A., 34 O.G. 1535)
3. If the store is located on the ground floor of the house belonging to the owner of the store, having an interior entrance connected therewith, it is a *dependency* of an inhabited house and the robbery committed therein is punished under the last paragraph of Art. 299. (U.S. vs. Tapan, 20 Phil. 211)

Art. 303. ***Robbery of cereals, fruits, or firewood in an uninhabited place or private building.*** **— In the cases enumerated in articles 299 and 302, when the robbery consists in the taking of cereals, fruits, or firewood, the culprit shall suffer the penalty next lower in degree than that prescribed in said articles.**

Penalty is one degree lower when cereals, fruits, or firewood are taken in robbery with force upon things.

When the robbery described in Arts. 299 and 302 consists in the taking of *cereals, fruits,* or *firewood,* the penalty *next lower* in degree than that prescribed in said articles shall be imposed.

"In the cases enumerated in Articles 299 and 302."

The penalty next lower in degree shall be imposed for robbery of cereals, fruits, or firewood, only when the robbery is committed by the use of force upon things, *without violence against or intimidation of any person,* in an inhabited house, public building, or edifice devoted to religious worship (Art. 299) or in an uninhabited place or private building (Art. 302).

Thus, even if the offender took from the *camarin* about 15 sacks of *palay* through an opening made on the floor of said *camarin,* since the

robbery committed with force upon things was accompanied with violence against or intimidation of persons, Art. 303 is not applicable. The offender should be punished under Art. 294. (Manahan vs. People, 73 Phil. 691)

Cereals are seedlings which are the immediate product of the soil.

The word "cereals" is not the correct translation of the Spanish words *"semilla alimenticia."* *"Semilla"* means *seedling* which is the immediate product of the soil. *Hulled rice* is not the immediate and natural product of the soil.

Hence, the taking of sacks of hulled rice does not fall under this article, but under the penultimate paragraph of Art. 302. (People vs. Mesias, 65 Phil. 267)

Palay (the local name for unhulled rice) is "cereal" and is included in the term *"semilla alimenticia"* used in the Spanish text of the Revised Penal Code, as it is grain in its original state and, under proper conditions, can and will germinate into the plant that produces it. The offense charged in the case at bar, therefore, properly comes under Art. 303 of the Revised Penal Code and within the original jurisdiction of the Justice of the Peace Court. (People vs. Rada, *et al.*, G.R. No. L-16988, Dec. 30, 1961, 3 SCRA 880)

The palay must be kept by the owner as "seedling" or taken for that purpose by the robbers.

Thus, taking 9 cavanes of palay, valued at P135, from another's granary by breaking its wall, is robbery as defined and penalized in Art. 302, par. 2, and not in Art. 303, inasmuch as the quantity and value of the *palay* robbed are not insignificant and there is no showing that the same was kept by the owner as "seedling" or taken for that purpose by the robbers. (People vs. Taugan, CA-G.R. No. 1287-R, May 26, 1949)

Art. 304. *Possession of picklocks or similar tools.* — Any person who shall, without lawful cause, have in his possession picklocks or similar tools specially adopted to the commission of the crime of robbery, shall be punished by *arresto mayor* in its maximum period to *prision correccional* in its minimum period.[12]

The same penalty shall be imposed upon any person who shall make such tools. If the offender be a locksmith, he

[2]See Appendix "A," Table of Penalties, No. 15.

shall suffer the penalty of *prision correccional* in its medium and maximum **periods.**[13]

Elements of illegal possession of picklocks or similar tools.

1. That the offender has in his possession *picklocks* or similar tools.
2. That such picklocks or similar tools are *specially adopted to the commission of robbery.*
3. That the offender *does not have lawful cause for* such possession.

Actual use of picklocks or similar tools, not necessary in illegal possession thereof.

It is not necessary that the picklocks or similar tools are actually used to commit robbery.

Liability of a locksmith.

If the person who makes such tools is a locksmith, the penalty is higher.

If he is not a locksmith, the penalty is the same as that for a mere possessor.

Art. 305. *False keys.* — The term **"false keys"** shall be deemed to include:

1. The tools mentioned in the next preceding article;
2. Genuine keys stolen from the owner;
3. Any keys other than those intended by the owner for use in the lock forcibly opened by the offender.

Possession of false keys in paragraphs 2 and 3 of Art. 305, not punishable.

Would a person found in possession of genuine key stolen from the owner be held criminally liable? This article provides no penalty. It is clear

[13]See Appendix "A," Table of Penalties, No. 15.

that the possession of the false keys mentioned in paragraphs 2 and 3 of Art. 305 is not punishable.

Problem:

Before leaving for another province with his family, A entrusted the key of the main door of his house to *B*, *A's* neighbor. One day, *B* used the key in opening the door of *A's* house and once inside took some personal belongings of *A*. Is *B* guilty of robbery? No, because the key which he used in opening the door was not *stolen*, it having been *entrusted* to him. It was not a picklock or similar tool, as defined in Art. 305. It was the key intended by the owner *(A)* for use in the lock opened by *B*.

Example of use of false key.

***A* proposed to *B*, a porter of a warehouse, to get some cases of whisky from the warehouse, offering to pay P16 a case. *A* suggested to *B* that he should take an impression of the key of the warehouse in soap paste and have another made by a locksmith. With the key made from the impression, *B* was able to open the warehouse from which he took cases of whisky.**

Held: **Robbery with the use of false key. A is a principal by inducement. (U.S. vs. Galuran, 12 Phil. 339)**

Chapter Two

BRIGANDAGE

Brigandage, defined.

Brigandage is a crime committed by *more than three armed* persons who *form* a band of *robbers* for the purpose of committing *robbery in the highway* or *kidnapping* persons for the purpose of *extortion* or *to obtain ransom,* or for any other purpose to be attained by means of force and violence.

Art. 306. *Who are brigands — Penalty.* — When more than three armed persons form a band of robbers for the purpose of committing robbery in the highway, or kidnapping persons for the purpose of extortion or to obtain ransom or for any other purpose to be attained by means of force and violence, they shall be deemed highway robbers or brigands.

Persons found guilty of this offense shall be punished by *prision mayor* in its medium period to *reclusion temporal* in its minimum period,[1] if the act or acts committed by them are not punishable by higher penalties, in which case, they shall suffer such high penalties.

If any of the arms carried by any of said persons be an unlicensed firearm, it shall be presumed that said persons are highway robbers or brigands, and in case of conviction, the penalty shall be imposed in the maximum period. *(As amended by Republic Act No. 12)*

There is brigandage when —

1. **There be *at least four armed persons.***
2. **They *formed* a band of *robbers.***

[1]See **Appendix "A," Table of Penalties, No. 25.**

3. The purpose is *any* of the following:

   a. To commit *robbery in the highway;* or

   b. To kidnap persons for the *purpose* of *extortion* or *to obtain ransom;* or

   c. To *attain* by means of *force* and *violence* any *other purpose.*

Must be a band of robbers.

Art. 306 mentions *"bands of robbers"* which is formed by more than three armed persons.

Hence, a band of dissidents whose purpose is to attain by means of force and violence, the destruction of army installations, cannot be convicted of brigandage. They do not form a band of robbers.

The existence of any of the purposes mentioned in Art. 306 is sufficient.

It would not be necessary to show, in a prosecution under Art. 306, that a member or members of the band actually committed highway robbery, etc., in order to convict him or them.

The purpose of the band must be (1) to commit robbery in the highway, or (2) to kidnap persons for the purpose of extortion or obtaining ransom, or (3) any other purpose to be attained by means of force and violence.

Evidence that the accused was a member of an armed band is not sufficient to convict him of brigandage, where there is no evidence showing that the band was organized for any of the purposes mentioned in Art. 306. (U.S. vs. Caneta, 4 Phil. 450)

But if the accused were members of a *lawless band* and that the firearms possessed by them were unlicensed, it is to be presumed that they were highway robbers or brigands. (People vs. De la Rosa, C.A., 49 O.G. 2863)

Note: This ruling is based on par. 3 of Art. 306.

Presumption of law as to brigandage — all are presumed highway robbers or brigands, if any of them carries unlicensed firearm.

If *any* of the arms carried by *any* of said persons be an *unlicensed firearm,* it shall be presumed that said *persons* are highway robbers or

brigands, and in case of conviction, the penalty shall be imposed in the maximum period. (Art. 306, last paragraph)

The arms carried by the members of the band of robbers may be any deadly weapon.

Brigandage may be committed without the use of firearms. The term "armed" as used in the first paragraph of Art. 306 covers arms and weapons in general, not necessarily firearms. (People vs. De la Rosa, *et al.*, C.A., 49 O.G. 2863)

Main object of law is to prevent formation of band of robbers.

The main object in enacting this law (Art. 306) is to *prevent the formation* of such band; in fact, the heart of the offense consists in the formation of the band by four or more persons conspiring together for the purpose of robbery in the highway, or kidnapping persons for extortion or to obtain ransoms, or for any other purpose to be attained by means of force and violence, and *such formation is sufficient* to constitute a violation of the law. (U.S. vs. Decusin, *et al.*, 2 Phil. 536)

The only things to prove are:

a. That there is an organization of more than three armed persons forming a band of robbers.

b. That the purpose of the band is any of those enumerated in Art. 306.

c. That they went upon the highway or roamed upon the country for that purpose. (See U.S. vs. Decusin, *et al., supra)*

d. That the accused is a member of such band.

Previous activities considered in determining existence of brigandage.

When the armed band, previous to kidnapping and taking personal property of the offended party, had *kidnapped* and *looted other persons on two other occasions,* the band was held to be that of brigands and liable for brigandage. (People vs. Laporeda, *et al.*, 44 O.G. 1816)

Note: The previous activities of the armed band were considered, because they proved the purpose of the band.

The term "highway" includes city streets.

Streets *within,* as well as roads outside the cities are covered by the

word "highway." Hence, brigandage may be committed in Manila. (U.S vs Tan Seco, *et al.*,4 Phil. 382)

"If the act or acts committed by them (brigands) are x x x punishable by higher penalties in which case, they shall suffer such high penalties."

The penalty of *prision mayor* in its medium period to *reclusion temporal* in its minimum period is prescribed for brigandage only. If the brigands committed robbery with homicide or kidnapping with a demand for ransom, which is penalized with higher penalty, they shall be prosecuted for robbery with homicide or kidnapping and the penalty for the crime actually committed shall be imposed on them.

Brigandage and robbery in band, distinguished.

Both brigandage and robbery in band require that the offenders form a band of robbers.

In brigandage, the purpose of the offenders is any of the following: (1) to commit robbery in the highway, or (2) to kidnap persons for the purpose of extortion or to obtain ransom, or (3) for any other purpose to be attained by means of force and violence; in robbery in band, the purpose of the offenders is only to commit robbery, not necessarily in the highway.

If the *agreement* among more than three armed men was *to commit* only a *particular robbery,* the offense is not brigandage, but only robbery, in band. (U.S. vs. Feliciano, 3 Phil. 422)

In brigandage, the *mere formation of a band* for any of the purposes mentioned in the law is sufficient, as it would not be necessary to show that the band actually committed robbery in the highway, etc.; in robbery in band, it is necessary to prove that the band *actually committed robbery,* as a mere conspiracy to commit robbery is not punishable.

Art. 307. ***Aiding and abetting a band of brigands.*** — Any person knowingly and in any manner aiding, abetting, or protecting a band of brigands as described in the next preceding article, or giving them information of the movements of the police or other peace officers of the Government (or of the forces of the United States Army, when the latter are acting in aid of the Government), or acquiring or receiving the property taken by such brigands, shall be punished by

prision correccional in its medium period to *prision mayor* in its minimum period.[2]

It shall be presumed that the person performing any of the acts provided in this article has performed them knowingly, unless the contrary is proven.

Elements:

1. That there is a band of brigands.
2. That the offender knows the band to be of brigands.
3. That the offender does any of the following acts:
   a. He in any manner *aids, abets* or *protects* such band of brigands; or
   b. He gives them information of the movements of the police or other peace officers of the Government; or
   c. He acquires or receives the property taken by such brigands.

Presumption of law as to knowledge.

It shall be presumed that the person performing any of the acts provided in this article has performed them knowingly, unless the contrary is proven. (Art. 307, par. 2)

Highway robbery/brigandage under Presidential Decree No. 532.

Highway Robbery/Brigandage. — The seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of persons or force upon things or other unlawful means, committed by any person on any Philippine Highway.

The penalty of *reclusion temporal* in its minimum period shall be imposed. If physical injuries or other crimes are committed during or on the occasion of the commission of robbery or brigandage, the penalty of *reclusion temporal* in its medium and maximum periods shall be imposed. If kidnapping for ransom or extortion, or murder or homicide, or rape is committed as a result or on the occasion thereof, the penalty of death shall be imposed.

[2]See Appendix "A," Table of Penalties, No. 16.

Philippine Highway. **— It shall refer to any road, street, passage, highway and bridges or other parts thereof, or railway or railroad within the Philippines used by persons, or vehicles, or locomotives or trains for the movement or circulation of persons or transportation of goods, articles, or property or both.**

Any person who aids or protects highway robbers or abets the commission of highway robbery or brigandage shall be considered as an accomplice.

Any person who knowingly and in any manner aids or protects highway robbers/brigands, such as giving them information about the movement of police or other peace officers of the government, or acquires or receives property taken by such brigands or in any manner derives any benefit therefrom; or any person who directly or indirectly abets the commission of highway robbery or brigandage, 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.

Repealing Clause. **— Pertinent portions of Act No. 3815, otherwise known as the Revised Penal Code; and all laws, decrees, or orders or instructions, or parts thereof, insofar as they are inconsistent with this Decree are hereby repealed or modified accordingly. (Presidential Decree No. 532, took effect on August 8, 1974)**

Chapter Three

THEFT

Theft, defined.

Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Art. 308. ***Who are liable for theft.*** **— Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.**

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and

3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

The following are liable for theft:

1. Those who, (a) ***with intent to gain,*** **(b) but** ***without*** **violence against or intimidation of persons nor force upon things, (c)** ***take,*** **(d)** ***personal property,*** **(e)** ***of another,*** **(f)** ***without the latter's consent.***

See P.D. No. 1612 under Art. 19, Book 1.

2. Those who, (a) having *found lost property,* (b) *fail* to *deliver* the same to the *local authorities* or *to its owner.*

3. Those who, (a) after having maliciously damaged the property of another, (b) *remove* or *make use of the fruits* or *object* of the damage caused by them.

4. Those who (a) *enter an inclosed estate* or a *field* where (b) *trespass is forbidden* or which belongs to another and, *without the consent of its owner,* (c) *hunt* or *fish* upon the same or *gather* fruits, cereals or other forest or farm products.

Elements of theft:

1. That there be taking of personal property.

2. That said property belongs to another.

3. That the taking be done with intent to gain.

4. That the taking be done without the consent of the owner.

5. That the taking be accomplished without the use of violence against or intimidation of persons or force upon things. (U.S. vs. De Vera, 43 Phil. 1000; People vs. Yusay, 50 Phil. 598)

Note: In the case of *U.S. vs. De Vera, supra,* the phrase "taking away" is used in stating one of the elements of theft. But in the case of *People vs. Yusay, supra,* citing Viada, the word "away" is not used in connection with the taking of personal property.

Theft, distinguished from robbery.

What distinguishes theft from robbery is that in theft, the offender does not use violence or intimidation or does not enter a house or building through any of the means specified in Article 299 or Article 302 in taking personal property of another with intent to gain.

There is no evidence that in taking the six roosters from their coop or cages in the yard of Baylon's house, violence against or intimidation of persons was employed. Hence, Article 294 of the Revised Penal Code cannot be invoked. Neither could such taking fall under Article 299 of the Revised Penal Code which penalizes robbery in an inhabited house *(casa habitada),* public building or edifice devoted to worship. The coop was not inside Baylon's house. Nor was it a dependency thereof within the meaning of Article 301 of the Revised Penal Code. (People vs. Jaranilla, 55 SCRA 563)

Meaning of "taking" in theft.

In theft, the *taking away or carrying away* of personal property of another is not *required* as in larceny in common law. (People vs. Mercado,

65 Phil. 665) Note the phrase used in Art. 308, which is, "shall *take* personal property of another" — not shall take away such property.

The theft was consummated when the culprits were able to take possession of the thing taken by them. It is not an indispensable element of theft that the thief carry, more or less far away, the thing taken by him from its owner. (People vs. Jaranilla, 55 SCRA 563)

People vs. Naval, et al.
(46 O.G. 2641)

Facts: While the truck loaded with bed sheets was enroute to its destination, the accused dumped one of the boxes, containing 120 bed sheets, on the ground, whereupon they were immediately arrested by a plain clothesman who was with them on the truck, pretending to be a laborer.

It is contended by the accused that the crime of theft was not consummated. It is urged that the first essential element of the crime of theft is that the property be *actually taken away* by the thief or that the thief must have obtained, at some particular moment, the complete, independent and absolute possession and control of the thing desired, adverse to the right of the owner or lawful possessor thereof.

Held: In a juridical sense, the *consummation* of the crime of theft takes place upon the *voluntary and malicious taking* of the property belonging to another *which is realized by the material occupation of the thing* whereby the thief places it under his control and in such a situation as he could dispose of it at once.

Note: This ruling applies also to the meaning of "taking" in robbery with violence against or intimidation of any person.

When is taking complete so that the theft is consummated?

In the case of *People vs. Naval, et al., supra,* the taking is considered complete only when the offender is able to place the thing taken *under his control* and *in such a situation as he could dispose of it at once.*

In other cases, it was held that asportation is complete from the moment the offender had *full possession* of the thing, *even if he did not have an opportunity to dispose of the same.*

Illustrations:

1. While the accused was behind the offended party, in the midst of a crowd in front of the public market, he abstracted from the pocket of the trousers of the offended party, a pocketbook containing P12. The accused already had the pocketbook, when the offended party

perceived the theft, caught hold of the accused's shirt-front, at the same time shouting for a policeman; after a struggle he recovered his pocketbook and let go of the accused, who was afterwards caught by a policeman.

It was held that the contention that these facts only constitute the crime of frustrated, and not consummated, theft is groundless. The accused succeeded in taking the pocketbook, and that determines the crime of theft. (People vs. Sobrevilla, 53 Phil. 227)

2. The defendant took from a chest a sum of money belonging to the offended party and then placed it over the cover of the chest. At the moment, he was caught by two guards.

Held: The defendant having materially taken possession of the money from the moment he took it from the place where it had been, and having taken it with his hands with intent to appropriate the same, he executed all the acts necessary to constitute the crime which was thereby produced. On *the act of making use of the money was frustrated, which, however, does not go to make the elements of consummated theft.* (Decision of the Supreme Court of Spain, June 13, 1882)

When the place is surrounded by a fence or wall and one has to pass to check point before going out, is the taking complete before passing through the check point?

A truck loaded with stolen boxes of rifles was on the way out of the check point in South Harbor surrounded by a tall fence when an MP guard discovered the boxes on the truck. It was held that the crime committed was frustrated theft, because of the timely discovery of the boxes on the truck before it could pass out of the check point. (People vs. Diho, C.A., 45 O.G. 3446)

In the Supply Depot at Quezon City, the accused removed from the pile nine pieces of hospital linen and took them to their truck where they were found by a corporal of the MP guards when they tried to pass through the check point. It was held that the crime committed was consummated theft. (People vs. Espiritu, *et al.*, CA-G.R. No. 2107-R, May 31, 1949)

Distinguished from the Diño case.

In the *Espiritu* case, it was held that the crime of theft was consummated because the thieves were able *to take or get hold of* the hospital linen and that the only thing that was frustrated, which does not constitute any element of theft, is the use or benefit that the thieves expected to derive from the commission of the offense.

In the *Diño* case, it was held that the crime committed is that of frustrated theft, because the fact determinative of consummation in the crime of theft is the *ability* of the offender to *dispose freely* of the articles stolen, even if it were more or less momentarily. The Court of Appeals followed the opinion of Viada in this case. (See 5 Viada, 103)

The ruling in the case of *People vs. Dino, supra,* should be applied only in theft of bulky goods.

There is no substantial variance between the circumstances in this case and those in the cited case of *People vs. Dino.*

We cannot bring ourselves to agree in the appellee's contention that the crime was consummated. The "traditional ruling" cited by the appellee is qualified by the words "is placed in a situation where he could dispose of its contents at once." Obviously, while the truck and the van were still within the compound, the appellant could not have disposed of the goods "at once." This is entirely different from the case where a much less bulky and more common thing as money was the object of the crime, where freedom to dispose or make use of it is palpably less restricted. (People vs. Flores, C.A., 62 O.G. 2644)

Must taking in theft have the character of permanency?

People vs. Fernandez, et al.
(C.A., 38 O.G. 985)

The accused, who were servants of the owner of a car, taking advantage of their master's sleep, quietly took from the garage, the car and used it for a drive to several places in Manila, with four lady companions. When prosecuted for qualified theft, the accused claimed that they took the car only to take a spin and learn to drive it, their intention being to return it after a few hours. The theory of the defense is that the accused did not incur liability for qualified theft, because the element of *animus lucrandi* (intent to gain) is lacking.

It was held that the essential requisites of qualified theft were present: *First,* there was the taking of another's personal property, as the accused took away the car of the offended party. *Second,* there was intent to gain, because, in the words of Groizard, "by using things, we derive from them utility, satisfaction, enjoyment, pleasure, or what amounts to the same thing, real gain." By gain is meant not only the acquisition of a thing useful to the purposes of life but also the benefit which in any other sense may be derived or expected from the act which is performed. The accused, who used the car to take their lady friends for a ride, derived gain from the use of

this means of transportation. *Third,* the taking of the car was without the consent of the owner thereof, as they took advantage of the owner's sleep. And *fourth,* the accused being domestic servants of the offended party, acted with abuse of the confidence reposed in them by him.

People vs. Galang, et al.
(C.A., 43 O.G. 577)

A policeman who was entering a theater for the purpose of looking for a person, requested several boys outside to keep watch over his jeep. Moved by a desire of having a joy ride, the accused boarded the jeep, after leaving word to the other boys to inform the policeman that they would return soon, and drove it around Plaza Sta. Cruz.

It was held that the accused were not guilty of qualified theft of motor vehicle, because their intention was to return it after the joy ride.

Note: The accused should have been prosecuted for a violation of Sec. 48 (a) of the Motor Vehicle Law, which penalizes the act of taking a joy ride in a motor vehicle without the owner's consent.

The element of "taking" referred to in the law means the act of depriving another of the possession and dominion of movable thing coupled *with the* intention, at the time of the "taking," of *withholding* it with the *character* of permanency.

People vs. Rico, et al.
(C.A., 50 O.G. 3103)

The youngsters took the horses of the complainants without the latter's knowledge and consent, and rode on them in order to get more quickly to the place of a barrio dance. Their intention was to return the horses to their owners after they would have returned from the dance.

It was held that although intent to gain may have existed in the commission of the act, as such intent is indicated in the case of *People vs. Fernandez* (38 O.G. 985), the "taking" of the horses, another essential element of the offense of theft, was not duly established, because the "taking" referred to in Article 308 must be accompanied by the intention, *at the time of the* taking, of withholding the thing with character of permanency.

Note: The ruling in the cases of *People vs. Fernandez, et al. supra,* and *People vs. Martisano et al.*, C.A., 48 O.G. 4417, considers the *taking* of the motor vehicle belonging to another *for a joy ride or to use it as a means of transportation* as qualified theft, even if the motor vehicle was intended to be returned after its use. But what was mainly considered in these cases is the meaning of intent to gain.

The offender must have the intention of making himself the owner of the thing taken.

In the case of *People vs. Rico, supra,* the decision of the Supreme Court of Spain of November 28, 1903, is cited as to the meaning of the term "apoderar" or "apoderarse," that is, the offender must have the *intention of placing the* property taken under *his* control and *of* making *himself the* owner *thereof.*

There is "taking" even if the offender received the thing from the offended party.

The unlawful taking may occur at or *soon after* the transfer of physical possession (not juridical possession) of the thing to the offender. The actual transfer of possession may not always and by itself constitute the unlawful taking, but an act *done* soon *thereafter by* the offender which may *result in unlawful* taking or asportation. In such case, the article is deemed to have been taken also, although in the beginning, it was in fact given to, and received by, the offender. (People vs. Roxas, C.A., 63 O.G. 716, citing Supreme Court decisions)

Illustration:

The accused, Nieves de Vera, *received* from an Igorot named Pepe, a bar of gold for the purpose of having it examined by a goldsmith, and P200 in bank notes to have them changed into silver coins, and thereafter appropriated said bar of gold and notes with intent to gain and without the consent of the owner thereof.

Held: That the accused is guilty of the crime of theft. (U.S. vs. De Vera, 43 Phil. 1000)

Note: Although the accused received the bar of gold and notes from the owner thereof, her subsequent felonious conversion of them *related back* to the time she received them, so that the bar of gold and notes are deemed to have been unlawfully taken by the accused.

But if the accused received the thing from another person in *trust* or *on commission,* or *for administration,* or *under a quasi-contract* or *a contract of bailment,* and later misappropriated or converted the thing to the prejudice of another, the crime committed is not theft, but estafa under Art. 315, par. 1(b), because under any of those transactions, the *juridical possession* of the thing is transferred to the offender.

In the case of *U.S. vs. De Vera, supra,* the accused, not having received them in trust, or on commission, or for administration, or under a quasi-contract, did not have juridical possession of the bar of gold and bank notes.

She had only the physical or material possession thereof. Hence, she was guilty of theft.

If there is no taking of personal property, the crime of theft is not committed.

The wife who delivers to the husband, property in her lawful possession as depositary or pledgee, without the knowledge and consent of the owner, might be guilty of a violation of the contract of deposit or pledge; but the husband who pawns the property and uses the proceeds thereof to settle his obligations, as per understanding with the wife, is not guilty of theft although he knew that the property did not belong to his wife, because there was no taking or abstracting of the article from the owner, the taking and abstracting being what constitute the crime of theft. (People vs. De los Reyes, C.A., 60 O.G. 5175, citing the case of U.S. vs. Reyes, 6 Phil. 441)

Note: The Court of Appeals held that there was only civil liability in this case.

Personal property.

Personal property as an element of theft includes electricity and gas because electricity, the same as gas, is a valuable article of merchandise bought and sold like other personal property and is capable of appropriation by another. (U.S. vs. Carlos, 21 Phil. 553; U.S. vs. Tambunting, 41 Phil. 364)

A meter reader of the Manila Electric Company who, in consideration of money, knowingly misread the electric meter of a consumer and this enabled the latter to appropriate 11,880 kilowatts of electric current, without paying for it, is guilty of theft. The resulting situation does not materially differ from the consumer who used a "jumper" to deflect the current from the house electric meter. (Natividad vs. Court of Appeals, *et al.*, 1 SCRA 380)

Promissory note and *check* may be the object of theft, because while they may not be of value to the accused, they undoubtedly are of value to the offended party. (People vs. Koc Song, 63 Phil. 371; U.S. vs. Raboy, 25 Phil. 1)

Thus, if the invoice is stolen, the owner of the store would be unable to collect his credits, because the customers cannot be compelled to pay without it being first shown to him. (People vs. Mendoza, CA-G.R. No. 44473, March 25, 1936)

The amount which a document represents must serve as the basis of the penalty. (U.S. vs. Tan Jenjua, 1 Phil. 38)

That the property belongs to another.

Thus, he who takes away the property pledged by him to another, without the latter's consent, does not commit theft, but estafa, for he is the owner of the thing taken by him.

Selling the share of a partner or joint owner is not theft.

His unlawful disposition of the share belonging to his partner or joint owner was undoubtedly a violation of their contract and a trespass upon the rights of another but not an act constituting the crime of theft. (U.S. vs. Reyes, 6 Phil. 441)

Note: Before the dissolution of the partnership or the division of the property held in common, no part of the property of the partnership or the property held in common truly belongs to a partner or co-owner.

See *People vs. Tan Tay Cuan,* C.A., 57 O.G. 6964, where the reason given by the Court of Appeals is that the industrial partner has *juridical possession* of the property acquired with funds supplied by the capitalist partner.

Employee is not the owner of separation pay which is not actually delivered to him.

The three accused were notified by their employer of the termination of their services with separation pay of P120.00 each. In his office, the employer placed three envelopes containing P120.00 each on top of his desk. The employer coughed and left to expectorate and, while expectorating, one of the accused took the three envelopes and gave his co-accused one envelope each. When the employer returned and found that the envelopes were already in the possession of the accused, he told the accused that they could not leave with the money without first signing the separation papers showing receipt of the money. The accused refused to sign. The employer went out to call a police officer, and when he returned, the accused were already gone. Prosecuted for theft, the accused maintained that an element of the crime, *i.e.*, that the property taken belongs to another, is not present, claiming that the money belonged to them.

Held: The fact that the accused are entitled to separation pay under Section 1 of Republic Act No. 1052, as amended, and have agreed to receive P120.00 each as separation pay, did not automatically vest ownership of the money in them for lack of proper delivery. The signing of the separation papers was a condition which the employer intended to impose before making delivery. Hence, when the accused took the money without signing the papers, they were taking something which did not belong to them. (People vs. De Jesus, *et al.*,C.A., 59 O.G. 6658)

Note: The accused denied on the stand that they took the money. The *denial* of the accused that they took the money, when in fact they did, is enough proof that the act of taking was done with intent to gain, and not for the purpose of applying the money to their claim for separation pay.

Ownership not transferred before goods are weighed or measured.

In the sale of goods, which are usually *tried, measured* or *weighed,* if, after the sale *but before the measuring* or *weighing,* a part of the goods covered by the contract is taken by the purchaser, without the consent of the vendor, he is guilty of theft, because until the weighing or measuring is done, the *transfer of the ownership* is not effected.

As to intent to gain.

Intent to gain is presumed from the unlawful taking of personal property belonging to another.

But if a person takes personal property from another believing it to be his own, the presumption of intent to gain is rebutted and, therefore, he is not guilty of theft. (US. vs. Viera, 1 Phil. 584)

One who takes personal property *openly* and *avowedly under* claim of *title* made in *good faith* is not guilty of theft even though the claim of ownership is later found to be untenable. (People vs. Lozada, CA-G.R. No. 3147-R, Dec. 21, 1949)

But where the accused took the harvested crops on the land cultivated by the complainant *who had been adjudged the owner of said land* in a civil case brought by the accused against him, the accused *was not acting in good faith* and, hence, he was guilty of theft. (U.S. vs. Villacorta, 30 Phil. 108)

Satisfaction and pleasure derived from the act of giving to another what had been stolen is a real gain.

Defendant took and carried away some building materials without the owner's knowledge and consent and gave *them to another person. Held:* There is theft even if defendant did not take them for his own use. (People vs. Santos, 53 Phil. 863)

Joy ride or using car of another to learn how to drive is sufficient gain.

A joy ride in an automobile taken without the consent of its owner constitutes "taking with intent to gain" because "by using things, we derive from them utility, satisfaction, enjoyment, and pleasure, or what amounts to the same thing, real gain." (People vs. Fernandez, C.A., 38 O.G. 985)

Is there intent to gain when the employee took the papers of his employer and delivered them to the government investigators as an act of revenge?

By the word gain is meant not only the acquisition of a thing useful to the purpose of life but also the benefit which in any other use may be derived or expected from the act which is performed.

In the case at bar, where the accused took the books, papers and documents from the files of his employer and then delivered them to the Committee on Good Government, House of Representatives, with which he filed charges of tax evasion and bigamy against his employer, he undoubtedly acted with intent to gain, for he derived therefrom the utility of presenting them as evidence, the satisfaction of taking revenge against his employer, and the pleasure of seeing his said employer being harassed by government investigators. (People vs. Padilla, C.A., 61 O.G. 2027)

Dissenting:

Animo lucrandi means, as Viada says, *"uno vil codicia"* and not *"un sentimiento de odio o de venganza."* (Viada, 6:221, 5.a edicion) Since the jurisprudence cited by the majority, namely, *People vs. Fernandez* and *People vs. Martisano,supra,* involves cases where the accused took the thing, object of the crime, for the satisfaction of his *"vil codicia,"* it cannot be considered an authority in the present case, where the appellant, by his act of delivering the records to the Committee on Good Government to convince that Committee that said records would reveal complainant's tax evasion, demonstrated that his intention was not to satisfy his greed but to take revenge against the complainant.

Actual or real gain, not necessary in theft.

It is not necessary that there was real or actual gain on the part of the offender or that he removed the stolen animals in order to make use of or derive some benefit from them. It is enough that on taking them, he was then actuated by the desire or intent to gain. (People vs. Mercado, 65 Phil. 665)

Taking without the consent of the owner.

The consent contemplated in this element of theft refers to consent freely given and not to one which may only be inferred from mere lack of opposition on the part of the owner of the property taken.

Thus, the accused, who picked the pocket of the offended party while the latter was hearing mass in a church and the latter, on account of the solemnity of the act, although noticing the theft, did not do anything to

prevent it, took the money of the offended party *without his consent.* (Decision of the Supreme Court of Spain, Dec. 1, 1897)

Note: The law does not say without the knowledge of the owner of the thing taken. Hence, even if the owner knew the taking, but he did not consent to it, the accused is still liable for theft.

Allegation of owner's lack of consent cannot be dispensed with in charging an ordinary theft.

We are aware that some decisions state that the crime of theft does not require that the culprit should know the owner of the thing stolen. Other authorities declare that it is not necessary for the existence of the crime of theft that it should appear in a specific manner who is the owner of the thing stolen, and that the crime is consummated provided the thing belongs to another and the same is taken with intent of gain. (Decision, Supreme Court of Spain, Nov. 22, 1898 and October 4, 1905)

By and large, these pronouncements are merely generalizations designed to cover all varieties of theft, from the one where the thing stolen is taken directly from the owner's control to that committed by "any person who having found lost property, shall fail to deliver the same to the local authorities or to its owner" which is also theft under Article 308, paragraph 2(1), Revised Penal Code. The rulings, therefore, are not fully applicable to the present case, which does not involve property lost *(extraviada),* nor do they warrant the inference that the nonconsent of the owner or possessor can be excused.

In the ordinary course of events, the owner of the thing (whoever he should be) would not consent to the taking of his property without any consideration or *quid pro quo* therefor; nevertheless, the possibility of such consent remains and the law demands that it be negated in the information. That the owner's lack of consent can not be dispensed with in charging an ordinary theft under the first paragraph of Article 308 of the Penal Code, is shown by the express requirement therein that the taking should be without the consent of the owner. In view of the clear text of the law, an information or charge that does not aver this lack of consent is manifestly bad and insufficient, and may be quashed for failure to allege an essential element of the deficit. (Pua Yi Kun vs. People, G.R. No. L-26256, June 26, 1968)

There is no theft when the taking of personal property is with the consent of its owner.

A felonious taking is necessary in the crime of larceny and, generally speaking, a taking which is done with the consent or acquiescence of the owner of the property is not felonious. (People vs. Trinidad, 50 Phil. 65) Thus, an individual who took possession of the cattle in the presence of the cattleman charged with

the care thereof, without any opposition or protest on his part, *is not* guilty of the crime of theft inasmuch as he took the animal with the knowledge of the person presumed to be the owner. (U.S. vs. Dacanay, 8 Phil. 617; People vs. Sianson, CA-G.R. No. 9969-R, July 10, 1963, cited in People vs. Javier, C.A., 62 O.G. 6453)

Robbery and theft compared.

For robbery to exist, it is necessary that there should be a *taking against the will* of the owner; and for theft, it sufficed that consent on the part of the owner *is lacking.* (People vs. Chan Wat, 49 Phil. 116)

The taking of personal property belonging to another must be accomplished without violence against or intimidation of person.

A picked the pocket of *B* and, having taken *B's* wallet, A walked away. *B* felt that his wallet was gone. He looked around and saw A just a few meters away. *B* approached A and asked for his wallet. A threatened *B* with bodily harm, boxed the latter, and ran away. Is the crime committed by A theft or robbery? It is theft, because the taking of the wallet of *B* by A was *already complete* when A used violence against and intimidation of *B.*

The *rule* is *different* when the violence used resulted in homicide, rape, intentional mutilation, or serious physical injuries defined in paragraphs 1 and 2 of Art. 263. In any of such cases, the crime is robbery complexed with one of such crimes, even if the taking of the personal property was already complete when the violence was employed.

When no force or violence was employed in the taking, as victim was already heavily wounded.

In this case, the personal properties were taken after accused-appellant had already successfully carried out his primary criminal intent of killing the victim and the taking did not necessitate the use of violence or force upon the person of the victim nor force upon anything. Considering that the victim was already heavily wounded when his personal properties were taken, there was no need to employ violence against or intimidation upon his person. Accused-appellant can only be held guilty of the separate offense of theft. (People vs. Basao, G.R. No. 128286, July 20, 1999)

It is not robbery when violence is for a reason entirely foreign to the fact of taking.

A constabulary officer, suspecting that *B* had concealed and aided a band of robbers, tied *B* in his house as a punishment. Several hours later, he took the money with intent to gain from an open drawer of *B.*

Is this theft or robbery?

Held: **The fact that the owner of the money was tied at the time the money was taken cannot be considered as violence for the purpose of classifying the crime as robbery. The offended party was tied for some hours previously for a reason entirely foreign to the act of taking the money (U S vs. Birueda, 4 Phil. 229)**

Force upon things in theft.

Unless the *force upon things* is employed to *enter a building,* the taking of the personal property belonging to another with intent to gain is theft and not robbery.

Thus, if A *entered* the house of B through an *open door* and once inside he removed by force, toilet fixtures and carried them away, A is liable for theft in spite of the use of force upon things, because the force was not employed to enter the house.

The only case where the taking of personal property with force upon things is robbery, even if the culprit did not enter the house or building with force upon things, is when a furniture, chest, or other locked or sealed receptacle is broken in the house or building or taken therefrom and broken outside.

Taking a bull belonging to the offended party from the corral where it was inclosed, after *destroying a part of the corral,* is theft, because the corral *was not covered* and not in any way connected with an inhabited house. (U.S. vs. Rosales, *et al.*, 1 Phil. 300) The reason for the ruling is that the corral is neither a building nor a dependency of a building.

Presumption as to possession of stolen property.

When a person has in possession, part of the *recently* stolen property, he is presumed to be the thief of all, in the absence of satisfactory explanation of his possession. (U.S. vs. Ungal, 37 Phil. 835)

Note: **The rule stated in this case applies only when all the goods were lost *at the same time,* in *the same place,* and on *the same occasion.* It does not apply where the things disappeared piece by piece, at different times and on different occasions, and only a part of them was found in the possession of the accused, in the absence of proof that he had the opportunity to take the rest at other times.**

When the stolen property is not found in the possession of the accused, his prior possession may be proved by circumstantial or direct evidence of his disposal of the property (36 C.J. 895, 896), in which case the presumption attaches to him. The presumption regarding possession of stolen property

does not exclusively refer to actual physical possession thereof but may include prior unexplained possession. (People vs. Tanaotanao, 2 C.A. Rep. 797)

Note: It is required that the property be recently stolen. Hence, if the property was stolen a *long time ago,* the presumption does not lie.

The presumption does not arise in this case.

When *all* the *recently stolen effects,* like carabaos in this case, have been *found* and *recovered,* one in the possession of the accused and another in the pasture, untied, the presumption cannot rise, as it lacks basis. It is not reasonable to believe that the accused had retained one in their possession and freed the other in the pasture. (People vs. Beltran, *et al.,* C.A., 40 O.G., Supp. 11, 153)

Finder of lost property (Paragraph No. 1, Art. 308).

Perez, who had in his possession the sum of P150 in paper money, hurried to the ticket window of a railroad station, at the same time drawing out from his watch-pocket P2.00 to buy a ticket. Unnoticed by him, the bundle of money bills dropped at his feet. The accused, a woman, who was passing by at that moment, picked up the bundle of bills, and, hastily concealing said bundle, moved on up the platform. After Perez had returned from the ticket window, the accused approached him and handed P30 in bills, saying that was the money he had dropped. She kept the rest of the money.

Held: The accused is guilty of theft as a finder of lost property who retained part of it with intent to gain. (U.S. vs. Santiago, 27 Phil. 483)

The term "lost property" embraces loss by stealing.

The accused was charged with having found and "kept in his possession one male horse x x x belonging to Felix Muertigue, said accused knowing x x x that the horse was stolen x x x and deliberately failed x x x to deliver the same to the authorities or to its owner."

Appellee contends that since the complaint refers to a stolen horse, it does not fall under paragraph No. 1 of Art. 308, "stolen property" not being the same as "lost property." The argument is without merit. The word "lost" is generic in nature, and embraces loss by stealing or by any act of a person other than the owner, as well as by the act of the owner himself or through some casual occurrence. If anything, the finder who fails deliberately to return the thing lost may be considered more blameworthy if the loss was by stealing than through some other means. (People vs. Rodrigo, 16 SCRA 475)

How to prove this kind of theft.

It is necessary to prove:

(1) The *time* of the seizure of the thing;

(2) That it was a *lost* property *belonging to another;* and

(3) That the accused *having had the opportunity* to return or deliver the lost property to its *owner or to the local authorities,* refrained from doing so. (People vs. Jerusalem, C.A., 43 O.G. 1253)

Delay in the delivery of lost property to the local authorities is immaterial, when the finder surrendered it voluntarily to the owner when the latter came to his house to get it.

Thus, in a case where a rig driver, who found on the road a valise containing clothes and other articles, failed to deliver it to the authorities for *41/2* days after finding it, it was held that he was not guilty of theft under paragraph No. 1 of Art. 308, it appearing that he surrendered the valise with all its contents to the owner when the latter came to his house to get it. (People vs. Carani, C.A., 1943 O.G. 60)

Paragraph No. 1 of Art. 308 not limited to actual finder.

A found in his carretela a purse containing money and jewelry left by a passenger. A delivered it to B, a policeman, with a request to give it to C, the owner thereof. B did not give it to C and appropriated it.

Held: B is liable for theft, because although B is not a finder in fact, he is a finder in law.

The finder (A) acquires physical custody only and does not become vested with the legal possession of the thing.

The person (B) to whom it was confided for delivery to its owner assumes, by voluntary substitution, as to both the property and its owner, the place occupied by the finder. (People vs. Avila, 44 Phil. 720)

The gist of this offense is the *furtive taking* and *misappropriation* of the property found. (People vs. Avila, *supra)*

Note: The finder of lost property has only the physical possession of the property. The person who received it from the finder cannot have juridical possession of the property. The spring cannot rise above its source. Hence, the policeman in the case of *People vs. Avila, supra,* cannot be held liable for estafa.

The law does not require knowledge of the owner of the lost property.

Due to a strong typhoon, a wooden chest containing money, jewelry, clothing and other personal property, was washed away by the flood. It was found by the accused. He took its contents.

Held: As long as the accused knew or had reason to know that the property was lost, it was his duty to turn it over to the authorities, regardless of whether or not he knew who was the owner of the lost property. The Revised Penal Code does not require knowledge of the owner of the lost property. (People vs. Panotes, *et al.*, C.A., 36 O.G. 1008; People vs. Silverio, C.A., 43 O.G. 2205)

Intent to gain is inferred from deliberate failure to deliver the lost property to the proper person.

In this kind of theft, intent to gain is inferred from the deliberate failure to deliver the lost property to the proper person, the finder knowing that the property does not belong to him. (People vs. Rodrigo, 16 SCRA 475)

Finder of hidden treasure who misappropriated the share pertaining to the owner of the property is guilty of theft as regards that share.

The finder of hidden treasure on *the property of another and* by *chance* is entitled to one-half thereof. (Arts. 438 and 439, C.C.) If he misappropriated the other half pertaining to the owner of the property on which the hidden treasure was found, he is liable for theft as to that share. (People vs. Longdew, CA-G.R. No. 9380-R, June 4, 1953)

Removing or making use of fruits or object of property maliciously damaged (Paragraph No. 2, Art. 308).

A defendant who shot, killed and slaughtered the cattle of another, which had destroyed defendant's plantation, and distributed the meat among himself and his neighbors, is guilty of *simple* theft. (People vs. Morillo, 40 O.G., Supp. 4, 107)

Hunting, fishing or gathering fruits, etc., in enclosed estate (Paragraph No. 3, Art. 308).

Elements:

1. That there is an *enclosed estate* or a *field* where *trespass is forbidden* or which belongs to another;

2. That the offender enters the same;

3. That the offender *hunts* or *fishes upon* the *same* or *gathers* fruits cereals or other forest or farm products in the estate or field; and

4. That the hunting or fishing or gathering of products is *without the consent* of the owner.

Fishing should not be in the fishpond within the field or estate.

The fishing referred to in this article is *not* in the fishpond or fishery. If the fish is taken from fishpond or fishery, it is qualified theft under Article 310.

Presidential Decree No. 534, which took effect on August 8, 1974, defines illegal fishing and prescribes stiffer penalties therefor, as follows:

Prohibition.

It shall be unlawful for any person to catch, take or gather or cause to be caught, taken or gathered fish or fishery/aquatic products in Philippine waters with the use of explosives, obnoxious or poisonous substances or by the use of electricity. *Provided,* That the Secretary of Natural Resources may, subject to such safeguards and conditions he deems necessary, allow for research, educational or scientific purposes only the use of explosives, obnoxious or poisonous substance or electricity or catch, take or gather fish or fishery/aquatic products in specified areas. (Sec. 2)

Penalties.

Violations of this Decree and the rules and regulations mentioned in paragraph (f) of Section 1 hereof shall be punished as follows:

a. By imprisonment from 10 to 12 years, if explosives are used: *Provided,* That if the explosion results (1) in physical injury to any person the penalty shall be imprisonment from 12 to 20 years, or (2) in the loss of human life, then the penalty shall be imprisonment from 20 years to life, or death;

b. By imprisonment from 8 to 10 years, if obnoxious or poisonous substances are used: *Provided,* That, if the use of such substances results in (1) physical injury to any person, the penalty shall be imprisonment from 10 to 12 years, or (2) in the loss of human life, then the penalty shall be imprisonment from 20 years to life, or death;

c. By imprisonment from 6 months to 4 years, or by a fine of from P500 to P5,000 for violation of the rules and regulations mentioned in paragraph (f) of Section 1 hereof. (Sec. 3)

Dealing in illegally caught fish or fishery/aquatic products.

Any person who knowingly possesses, deals in, sells or in any manner disposes of, for profit, any fish, fishery/aquatic products which have been illegally caught, taken or gathered shall, upon conviction by a competent court, be punished by imprisonment from 2 to 6 years. (Sec. 4)

Definition of Terms:

For purposes of this Decree the following terms are defined:

a. ***Philippine Waters.*** **— Include all bodies of water within Philippine Territory such as rivers, streams, creeks, brooks, ponds, swamps, lagoons, gulfs, bays and seas and other bodies of water now existing, or which may hereafter exist in the provinces, cities, municipalities, municipal districts, and barrios and the sea or fresh water around, between and connecting each of the islands of the Philippine Archipelago, irrespective of its depth, breadth, length and dimension, and all other waters belonging to the Philippines by historic or legal title, including the territorial sea, the seabed, the insular shelves and other submarine areas over which the Philippines has sovereignty or jurisdiction.**

b. ***Fish and Fishery/Aquatic Products.*** **— Fish includes all fishes and other aquatic animals such as crustaceans (crabs, prawns, shrimps and lobsters, mollusks (clams, mussels, scallops, oysters, snails and other shellfish). Fishery/aquatic products include all products of aquatic resources in any form.**

c. ***Fishing with the use of Explosives.*** **— Means the use of dynamite other explosives, or chemical compound that contain combustible elements or ingredients that, upon ignition by friction, concussion, percussion or detonation of all parts of the compound, kill, stupefy, disable or render unconscious any fish or fishery/aquatic products. It shall also refer to the use of any other substance and/or device that causes explosion capable of producing the said harmful effects on fish or fishery/aquatic products.**

d. ***Fishing with the use of Obnoxious or Poisonous Substance.*** **— Means the use of any substance or chemical, whether in raw or processed form, harmful or harmless, which kill, stupefy, disable, or render unconscious fish or fishery/aquatic products.**

e. ***Electro-fishing.*** **— Means the use of electricity generated by dry cell batteries, electric generators or other source of electric power to kill, stupefy, disable or render unconscious fish or fishery/aquatic products. It shall include the use of rays or beams of whatever nature, form or power.**

f. *Violations of Rules and Regulations.* — Means violations of Fisheries Administrative Orders, rules and regulations promulgated by the Secretary of Natural Resources.

g. *Persons.* — Include natural and juridical persons, unless the context intends otherwise. (Sec. 1)

Repealing Clause.

Act No. 4003, as amended, Republic Act No. 6451, laws, decrees, orders, rules and regulations or parts thereof which are inconsistent with this Decree are hereby repealed or modified accordingly. (Sec. 5)

"Highgrading" or theft of gold is punished by Presidential Decree No. 581.

Section 1. Any person who shall take gold-bearing ores or rocks from a mining claim or mining camp or shall remove, collect or gather gold-bearing ores or rocks in place or shall extract or remove the gold from such ores or rocks, or shall prepare and treat such ores or rocks to recover or extract the gold contents thereof, without the consent of the operator of the mining claim, shall be guilty of **"highgrading"** or theft of gold and shall suffer a penalty of *prision correccional* in its minimum period, but if the accused is an employee or laborer of the operator of the mining claim, the penalty shall be *prision correccional* in its medium period without prejudice to the imposition of the higher penalties provided in Article 309 of the Revised Penal Code if the value of the goods stolen so warrants. The penalty next lower in degree than that prescribed hereinabove shall be imposed if the offense is frustrated, and the penalty two degrees lower if the offense is attempted.

Section 2. The unauthorized possession by any person within a mining claim or mining camp of gold-bearing ores or rocks or of gold extracted or removed from such ores or rocks, shall be *prima facie* evidence that they have been stolen from the operator of a mining claim.

Section 3. Any person who knowingly buys or acquires stolen gold-bearing ores or rocks or the gold extracted or removed therefrom shall be guilty of theft as an accessory and penalized with *arresto mayor* in its maximum period.

Section 4. All laws or regulations inconsistent herewith are hereby repealed or modified accordingly.

Section 5. This Decree shall take effect immediately.

Done in the City of Manila, this 13th day of November, in the year of Our Lord, nineteen hundred and seventy-four.

The use of tampered water or electrical meters to steal water or electricity.

Presidential Decree No. 401, which took effect on March 1, 1974, punishes with *prision correccional* in its minimum period or a fine ranging from P2,000 to P6,000, or both, the unauthorized installation of water, electrical or telephone connections, *the use of tampered water or electrical meters to steal water or electricity,* the stealing or pilfering of water and/or electrical meters, electric and/or telephone wires, and *knowingly possessing stolen* or *pilfered water and/or electrical meters,* and stolen or pilfered electric and/or telephone wires.

See the Presidential Decree as to the liability of the employee or officer of the utility or service company, who connives with or permits the other offender to commit the violation.

Theft of electricity can be effected even without illegal or unauthorized installations of any kind by, for instance, any of the following means:

1) Turning back the dials of the electric meter;

2) Fixing the electric meter in such a manner that it will not register the actual electric consumption;

3) Under reading of electric consumption; and

4) Tightening screw of rotary blades to slow down rotation of the same. (People vs. Relova, 148 SCRA 292)

Theft is not a continuing offense.

The American rule that larceny is a continuing offense does not apply to theft because "carrying away," which is one of the characteristics of larceny, is not an essential ingredient of theft. (Duran, *et al.* vs. Tan, *et al.*, 85 Phil. 476) Thus, the theft of large cattle in Gapan, Nueva Ecija, was consummated in that municipality and the Court of First Instance of Pampanga to which province the large cattle was taken by the thief had no jurisdiction over the offense. The Court of First Instance of Nueva Ecija had jurisdiction over the offense. (People vs. Mercado, 65 Phil. 665)

Art. 309. ***Penalties.*** — Any person guilty of theft shall be punished by:

1. The penalty of *prision mayor* in its minimum and medium periods,[1] if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph and one year of each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal,* as the case may be.

2. The penalty of *prision correccional* in its medium and maximum periods,[2] if the value of the property stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

3. The penalty of *prision correccional* in its minimum and medium periods,[3] if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

4. *Arresto mayor* in its medium period to *prision correccional* in its minimum period,[4] if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.

5. *Arresto mayor* in its full extent,[5] if such value is over 5 pesos but does not exceed 50 pesos.

6. *Arresto mayor* in its minimum and medium periods,[6] if such value does not exceed five pesos.

7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of

[1]See Appendix "A," Table of Penalties, No. 23.
[2]See Appendix "A," Table of Penalties, No. 15.
[3]See Appendix "A," Table of Penalties, No. 14.
[4]See Appendix "A," Table of Penalties, No. 7.
[5]See Appendix "A," Table of Penalties, No. 1.
[6]See Appendix "A," Table of Penalties, No. 5.

the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.

8. *Arresto menor* in its minimum period[7] or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

Basis of penalty in theft.

The basis of the penalty in theft is (1) the *value* of the thing stolen, and in some cases (2) the *value* and also the *nature* of the property taken, or (3) the *circumstances* or *causes* that impelled the culprit to commit the crime.

When the offender, having entered an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of the owner, shall hunt or fish upon the same or shall gather fruits, *cereals,* or other *forest* or *farm products* and the *value of* the thing stolen *does not exceed P5.00* (Art. 309, par. 7), or when the offender shall have acted under the *impulse* of hunger, *poverty, or* the *difficulty* of earning *a livelihood* for the support of himself or his family and the value of the thing stolen is not over *P5.00* (Art. 309, par 8), the penalty is based not only on the value of the *property* stolen, but also on the nature of the property and on the circumstances and causes that impelled the culprit to commit the crime.

Offender is liable for theft of whole car taken to another place, even if tires only are taken away.

The owner of an automobile left it parked on the street and while he was absent, the car was stolen and taken to *another* part *of the* city where it was stripped of three tires, after which the thieves abandoned the car which was recovered the next day.

Are the thieves liable for the value of the whole car or only of the tires?

The thieves are liable for the value of the *whole car,* because the gist of the offense of larceny consists in the furtive taking and *asportation* of property, *animo lucrandi* and with intent to deprive the owner of the possession thereof. Since the thieves effectively deprived the owner of the

[7]From 1 day to 10 days.

possession of the *entire automobile,* the offense of larceny comprised the whole car. The deprivation of the owner and the trespass upon his right of possession were complete as to the entire car. (People vs. Carpio, 54 Phil 48)

Note: The rule will be different if the automobile was not taken away from the place where it was parked and only the tires were removed. In this case, the thieves will be liable only for the value of the tires.

When there is no evidence of value of property stolen.

If there is no available evidence to prove it or that the prosecution fails to prove it, the court should impose the minimum penalty corresponding to theft involving the value of P5.00. (People vs. Reyes, G.R. No. 38901, Oct. 2, 1933)

The court may also take judicial notice of its value in the proper cases, as in the case of jeep which has at least a value of P1,000. (People vs. Dela Cruz, 43 O.G. 3206)

When the resulting penalty for the accessory in theft has no medium period, the court can impose the penalty which is favorable to the accused.

When after lowering the penalty for theft by two degrees, the resulting penalty is *destierro* in its maximum period to *arresto mayor* in its minimum period, there being no medium or middle ground between the two penalties, the court can impose either one or the other, but one month and one day of *arresto mayor* is preferable, it being more favorable to the accused. (Cristobal vs. People, 84 Phil. 473)

Art. 310. *Qualified theft.* — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. *(As amended by Batas Pambansa Blg. 71, approved May 1, 1980)*

Theft is qualified —

1. If the theft is committed by a *domestic servant.*
2. If the theft is committed with *grave abuse of confidence.*
3. If the property stolen is a (a) *motor vehicle,* (b) *mail matter,* or (c) *large cattle.*
4. If the property stolen consists of coconuts taken from the premises of a plantation.
5. If the property stolen is *fish taken from a fishpond or fishery.*
6. If property is taken *on the occasion* of *fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.*

Penalty is two degrees higher.

The penalties for qualified theft are now next *higher by two degrees* than those respectively specified in the next preceding article. (Art. 310, as amended)

Theft by domestic servant is always qualified.

When the offender is a domestic servant, it is not necessary to show that he committed the crime with grave abuse of confidence. The phrase "with grave abuse of confidence" is separated by the word "or" from the term "domestic servant" in Art. 310.

Theft by a domestic servant is illustrated in the case of a house boy who stole P42.50 belonging to his master. (People vs. Evangelista, 70 Phil. 122)

The abuse of confidence must be grave.

Note the word "grave" describing "abuse of confidence" in the second kind of qualified theft. There must be allegation in the information and proof of a relation, by reason of *dependence, guardianship* or *vigilance,* between the accused and the offended party, that has created a *high degree* of confidence between them, which the accused abused. (See People vs. Koc Song, 63 Phil. 369)

An example of theft committed with grave abuse of confidence is that where the accused who was permitted to sleep in the house of the offended party out of charity, stole the latter's money in that house. (Mariano vs. People, 68 Phil. 724, People vs. Lingat, 40 O.G., Supp. 3, 7)

The fact that the accused was living in the house of the offended party, who had sheltered him out of charity, when he took the money belonging

to his protector, aggravates the crime committed by him, inasmuch as he *gravely abused* the confidence which the owner of the house reposed in him upon permitting him, out of charity, to live therein, stifling the sentiment of gratitude awakened in his bosom by his benefactor's charitable act. It is not necessary that the accused asked for shelter for charity's sake. The grave abuse of confidence need not be premeditated. Its presence in the commission of theft is sufficient. (People vs. Syou Hu, 65 Phil. 270)

Where the accused did not act with grave abuse of confidence.

Where the accused had taken advantage of his position in committing the crime of theft but did not act with grave abuse of confidence because his employer had never given him the possession of the machines involved or allowed him to take hold of them, and it does not appear that the former had any special confidence in him, the accused cannot be convicted of qualified theft. (People vs. Maglaya, 30 SCRA 606)

Theft by housemate is not always qualified.

But theft by housemate is not always qualified, because while this fact constitutes a certain abuse of confidence, since living together under the same roof engenders some confidence, it is not *necessarily grave.* (People vs. Koc Song, 63 Phil. 369)

The fact of living together in the same house may be *accidental* and the goods stolen might *not* have been *entrusted* to the *custody* or *vigilance* of the accused. (People vs. De la Cruz, 82 Phil. 388)

Theft by laborer is not qualified theft.

The mere circumstance that the accused worked as a laborer in the place where the theft was committed, does not suffice to create the relation of confidence and intimacy that the law requires. Theft by laborer is only simple theft. (People vs. Celis, 76 Phil. 369)

Theft by truck driver or by shepherd or by one who had access to the place where the stolen property is kept is qualified theft.

A truck driver who takes the load of his truck, or a shepherd who takes away and converts to his own use sheep *under his care,* is guilty of qualified theft (with grave abuse of confidence), not estafa. (Decisions of Sup. Ct. of Spain, July 14, 1904 and October 24, 1904)

The truck driver who took and sold part of the gasoline requisitioned for the use of the truck by its owner, through said driver, is guilty of qualified theft of the gasoline taken. (People vs. Batoon, C.A., 55 O.G. 1388)

The accused who smuggled radio tubes from a signal depot where he was working as a radio technician and, as such, *had access to the place* where were kept various items essential for repair and maintenance of radios, and sold radio tubes, is guilty of qualified theft. (See People vs. Jimenez, CA-G.R. No. 12094R, Jan. 29, 1955)

Security guards who steal from a bonded warehouse where they are hired to watch commit the crime of qualified theft (with grave abuse of confidence), even though they are hired and paid by the warehousing firm and not by the owner of the goods stolen. (People vs. Regamit, C.A., 72, O.G. 119)

Theft of any material, spare part, product or article by employees and laborers is heavily punished.

Any employee or laborer who shall steal any material, spare part, product or article that he is working on, using or producing shall, upon conviction, be punished with imprisonment ranging from *prision correccional to prision mayor.*

All laws inconsistent herewith are hereby repealed or modified accordingly, unless the same provide a heavier penalty. (Presidential Decree No. 133, which took effect on February 20, 1973)

The clear import of Presidential Decree No. 133 on the basis of its recitals is to eradicate "graft and corruption in society, and promote the economic and social welfare of the people" by placing a strong deterrent on workers and laborers from sabotaging the productive efforts of the industry where they were employed through the imposition of heavier penalties for the theft of any material, spare part, product, or article that he is working on, using or producing." Hence, to qualify the offense and to justify the imposition of the heavier penalty prescribed by Presidential Decree No. 133, it is essential and necessary to aver in the body of the information that the articles stolen were materials or products which the accused was *"working on, using or producing."* And a statement in the preamble of the information that the accused is charged with the crime of simple theft "in relation to Presidential Decree No. 133," is insufficient for the purpose envisioned by the constitutional guarantee that the accused should be informed of the nature and cause of the accusation against him, considering that it is well-stated that the real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital in the complaint or information. (Matilde, Jr. vs. Jabson, 72 O.G. 3157)

Use of safe combination learned by confidential clerk is a grave abuse of confidence.

The accused was a stenographer and *confidential* clerk of the offended party. In drying the ink with which the combination numbers of the safe were written, a new blotter was used by the offended party, from which the accused learned the turns of the safe combination. He opened the safe and took the money therefrom. *Held:* Qualified theft. (People vs. Valdellon, 46 Phil. 245)

Taking money in his possession by receiving teller of bank is qualified theft.

A receiving teller of a bank, taking advantage of his position, appropriated the amount of P33,965.45 which he had in his possession. *Held:* Qualified theft because the possession of the defendant as receiving teller was the possession of the bank, as he had only the physical, not the juridical, possession of the money. There was grave *abuse* of confidence. (People vs. Locson, 67 Phil. 325)

The confidence gravely abused must be that existing between the offended party and the offender.

The accused, who was a typist of the Provincial Government of Samar, asked the watchman of the building for the key to the door of the session hall in order to use a typewriter. Having received the key, the accused went to the session hall, took and carried away a typewriter, and later sold the same. It was contended by the prosecution that the accused committed qualified theft, because the watchman reposed confidence in him and he gravely abused it.

Held: The offended party in this case was the Provincial Government of Samar, not the watchman. The confidence contemplated in Art. 310 is that existing between the offended party and the offender. (People vs. Cabahug, C.A., 48 O.G. 2818)

Industrial partner is not liable for qualified theft.

An industrial partner who sells personal property acquired with funds supplied by the capitalist partner, and who is responsible therefor in case of loss, has, in legal contemplation, both material and juridical possession of the property, and may not be held liable for qualified theft by reason of said sale. (*In pari materia:* U.S. vs. Reyes, 6 Phil. 441, 442; People vs. Tan Tay Cuan, 57 O.G. 6964)

The novation theory applies only when there is contractual relationship between the accused and the complainant.

The accused was the private secretary of the complainant. The relationship between the accused and the complainant was so intimate and confidential that the latter used to send to the former, sums of money to be deposited in his (complainant's) current accounts with the Prudential Bank. It was in the discharge of this duty that the accused betrayed the confidence reposed on him by the complainant by retaining for his personal use, part of the money entrusted to him. *Held:* The accused is guilty of qualified theft.

Making capital of the acceptance by complainant of properties belonging to the accused and his relatives allegedly assigned to the former for the settlement of his obligations, the accused claims that there was novation of the relationship between him and the said complainant, resulting in the obliteration or extinction of his criminal liability. This argument is anchored on the alleged recognition by this Court of the novation theory (to extinguish criminal liability) in the case of *People vs. Nery*. Reliance on the Nery case, in support of the contention that the acceptance by the complainant of payment converted the liability of the accused into a civil obligation or else that it estopped said complainant from proceeding with the prosecution of the case, is misplaced and unwarranted. Firstly, in the Nery case, there was contractual relationship between the parties that can be validly novated by the settlement of the obligation of the offender. Whatever was said in that case, therefore, cannot be invoked in the present case where no contractual relationship or bilateral agreement, which can be modified or altered by the parties, is involved. (People vs. Tanjuatco, G.R. No. L-23924, April 29, 1968)

Theft of motor vehicle.

The term "motor vehicle" has been defined by statute as including all vehicles propelled by power, other than muscular power. (See Law Dictionary by Ballentine, 1948 Edition, p. 837) The term includes automobile, jeep or jeepney, motorcycle and even scooter.

When the accused considered the deed of sale a sham and he had intent to gain, his absconding with the jeep is qualified theft.

The accused, using a fictitious name and posing as a buyer of the jeep of the offended party, haggled about the price and finally settled for P4,000.00. The accused persuaded the offended party to have the required deed of sale prepared and the registration certificate transferred to his name. The deed of sale was executed by the offended party and a certificate of registration was issued in favor of the accused. The offended party delivered the papers and

the jeep to the accused, without having received the amount of P4,000.00. The accused absconded with the jeep.

Held: The accused underscores the completeness of the sale — there was the notarized deed and actual delivery. To give to that deed and possession, the value ascribed, in our opinion, is to sanction a *tour de force.* It takes mental gymnastics to withdraw this from the compass of the crime of theft. For, we cannot say that the deed and the possession conveyed ownership upon the accused without blinking at the fact that they were nothing more than part and parcel of his *modus operandi.* Really, the accused never intended to genuinely enter into the transaction of purchase and sale. To him, that deed of sale was a sham. He cannot now cling to the written covenants therein in furtherance of his nefarious purpose. To uphold his position would be to create a breach of the rule — *Fraus et jus nunquam cohabitant.*

The transaction was on a cash-and-carry basis. When the offended party parted with the physical possession of the jeep, he did not intend to transfer juridical possession thereof. The accused himself told complainant that he would take the jeep for a test; that if the condition was unsatisfactory, he would return the same; and that in the meantime, complainant could go back to the hospital in Balmes Street. In this posture, we say that the accused received possession of the jeep fraudulently, that is, with intent of gain, as a means of converting it to his own use. The fraud in legal contemplation supplied the place of trespass in the taking and such conversion related back and made the taking and conversion larceny. (People vs. Tiongson., C.A., 59 O.G. 4523-4524)

When the purpose of taking the car is to destroy by burning it, the crime is arson.

Appellant had a sufficient motive to burn the car because his request to borrow the car was refused by Rojas shortly before the incident in question, and that must have impelled him to act out of hatred and revenge against Rojas. In fact, it was on account of Rojas' refusal to lend him the car that appellant thereafter refused to talk to Rojas.

Appellant had no intention of acquiring the car for himself or of subjecting it to his control and dominion or of disposing of it for gain or profit. Instead, Solis took it with the apparent intent of damaging or destroying it as shown by the fact that after running away with the vehicle, he immediately set it afire.

The antecedent occurrence which preceded the actual taking away of the car as above stated, points out the motive for the act. It is, therefore, clear that the accused never meant to appropriate it for himself nor to derive any profit, pleasure or benefit from it. The act of the accused in moving

the car to a certain distance undoubtedly was for no other purpose than to prevent or delay immediate discovery of the act to be done by him, thus avoiding his being identified while he was near the place where the crime was committed and likewise prevent immediate assistance being rendered by the authorities.

The crime committed by the appellant is not qualified theft but arson under the provisions of Article 321, paragraph (2), subsection (b), and paragraph (3), subsection (a). It is not malicious mischief. (People vs. Solis, *et al.*, C.A., 64 O.G. 11261-11262)

Theft of motor vehicle is punished under Rep. Act No. 6539.

Section 2 of R.A. 6539, the Anti-Carnapping Act of 1992, as amended by R.A. No. 7659, defines the crime of carnapping as the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things. It becomes qualified when in the course of the commission or on occasion of the carnapping, the owner, driver or occupant of the carnapped vehicle is killed or raped. When the carnapping is qualified, the penalty imposable is *reclusion perpetua* to death.

Example: Where accused-appellant and his companions shot the driver of the tricycle resulting in his death, abandoned him and took possession of the vehicle, the crime committed is qualified carnapping. (People vs. Lobitania, Sept. 5, 2002)

The unlawful taking of motor vehicles is now covered by the anti-carnapping law, and not by the provisions on qualified theft or robbery.

There is no arguing that the anti-carnapping law is a special law, different from the crime of robbery and theft included in the Revised Penal Code. It particularly addresses the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things. But a careful comparison of this special law with the crimes of robbery and theft readily reveals their common features and characteristics, to wit: unlawful taking, intent to gain, and that personal property belonging to another is taken without the latter's consent. However, the anti-carnapping law particularly deals with the theft and robbery of motor vehicles. Hence a motor vehicle is said to have been carnapped when it has been taken, with intent to gain, without the owner's consent, whether the taking was done with or without the use of force upon things. Without the anti-carnapping law, such unlawful taking of a motor vehicle would fall within the purview

of either theft or robbery which was certainly the case before the enactment of said statute. (People vs. Lobitania, 388 SCRA 417, 432 [2002]; People vs Tan, 323 SCRA 30, 39 [2000]).

Theft of motor vehicle by the person who received it.

Where the accused was entrusted by its owner with a passenger jeepney under the so called "boundary system", that is, the accused to use the vehicle for transporting passengers and to pay the owner thereof P10.00 a day, the subsequent sale of the jeepney to another by the accused constitutes the crime of qualified theft. The reason for this ruling is that when the passenger jeepney is operated as a public utility, the accused could not be considered a lessee thereof, the Rules and Regulations of the Public Service Commission prohibiting the lease of such vehicle by the operator to another person. (People vs. Isaac, 96 Phil. 931)

But when the motor vehicle is *not* operated as a public utility and the same is leased by the owner to the accused who sold the same, the crime committed is estafa, not qualified theft. (People vs. Noveno, *et al.*, C.A.,46 O.G. 1637) *Reason:* The accused received the motor vehicle under a contract of lease.

If the property stolen is mail matter.

What makes the theft of mail matter qualified is the fact that the subject thereof is mail matter, regardless of whether the offender is a postal employee or a private individual. (Marcelo vs. Sandiganbayan, G.R. No. 109242, Jan. 26, 1999)

The clerk in charge of the registry section of the Bureau of Posts, with the duties, among others, to receive packages from the clerk in the same section charged with the duty of opening sacks containing registered packages and letters of value coming into that section, took from a package, addressed to the Hongkong and Shanghai Banking Corporation of Manila, diamonds to the value of P27,548.75.

Held: The crime committed is qualified theft, the property stolen being mail matter. (People vs. Manalo and Atienza, 46 Phil. 573)

But a postmaster, to whom a letter containing postal money order was delivered to be forwarded by registered mail, who opened it and abstracted the postal money order enclosed therein, was held guilty of faithlessness in the custody of documents. (Art. 226; U.S. vs. Gorospe, 31 Phil. 285)

If the person who took the letter containing postal money order is a private individual, the crime would be qualified theft, the property taken being a mail matter.

Is it qualified theft if the mail matter is taken from the possession of the addressee?

The law is silent on this point. All that it says is, "if the property stolen is x x x mail matter."

Theft of large cattle.

The word "cattle" is defined as including horses, asses, mules, sheep, goats and swine. (See Law Dictionary by Ballentine, 1948 Edition, p. 196)

In this jurisdiction, the term "large cattle" includes *horses* (U.S. vs. Mauhay, 31 Phil. 513), *cows* (People vs. Bangay, C.A., 40 O.G. 772), *bulls* (U.S. vs. Billedo, 83 Phil. 574), and *carabaos.* (U.S. vs. Sang Kupang, 36 Phil. 348; People vs. Magbanua, 77 Phil. 79)

Act No. 2030, which amended Articles 503, 508, 512 and 520 of the Old Penal Code regarding theft of large cattle, provides that for purposes of that law, the term "large cattle" includes "carabaos, horses, mules, asses, and all members of the bovine family." According to the dictionary, the word "bovine" refers to animals related to or resembling oxen or cows. To include goats in the term "large cattle" would render meaningless the adjective "large." The law evidently has made a distinction between large cattle and small cattle. (People vs. Nazareno, 70 SCRA 531)

To constitute the crime of qualified theft by taking large cattle, the animal must be taken alive. Thus, killing a cow on the spot where it was found and taking its meat is simple theft, because there was no taking of the cow but only its meat. (People vs. Morillo, C.A., 40 O.G., Supp. 4, 107)

But if the offender, in killing the cow of another, acted with hatred or revenge against the owner thereof, as when the cow was killed because it had entered and destroyed the plants of the offender, the crime committed is not even simple theft, but malicious mischief under Art. 329. (People vs. Valiente, *et al.*, CA-G.R. No. 9442-R, Dec. 29, 1953)

Theft of large cattle by the person who received it.

When for the purpose of plowing his field, the accused borrowed a carabao from its owner, but after using the same, he sold it to a third person and spent the proceeds of the sale, the crime committed is estafa, not qualified theft. The reason for this opinion is that the accused received the carabao under the contract of *commodatum*. The accused had the juridical possession of the animal when he sold it.

But the herdsman who slaughtered one of the cows under his care and took the meat thereof is guilty of qualified theft, because he had merely the physical possession of the cow, the legal possession thereof being in the owner. (People vs. Bangay, C.A., 40 O.G. 772)

Taking at the same time several cows is only one crime.

Taking at the same time thirteen cows belonging to different owners is only one crime of qualified theft, because the intention as well as the criminal act of the accused is not susceptible of division. (People vs. Tumlos, 67 Phil. 320)

ANTI-CATTLE RUSTLING LAW OF 1974

(Presidential Decree No. 533)

Cattle rustling **is the taking away by any means, method or scheme, without the consent of the owner/raiser, of any of the animals (classified as large cattle) whether or not for profit or gain, or whether committed with or without violence against or intimidation of any person or force upon things. It includes the killing of large cattle, or taking its meat or hide without the consent of the owner/raiser.**

Presumption of cattle rustling. **— Every person having in his possession, control or custody of large cattle shall, upon demand by competent authorities, exhibit the documents prescribed in the preceding sections. Failure to exhibit the required documents shall be *prima facie* evidence that the large cattle in his possession, control or custody are the fruits of the crime of cattle rustling.**

Penal provisions. **— Any person convicted of cattle rustling as herein defined shall, irrespective of the value of the large cattle involved, be punished by *prision mayor* in its maximum period to *reclusion temporal* in its medium period if the offense is committed without violence against or intimidation of persons or force upon things. If the offense is committed with violence against or intimidation of persons or force upon things, the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed. If a person is seriously injured or killed as a result or on the occasion of the commission of cattle rustling, the penalty of *reclusion perpetua* to death shall be imposed.**

When the offender is a government official or employee, he shall, in addition to the foregoing penalty, be disqualified from voting or being voted upon any election/referendum and from holding any public office or employment.

When the offender is an alien, he shall be deported immediately upon the completion of the service of his sentence without further proceedings.

Large cattle as herein used shall include the cow, carabao, horse, mule, ass, or other domesticated member of the bovine family.

Repealing clause. — The provisions of Articles 309 and 310 of Act No. 3815, otherwise known as the Revised Penal Code, as amended, x x x, all laws, decrees, orders, instructions, rules and regulations which are inconsistent with this Decree are hereby repealed or modified accordingly. *(Presidential Decree No. 583 which took effect on August 8, 1974)*

The coconuts must be taken from the premises of a plantation.

The stealing of coconuts when they are still in the tree or deposited on the ground within the *plantation* is qualified theft. (People vs. Esmillo, C.A., 40 O.G. Supp. 11, 111; Empelis vs. Intermediate Appellate Court, 132 SCRA 398) When the coconuts are stolen in any other place, it is simple theft. Thus, when the accused took nine of the coconuts piled up in front of the house of the offended party along the highway outside of the coconut plantation, he is guilty of simple theft. (People vs. Esmillo, *supra)*

Reason for providing a heavier penalty for theft of coconut.

In the matter of theft of coconuts, the purpose of the heavier penalty is to encourage and protect the development of the coconut industry as one of the sources of our national economy. Unlike rice and sugar cane farms where the range of vision is unobstructed, coconut groves cannot be efficiently watched because of the nature of the growth of coconut trees; and without a special measure to protect this kind of property, it will be, as it has been in the past, the favorite resort of thieves. There is, therefore, some reason for the special treatment accorded the industry. (People vs. Isnain, 85 Phil. 650-651)

The fish must be taken from the fishpond or fishery.

The term "fish" includes not only the fishes proper but also many other aquatic animals like crabs, prawns, shrimps, lobsters, clams, mussels, scallops, snails, oysters, and other mollusks or shell fish. (Phil. Annotated Laws, Titles 31-36, 1956 Edition, p. 156)

"Fishery" is a place where fish are bred or caught (Webster's Dictionary). The term "fishery" is also defined as "fishing grounds." (Phil. Annotated Laws, *idem.)*

Under the definition of the term "fishery" by Webster, is the fish corral in the sea included? This being also an industry which cannot be efficiently watched in view of its location, it would seem that the taking of fish from the fish corral is qualified theft.

Timber smuggling from, and illegal cutting of logs in, public forest and forest reserves are punished as qualified theft by Presidential Decree No. 330 (1973).

Section 1. Any person, whether natural or juridical *who* directly or indirectly cuts, gathers, removes, or smuggles timber, or other forest products, either from any of the public forests, forest reserves and other kinds of public forests, whether under license or lease, or from any privately owned forest lands in violation of existing laws, rules and regulations shall be guilty of the crime of *qualified theft* as defined and penalized under Articles 308, 309 and 310 of the Revised Penal Code; *Provided,* That if the offender is a corporation, firm, partnership or association, the penalty shall be imposed upon the guilty officer or officers, as the case may be, of the corporation, firm, partnership or association, and if such guilty officer or officers are aliens, in addition to the penalty herein prescribed, he or they shall be deported without further proceedings on the part of the Commission of Immigration and Deportation.

Section 2. All laws, rules and regulations inconsistent herewith are hereby repealed or modified accordingly.

Section 3. This decree shall take effect immediately after publication in the *Official Gazette.* (Published on November 12, 1973)

ANTI-FENCING LAW

(Presidential Decree No. 1612)

SECTION 1. *Title.* — This decree shall be known as the Anti-Fencing Law of 1979.

SEC. 2. *Definition of Terms.*— The following terms shall mean as follows:

a. "Fencing" is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.

b. "Fence" includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing.

SEC. 3. *Penalties.* — Any person guilty of fencing shall be punished as hereunder indicated:

a) The penalty of *prision mayor*, if the value of the property involved is more than P12,000 but not exceeding P22,000; if the value of such property exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding (1) one year for each additional P10,000, but the total penalty which may be imposed shall not exceed twenty years. In such cases, the penalty shall be termed *reclusion temporal* and the accessory penalty pertaining thereto provided in the Revised Penal Code shall also be imposed.

b) The penalty of *prision correccional* in its medium and maximum periods, if the value of the property robbed or stolen is more than P6,000 but not exceeding P12,000.

c) The penalty of *prision correccional* in its minimum and medium periods, if the value of the property involved is more than P200 but not exceeding P6,000.

d) The penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of property involved is over P60 but not exceeding P200.

e) The penalty of *arresto mayor* in its medium period if such value is over P5 but not exceeding P50.

f) The penalty of *arresto mayor* in its minimum period, if such value does not exceed P5.

SEC. 4. *Liability of Officials of Juridical Persons.* — If the fence is a partnership, firm, corporation or association, the

president or the manager or any officer thereof who knows or should have known the commission of the offense shall be liable.

SEC. 5. *Presumption of Fencing.* — Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

SEC. 6. *Clearance/Permit to Sell Used Secondhand Articles.* — For purposes of this Act, all stores, establishments or entities dealing in the buy and sell of any good, article, item, object or anything of value obtained from an unlicensed dealer or supplier thereof, shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such store, establishment or entity is located. The Chief of Constabulary/Director General, Integrated National Police shall promulgate such rules and regulations to carry out the provisions of this section. Any person who fails to secure the clearance or permit required by this section or who violates any of the provisions of the rules and regulations promulgated thereunder shall upon conviction be punished as fence.

2 March 1979

Fencing

Fencing is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.

Elements:

1. The crime of robbery or theft has been committed.
2. The accused, who is not a principal or accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the said crime.

3. The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft.

4. There is, on the part of the accused, intent to gain for himself or another. (Dizon-Pamintuan vs. People, 234 SCRA 63 [1994])

Presumption of fencing.

Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

Clearance/Permit to Sell Secondhand Articles Required.

All stores, establishments or entities dealing in the buy and sell of any good, article, item, object or anything of value obtained from an unlicensed dealer or supplier thereof, shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the Integrated National Police (now Philippine National Police) in the town or city where such store, establishment or entity is located.

The crimes of robbery and theft, on the one hand, and fencing, on the other, are separate and distinct offenses.

Before P.D. No. 1612, a fence could only be prosecuted for and held liable as an *accessory,* as the term is defined in Article 19 of the Revised Penal Code. The penalty applicable to an accessory is obviously light under the rules prescribed in Articles 53, 55 and 57 of the Revised Penal Code, subject to the qualification set forth in Article 60 thereof. Noting, however, the reports from law enforcement agencies that "there is rampant robbery and thievery of government and private properties" and that such robbery and thievery have become profitable on the part of the lawless elements because of the existence of ready buyers, commonly known as fence, of stolen properties," P.D. No. 1612 was enacted to "impose heavy penalties on persons who profit by the effects of the crimes of robbery and theft." Evidently, the accessory in the crimes of robbery and theft could be prosecuted as such under the Revised Penal Code or under P.D. No. 1612. However, in the latter case, he ceases to be a mere accessory but becomes a *principal* in the crime of fencing. Elsewise stated, the crimes of robbery and theft, on the one hand, and fencing, on the other, are separate and distinct offenses. The state may thus choose to prosecute him either under the Revised Penal Code or P.D. No. 1612, although the preference for the latter would seem inevitable considering that fencing is a *malum prohibitum,* and P.D. No. 1612 creates

a presumption of fencing and prescribes a higher penalty based on the value of the property. (Dizon-Pamintuan vs. People, 234 SCRA 63 [1994])

Art. 311. ***Theft of the property of the National Library and National Museum.*** **— If the property stolen be any property of the National Library or of the National Museum, the penalty shall be** *arresto mayor*[1] **or a fine ranging from 200 to 500 pesos, or both, unless a higher penalty should be provided under other provisions of this Code, in which case, the offender shall be punished by such higher penalty.**

Theft of property on National Library and Museum has a fixed penalty regardless of its value.

While the penalty for theft of other property depends on the value of the property taken, under this article, the penalty is fix without regard to the value of the property of the National Library or National Museum.

But if the crime is committed with grave abuse of confidence, the penalty for qualified theft shall be imposed, because Art. 311 says: "unless a higher penalty should be provided under other provisions of this Code."

[1]See Appendix "A," Table of Penalties, No. 1.

Chapter Four

USURPATION

What are the crimes under usurpation?

They are:

1. Occupation of real property or usurpation of real rights in property. (Art. 312)
2. Altering boundaries or landmarks. (Art. 313)

Art. 312. ***Occupation of real property or usurpation of real rights in property.*** — Any person who, by means of violence against or intimidation of persons, shall take possession of any real property or shall usurp any real rights in property belonging to another, in addition to the penalty incurred for the acts of violence executed by him, shall be punished by a fine of from 50 to 100 per centum for the gain which he shall have obtained, but not less than 75 pesos.

If the value of the gain cannot be ascertained, a fine from 200 to 500 pesos shall be imposed.

Acts punishable under Art. 312:

1. By taking possession of any real property belonging to another by means of *violence* against or *intimidation* of persons.
2. By usurping any real rights in property belonging to another by means of *violence* against or *intimidation* of persons.

Elements:

a. That the offender takes possession of any *real property* or usurps any *real rights* in property.

b. That the real property or real rights *belong to another.*

c. That *violence* against or *intimidation* of persons is used by the offender in *occupying* real property or *usurping* real rights in property.

d. That there is *intent to gain.*

The real property or real rights must belong to another.

If the defendant has shown that he was the owner of the land in question and the offended party was a mere possessor, Art. 312 is not applicable. (U.S. vs. Fuster, 2 Phil. 695) If in taking possession of the said land, the defendant used violence or intimidation, the crime committed is grave coercion.

Illustration of usurpation of real right in property.

The accused, who had lost the case in a cadastral proceeding, took possession of the land adjudicated in favor of the offended party and harvested the palay, by means of threats and intimidation. *Held:* Guilty of usurpation of real right under Art. 312. (People vs. Calleja, CA-G.R. 43375, Nov. 18, 1936)

There is only civil liability, if there is no violence or intimidation in taking possession of real property.

Thus, if the accused took possession of the land of the offended party through other means, such as strategy or stealth, during the absence of the owner or of the person in charge of the property, there is only civil liability. (People vs. Dimacutak, *et al.*, C.A., 51 O.G. 1389)

Violence or intimidation must be the means used in occupying real property or usurping real right belonging to another.

Art. 312 does not apply when the violence or intimidation took place subsequent to the entry into the property, because the violence or intimidation must be the means used in occupying real property or in usurping real rights.

Thus, if the accused were *already occupying the land* belonging to another, and when the administrator of the latter told them that the land belonged to his principal, the accused told him that they would kill anyone who would try to drive them away and threatened him with their bolos and chased him away. The accused are not liable for usurpation of real property under Art. 312. (People vs. Dimacutak, *et al., supra)*

Art. 312 is not applicable to a case of open defiance of the writ of execution issued in the forcible entry case.

The stubborn refusal of the accused to vacate the land and to deliver possession of the same to the plaintiff, in open defiance of the writ of execution issued in the forcible entry case, does not constitute the crime of usurpation defined and punished in Article 312 of the Revised Penal Code, because the accused did not secure possession of the land by means of violence or intimidation. The refusal of the accused constitutes a distinct offense, to wit, contempt of court, under the Rules of Court, punishable with a fine not exceeding P1,000.00 or imprisonment not exceeding 6 months, or both. (People vs. Leyson, *et al.*, 57 O.G. 6635)

Criminal action for usurpation of real property, not a bar to civil action for forcible entry.

Where a criminal action for usurpation of real property was filed and was dismissed, and the accused therein is sued in a forcible entry case involving the same real property, a motion to dismiss on the ground of bar by former judgment cannot be sustained, for not only are the parties not identical, but also are the causes of action different. (Pitargue vs. Sorilla, 92 Phil. 5)

"In addition to the penalty incurred for the acts of violence executed by him."

Art. 312 does not provide the penalty of imprisonment for the crime of occupation of real property or usurpation of real rights in property. The penalty is only fine. However, the offender who may have inflicted physical injuries in executing acts of violence shall suffer the penalty for physical injuries also.

Distinguished from theft or robbery.

(a) While there is *taking* or asportation in theft or robbery, there is occupation or usurpation in this crime.

(b) In theft or robbery, personal property is taken; in this crime, there is real property or real right involved.

(c) In both crimes, there is intent to gain.

Republic Act No. 947 punishes entering or occupying public agricultural land including public lands granted to private individuals.

It shall be unlawful for any person, corporation or association to enter or occupy, through force, intimidation, threat, strategy or stealth, any public agricultural land including such public lands as are granted to private

individuals under the provisions of the Public Land Act or any other laws providing for the disposal of public agricultural lands in the Philippines, and are duly covered by the corresponding applications required for the purpose, notwithstanding the fact that title thereto still remains in the Government; or for any person, natural or juridical, to instigate, induce or force another to commit such acts. (Sec. 1, Rep. Act No. 947)

Any violation of the provisions of this Act shall be punished by a fine of not exceeding one thousand pesos or imprisonment for not more than one year, or by both such fine and imprisonment in the discretion of the court. (Sec. 3, Rep. Act No. 947)

Art. 313. ***Altering boundaries or landmarks.*** **— Any person who shall alter the boundary marks or monuments of towns, provinces, or estates, or any other marks intended to designate the boundaries of the same, shall be punished by** ***arresto menor*** **or a fine not exceeding 100 pesos, or both.**

Elements:

1. That there be boundary marks or monuments of towns, provinces, or estates, or any other marks intended to designate the boundaries of the same.
2. That the offender *alters* said boundary marks.

Is intent to gain necessary under Art. 313?

Art. 313 does not seem to require it. Mere alteration of the boundary marks or monuments intended to designate the boundaries of towns, provinces or estate is punishable.

Fraudulent intent is not necessary for the crime to exist. (Guevara)

The offense consists in carrying out a felonious intent to *usurp* realty, and this intent must be established as the moral element before the penalty fixed in Art. 313 can be applied. (Albert)

Meaning of the word "alter."

The word *alter* has a general and indefinite meaning. Any alteration of boundary marks is enough to constitute the material element of the crime. Destruction of stone monument or *taking* it to another place, or removing a fence, is altering. (Albert)

Chapter Five

CULPABLE INSOLVENCY

Art. 314. ***Fraudulent insolvency.*** **— Any person who shall abscond with his property to the prejudice of his creditors, shall suffer the penalty of *prisionmayor*[1] if he be a merchant, and the penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period,[2] if he be not a merchant.**

Elements:

1. That the *offender is a debtor;* that is, he has obligations *due* and *payable.*
2. That he *absconds* with his property.
3. That there be *prejudice to his creditors.*

Illustration of a violation of Art. 314.

Defendant was a merchant of good standing, but he became indebted to several merchants in Cebu. Judgment was rendered against him and execution issued. He owned several parcels of real property which he transferred to another to place them beyond the reach of his creditors. The considerations in the deed of sale were all fictitious. *Held:* Fraudulent insolvency made in fraud of creditors. (People vs. Tan Diong, 59 Phil. 537)

Actual prejudice, not intention alone, is required.

Hence, even if the debtor disposes of his property, unless it is shown that such disposal has *actually prejudiced* his creditor, conviction will not lie. Fraudulent concealment of property is not sufficient if the creditor has some other property with which to satisfy his obligation. (People vs. Sy Gesiong, 60 Phil. 614)

[1]See Appendix "A," Table of Penalties, No. 19.
[2]See Appendix "A," Table of Penalties, No. 18.

The mere circumstance that a person has disposed of his merchandise by removing them from the place where they are kept would not necessarily imply fraudulent insolvency which *requires malice,* especially so as in this case where the defendant delivered part of the proceeds of the sale to his creditor. (People vs. Guzman, C.A., 40 O.G. 2655)

Being a merchant is not an element of this offense.

If the accused is a merchant, a higher penalty shall be imposed.

Real property may be involved.

The word "abscond" does not require that the debtor should depart and physically conceal his property. Hence, *real property* could be the subject matter of fraudulent insolvency. (People vs. Chong Chuy Limgobo, 45 Phil. 372)

The person prejudiced must be the creditor of the offender.

As to Pastora Padla, it appears that she joined in the conveyances, but the creditors who were defrauded were not her creditors, they being the creditors of her husband, the merchant Tan Diong. The fact that she participated in the making of *the* document executed by her husband does not prove her complicity in the fraud. (People vs. Tan Diong, *supra)*

Distinguished from the Insolvency Law.

The Insolvency Law requires for its application that the criminal act should have been committed after the institution of insolvency proceedings.

Under the present article, there is no such requirement, and it is not necessary that the defendant should have been adjudged bankrupt or insolvent.

Hence, there is no inconsistency between this article and the Insolvency Law.

Chapter Six

SWINDLING AND OTHER DECEITS

Art. 315. *Swindling (estafa).*— Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period,[1] if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal,* as the case may be;

2nd. The penalty of *prision correccional* in its minimum and medium periods,[2] if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period,[3] if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its medium and maximum periods,[4] if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

[1] See Appendix "A," Table of Penalties, No. 17.
[2] See Appendix "A," Table of Penalties, No. 14.
[3] See Appendix "A," Table of Penalties, No. 8.
[4] See Appendix "A," Table of Penalties, No. 6.

With **unfaithfulness** or abuse of confidence, namely:

(a) By altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration;

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property;

(c) By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person.

By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

b) By altering the quality, fineness, or weight of anything pertaining to his art or business.

(c) By pretending to have bribed any Government employee, without prejudice to the action for calumny, which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.

(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The

failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. *(As amended by Rep. Act No. 4885, approved June 17, 1967)*

(e) By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like without paying therefore, with intent to defraud the proprietor or manager thereof, or by obtaining credit at a hotel, inn, restaurant, boarding house, lodging house, or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house, or apartment house after obtaining credit, food, refreshment, or accommodation therein without paying for his food, refreshment, or accommodation. *(As amended by Com. Act No. 157)*

3. Through any of the following fraudulent means:

(a) By inducing another, by means of deceit, to sign any document;

(b) By resorting to some fraudulent practice to insure success in a gambling game;

(c) By removing, concealing, or destroying, in whole or in part, any court record, office files, document, or any other papers.

Elements of estafa in general:

1. That the accused defrauded another (a) by *abuse of confidence,* or (b) by means of *deceit;* and

2. That *damage* or *prejudice* capable of pecuniary estimation is caused to the offended party or third person.

The first element covers the three different ways of committing estafa under Art. 315.

Note that Art. 315 has three subdivisions classifying the different forms of estafa according to the means by which the fraud is committed.

Thus, estafa is committed —

(a) *with unfaithfulness or abuse of confidence;*

(b) *by means of false pretenses or fraudulent acts; or*

(c) *through fraudulent means.*

The three ways of committing estafa under Art. 315 may be reduced to two only. The first form under subdivision No. 1 is known as *estafa with abuse of confidence,* and the second and third forms under subdivisions Nos. 2 and 3 cover *estafa by means of deceit.*

Deceit is not an essential requisite of estafa with abuse of confidence.

"Deceit with intent to defraud" is not an essential requisite in cases wherein the money or other personal property has been voluntarily entrusted to the offender, without wrongdoing on his part in obtaining or receiving it. It is true that it is sometimes said that "deception with intent to defraud" is an essential requisite of the crime of estafa. But while this is true as to estafas in general, it is not true of those estafas under consideration (Art. 315, subdivision 1, par. [b]), except in so far as the abuse of confidence in misappropriating the funds or property after they have come to the hands of the offender may be said to be a fraud upon the person injured thereby. (U.S. vs. Pascual, 10 Phil. 621)

Note: It will be noted that *"abuse of confidence"* and *"deceit"* are two different means of committing estafa under Art. 315. Where there is fraudulent *conversion or misappropriation* of the property received in trust, on commission, for administration, or under any other obligation involving the duty to make delivery of or to return the same, deceit is not an essential element of estafa.

The second element — the basis of the penalty.

It is necessary that the damage or prejudice be capable of pecuniary estimation, because the amount of the damage or prejudice is the basis of the penalty for estafa.

The first four paragraphs of Art. 315 fix the penalties for estafa according to the amount of the fraud.

With unfaithfulness or abuse of confidence, namely:

By altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration. (Art. 316, No. 1 [a])

Elements of estafa with unfaithfulness:

1. **That the offender has an *onerous* obligation to *deliver* something of value.**
2. **That he alters its *substance, quantity, or quality.***
3. **That *damage or prejudice* is caused to another.**

There must be an existing obligation to deliver something of value.

Under the provision of par. 1(a), Art. 315, the obligation to deliver already existed, and the offender, on making the delivery, has altered the substance, quantity or quality of the thing he delivered. (People vs. Gansai, C.A., 61 O.G. 3603)

By virtue of an onerous obligation.

In estafa by altering the substance, quantity or quality of anything of value which the offender delivers, the delivery of anything of value must be "by virtue of an *onerous* obligation to do so." (Albert)

Thus, if the thing delivered had not been fully or partially *paid for* when it was received by the other party, the person making the delivery is not liable for estafa, even if there was an alteration of the substance, quantity, or quality of the thing delivered as there was no damage caused.

Altering the substance, quality or quantity of the things to be delivered.

1. ***Altering the substance.***

   Thus, where a person sold to another 1,000 tins on the assurance that they contained opium, when in fact only 16 tins contained opium while the others contained only molasses, the crime of estafa under this subsection was committed, because there was an alteration of the substance — from opium, which he promised to deliver, to molasses which was actually delivered. (People vs. Manansala, *et al.*, 58 Phil. 796)

Altering the substance may constitute violation of Pure Food Law.

When the fraud committed consists in the adulteration or mixing of some extraneous substance in an article of food so as to lower its quality, it may be a violation of the Pure Food Law.

2. *Altering the quantity.*

The accused pledged to the *Compania de Tabacos* 20,000 bales of hemp, by declaring in an instrument that such number of bales was actually in existence, the accused knowing that he had only 12,000 bales in the warehouse. The manager of the *Compania de Tabacos,* trusting the apparent good faith of the accused, continued to advance the latter, money and goods on account in the sum of P300,000. *Held:* This is estafa by altering the quantity of the thing the accused promised to deliver by virtue of an obligation to do so. (U.S. vs. Mendezona, 2 Phil. 353)

A person who, after having agreed to the sale of 100 cavans of palay, and having received the payment therefor, delivers to the purchaser 98 cavans only, is guilty of estafa for having altered the quantity of the thing he is duty-bound to deliver. (Guevara)

3. *Altering the quality.*

A agreed to sell to B first class rice and received from B the purchase price thereof. But when the rice was delivered to B, it was found to be a poor kind of rice. The damage consists in the difference in value of the rice.

When there is no agreement as to the quality of the thing to be delivered, the delivery of the thing not acceptable to the complainant is not estafa.

Thus, in a case where the evidence does not show that there was an agreement as to the quality of the ROTC and PMT insignias and name plates which the accused bound themselves to make and deliver to the complainant, and the insignias and name plates delivered by the accused were not acceptable to the complainant, even if payment was made by the latter, the accused are not guilty of estafa under Art. 315, par. 1(a), of the Revised Penal Code. (People vs. Bastiana, *et al.,* C.A., 54 O.G. 4300)

"Even though such obligation be based on an immoral or illegal consideration."

By specific provision of paragraph (a) of subdivision No. 1, Art. 315, the crime of estafa may arise even if the thing to be delivered, under the obligation to deliver it, is not a subject of lawful commerce, such as opium.

ESTAFA WITH ABUSE OF CONFIDENCE
By Misappropriating or Converting Personal Property Received

Note the case of *People vs. Manansala, et al.*, 58 Phil. 796, where the accused was found guilty of estafa, even if the thing which he promised to deliver was opium.

By misappropriating or converting, to the prejudice of another, money, goods, or other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property. (Art. 315, No. 1 [b])

Elements of estafa with abuse of confidence under subdivision No. 1, par. (b), of Art. 315:

1. **That *money, goods, or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation* involving the duty to *make delivery of, or to return,* the same;**
2. **That there be *misappropriation* or *conversion* of such money or property *by the offender,* or *denial* on his part of such receipt;**
3. **That such misappropriation or conversion or denial is to the *prejudice of another;* and**
4. **That there is a *demand* made by the offended party to the offender.**

***Note:* The 4th element is not necessary when there is evidence of misappropriation of the goods by the defendant. (Tubb vs. People, *et al.*, 101 Phil. 114)**

Check is included in the word "money."

The distinction between the conversion of a check and the conversion of cash in relation to the formal allegation in the information of conversion of a specific sum of money is not material in estafa. *First,* a check, after all, while not regarded as a legal tender, is normally accepted, under commercial usage, as a substitute for cash. Furthermore, the credit represented by it in stated monetary value is properly capable of appropriation. *Second,* it is erroneous for the accused to assume that he was in receipt of the complainant's money only from the time when and at the place where he cashed the check. Applying the principles of civil law on payments done thru the use of bills of exchange, the delivery to the accused of the check of an earlier date and at another place, had the effect, when the same was subsequently cashed, of transferring as of that date and in that place, the

sum covered thereby from the drawer to the payee. This, although the change from check to public notes took place at a later date and at another situs. And *third,* the delivery by the complainant of the check and its acceptance by the accused signified not merely the transfer to the accused of money belonging to the complainant. It also marked, the creation of a fiduciary relation between the parties. The existence of such relation either in the form of a trust, commission or administration, is, of course, an essential element of the crime of estafa by misappropriating or conversion. (Galvez vs. Court of Appeals, 42 SCRA 278)

Money, goods or other personal property must be received by the offender.

Note the first element of this form of estafa. The money, goods or other personal property *must be received* by the offender. If the offender takes the thing without the consent of the owner, the crime may be theft, not estafa.

Money, goods or other personal property must be received by the offender under certain kinds of transaction transferring juridical possession to him.

Paragraph (b) of subdivision No. 1 provides that the "money, goods, or any other personal property" be "received by the offender *in trust* or on *commission,* or for *administration,* or *under any other obligation involving the duty to make delivery of, or to return the same."*

When the thing *is received* by the offender from the offended party (1) *in trust,* or (2) on *commission,* or (3) for *administration,* the offender acquires both material or physical possession and *juridical possession* of the thing received.

Meaning of juridical possession.

Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner.

The case of *People vs. Noveno, et al.,* C.A., 46 O.G. 1637, illustrates the meaning of juridical possession:

At about 6 o'clock in the morning of August 10, 1946, S and N, the latter a former driver of M, went to the house of M for the purpose of hiring his truck. It was agreed that upon receipt of the amount of P10.00, M would let N drive his truck hired by S until noon of that day.

Held: During that period agreed upon in the contract for hire (from the time S and N received the truck at 6 o'clock in the morning until noon of that day) *they could set up their possession as against the right to possession*

of M, the owner of the truck. Pursuant to their agreement, therefore, M delivered not only the physical but also the *juridical possession* of the truck to both S and N.

(See also the cases of U.S. vs. Abad, 23 Phil. 504; U.S. vs. Ador Dionisio, 36 Phil. 141; and People vs. Dugan, C.A., 46 O.G. 3180)

An agent, unlike a servant or messenger, has both the physical and juridical possession of the goods received in agency, or the proceeds thereof, which takes the place of the goods after their sale by the agent. His duty to turn over the proceeds of the agency depends upon his discharge, as well as the result of the accounts between him and the principal; and he may set up his right of possession as against that of the principal until the agency is terminated. (Guzman vs. Court of Appeals, 99 Phil. 703)

Presumption as to kind of possession.

When the delivery of a chattel has not the effect of transferring the juridical possession thereof, or title thereto, it is presumed that the *possession of, and title to, the thing so delivered remain in the owner.* (U.S. vs. De Vera, 43 Phil. 1001)

Illustration of estafa where the offender received the thing in trust, on commission, or for administration:

1. *The thing was received in trust:*

The accused were tenants of the complaining witness. They received from the sale of the abaca harvested by them a sum of money, including the one-half which belonged to the landlord under the tenancy agreement. The accused were under obligation to deliver to the landlord this half of the money. They, therefore, held it in trust for him. But instead of turning it over to him, they appropriated it to their own use and refused to give it to him, notwithstanding repeated demands.

Held: It is not correct to say that the abaca in question was not received by the accused from anybody but had been harvested by them. What the accused are charged with having misappropriated is the landlord's share of the purchase price which they received in *trust* for him. (People vs. Carulasdulasan, *et al.*, 95 Phil. 8)

Failure to turn over to the bank the proceeds of the sale of goods covered by trust receipts is estafa.

A person who executed trust receipts and, despite demands by the bank, failed either to turn over to the bank the proceeds of the sale of the

goods or to return said goods, if they were not sold, is guilty of having violated the provisions of Art. 315, l-(b), of the Revised Penal Code.

The ownership of the merchandise continues to be vested in the person who has advanced payment, until he has been paid in full, or if the merchandise has already been sold, the proceeds of the sale should be turned over to him by the importer or by his representative or successor in interest. (PNB vs. Vda. de Hijos de Angel Jose, 63 Phil. 814-15; Samo vs. People, *et al,* G.R. Nos. L-17603-04, May 31, 1962)

Conversion by the importer of the goods covered by a trust receipt constitutes estafa through misappropriation under Article 315(l)(b) of the Revised Penal Code. (People vs. Chai Ho, 53 Phil. 874; Samo vs. People, 115 Phil. 346; Lee vs. Rodil, 175 SCRA 100)

PRESIDENTIAL DECREE NO. 115

XXX

SEC. 13. *Penalty clause.* — The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three Hundred and Fifteen, Paragraph One (b), of Act Numbered Three Thousand Eight Hundred and Fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or otherjuridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

x x x

SEC. 17. This Decree shall take effect immediately.

Done in the City of Manila, this 29th day of January, in the year of Our Lord, nineteen hundred and seventy-three.

2. *The thing was received on commission:*

A received P0.25 from B with obligation to pay it as slaughter fee to the municipal treasurer. A received some pork from C, promising to pay P0.25, representing the cost of the pork, to the municipal treasurer as slaughter fee in the name of C. A failed to make the payment for C and B, and spent the money of B.

Held: (1) As to the P0.25 in cash received from B, there is estafa. (2) As to his promise to pay P0.25 to the municipal treasurer in consideration of some pork received from C, there is no estafa.

Reasons: (1) The title under which A received the P0.25 from B was that of a *commission* consisting in the instruction *to deliver* the same to the municipal treasurer.

(2) As regards the failure of A to pay to the treasurer the P0.25 representing the cost of the pork received from C, there is no estafa, because the law says "money, goods, or any other personal property received," under the obligation "to deliver the same." This means that the *thing received must be the same thing to be delivered,* and not another. (See U.S. vs. Figueroa, 22 Phil. 270)

Note: A did not receive any money from C to be delivered to the treasurer. What A received from C was a kilo of pork.

3. *The thing was received for administration:*

Thus, if the administrator, appointed by the Court to administer the estate of a deceased person, received money or other personal property in such capacity, and misappropriated the same for his personal benefit, he is guilty of estafa.

Where the accused collected a sum of money as rentals from the different tenants of his employer, failed to account for and turn over said amount to his employer, upon demand therefor, he is guilty of estafa. (People vs. Benitez, 108 Phil. 920)

The phrase "or under any other obligation involving the duty to make delivery of, or to return the same," includes quasi-contracts and certain contracts of bailment.

In *quasi-contracts,* the person who receives the thing also acquires *juridical possession* of the thing received.

In contracts of bailment, such as, contract of deposit, contract of lease of personal property, *commodatum,* etc., the *depositary* or the *lessee,* or the *borrower* acquires also juridical possession of the thing deposited with him, or leased to him, or loaned to him.

These contracts require the return of the *same thing* received. (U.S. vs. Clarin, 17 Phil. 86)

Illustrations of estafa where the offender received the thing under a quasi-contract or contract of bailment.

1. *The thing was received under a quasi-contract.*

An interisland steamer received at Manila a shipment of 18 boxes of goods consigned to the accused. The boxes bore the marks "Y.J.," letters presumably representing the initials of the accused. In delivering the 18 boxes to the accused at Ibajay, Capiz, a box of *sinamay* valued at P625, consigned to another Chinese bearing also the marks "Y.J." was also delivered to the accused by mistake because of the similarity of the marks. When informed of the mistake, the accused denied that he had received the box of *sinamay* and declared that he knew nothing whatever about it.

Held: The accused is guilty of estafa. He received the box of *sinamay* under such circumstances as to give rise to an obligation to return or make delivery of the same to the owner upon demand. (U.S. vs. Yap Tian Jong, 34 Phil. 10)

2. *The thing was received under a contract of bailment.*

a. *Under a contract of deposit.*

The offended party deposited with the accused certificate of Stock No. 517 as guaranty for the payment of certain shares of "Crown Mines." When already in possession of the certificate of Stock No. 517, the accused indorsed it to the Hongkong Shanghai Banking Corporation as guaranty of his overdraft. As a result, the offended party could not recover her certificate of Stock No. 517 when she paid the shares of "Crown Mines."

Held: Since the pledge (indorsing it as guaranty of his overdraft) involves an act of ownership, the depositary who pledges a thing in *deposit* uses it for a distinct purpose and accordingly commits the crime of estafa. (People vs. Campos, C.A., 40 O.G., Supp. 12, 7)

b. *Under contract of lease of personal property.*

The accused hired the truck of the offended party until noon of the same day for the sum of P10.00. The truck was never returned as it had been sold to a third person.

Held: Pursuant to their agreement, the offended party delivered not only the material but also the *juridical possession* of his truck to the accused. The accused are guilty of estafa, not qualified theft. (People vs. Noveno, *et al.*, C.A., *supra)*

Distinguished from the case of People vs. Isaac. (96 Phil. 931)

The owner of a jeepney with license plate No. AC-2553, hired the accused on a temporary basis and entrusted the vehicle for a "pasada," that is to say, for transporting passengers for a compensation, at the rate of P10.00 per day. His arrangement with the owner was to turn in not all the fare collected, but only a fixed sum known in the trade as "boundary." The accused sold the jeepney.

Held: **The accused had only substituted for the regular driver of the jeepney operated as a public utility. He cannot be considered a lessee of the jeepney, because it is ordained in Section 26 of the Rules and Regulations of the Public Service Commission that "no motor vehicle operator shall enter into any kind of contract with any person if by the term thereof it allows the use and operation of all or any of his equipment under a fixed rental basis." In the eyes of the law then, the accused was not a lessee but only an *employee* or agent of the owner, so that his *possession* of the vehicle was only an *extension* of that of the latter. The accused, not having the *juridical possession* of the jeepney, committed qualified theft for disposing of it with intent to gain and without the consent of the owner. (People vs. Isaac, 96 Phil. 931)**

Note: **In the case of People vs. Noveno, *supra,* the truck was not operated as a regular passenger vehicle, subject to the rules and regulations of the Public Service Commission which prohibit the leasing of vehicles operated as a public utility.**

c. *Under a contract of commodatum.*

A borrowed a book from B to be returned after two days. After two days, in spite of repeated demands, A could not return the book, because he had sold it. This is estafa, because in a contract of *commodatum,* the borrower acquired the juridical possession of the thing borrowed.

Note: **Commodatum is a loan for use. In commodatum, the bailor retains the ownership of the thing loaned.**

The obligation to return or deliver the thing must be contractual without transferring to the accused the ownership of the thing received.

Art. 315, No. 1(b) is intended for the case of embezzlement by a bailee, whose obligation to return or deliver the thing received is *contractual.*

But Art. 315, No. 1 (b) does not apply when the *contract* between the accused and the complainant has the effect of transferring to the accused the *ownership* of the thing received.

Thus, when the contract is a loan of money, the accused debtor cannot be held liable for estafa for merely refusing to pay, or denying having contracted, the debt. (U.S. vs. Ibañez, 19 Phil. 559) Loan of money is known as *mutuum*. It is a loan for *consumption* and the ownership of the thing loaned passes to the borrower.

When the accused had received a thing from the complainant, under a contract of purchase and sale, and failed or refused to pay the price thereof, he is not liable for estafa. (People vs. Gonora, C.A., 38 O.G. 3185)

In those two transactions, the accused *did not receive the* money or thing *under the "obligation involving the duty to make delivery of, or to return, the same"* money or thing.

When ownership of the thing is transferred to the person who has received it, his failure to return it will give rise to civil liability only.

It is necessary to resort in many cases to the provisions of the civil law to determine in whom the ownership is vested.

Thus, when the contract under which the thing is received is one of purchase and sale, even if the price is not paid, ownership is transferred to the buyer upon the delivery of the thing to him. If the buyer sold the thing and did not pay the price to the original owner, there is only civil liability.

The advance or part payment of the price of the thing sold, but not yet delivered, becomes the property of the seller. If the thing sold is not delivered and the advance or part payment of the price is not returned, there is only civil liability. (People vs. Ma Su, 90 Phil. 706)

Provisions of the Civil Code.

Art. 1477. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive *delivery* thereof.

Art. 1482. Whenever *earnest money is* given in a contract of sale, it shall be considered as part *of the price* and as proof of the perfection of the contract.

No "obligation involving the duty x x x to return the same."

In estafa with abuse of confidence under paragraph (b), subdivision No. 1 of Art. 315, the very same thing received must be returned, if there is an obligation to return it. If there is no obligation to return the very same

thing received, because ownership is transferred, there is only civil liability. (U.S. vs. Figueroa, 22 Phil. 270)

Illustrations:

The accused received a radio from the complainant to keep the same for trial for five days at the termination of which he bound himself to either return it or, if he desired to retain it, pay the initial sum of P90, and the balance in installments. The accused never returned the radio to the complainant.

Held: That as the accused chose to retain the radio set, the transaction, theretofore indefinite, became automatically a sale. There is no estafa even if for eight months the accused deliberately avoided paying anything at all. (Sison vs. People, G.R. No. 48198 [1943])

In a contract for the sale of property on trial basis, retention by the buyer of the property object of the sale without giving notice of rejection to the owner after the expiration of the agreed trial period, passes ownership of the property to him. His subsequent act of selling the property is but the exercise of the right to dispose and does not make him liable for estafa under Article 315, paragraph 1(b), of the Revised Penal Code. (People vs. Joyce, C.A., 66 O.G. 10163)

When the transaction of purchase and sale fails, there is no estafa if the accused refused to return the advance payment.

Esguerra vs. People
(G.R. No. L-14318, July 26, 1960)

Facts: It appears that the accused, upon representation that he had copras ready for delivery, took and received the sum of P2,400 from the complainant, but in spite of repeated demands, the said accused failed to deliver the copra or return the amount received. Thus, an information for estafa was filed against him.

Held: On the merits, there is reason to believe that the responsibility of the accused is only civil in nature. The receipt signed by the accused reads: "Received from x x x the sum of P2,400 only representing advance payment of 10,000 kilos of copra which I sold them and shall be delivered in their bodega at Siain, P.I., on or before Jan. 31, 1952." The language of the receipt, together with the finding that the accused used to supply copra not only to complainant but also to other exporters, clearly indicate that the transaction was that of sale of copra for future delivery. Obviously, an advance payment is subject to the disposal of the vendor. If the transaction fails, the liability arising therefrom is of a civil and not of a criminal nature. (See Abeto vs. People, 90 Phil. 581)

There is no estafa when the money or other personal property received by the accused is not to be used for a particular purpose or to be returned.

U.S. vs. Villareal
(27 Phil. 481)

Facts: The firm of Successors of C. Fressel & Co. was engaged in the purchase and export of native hats of various styles and qualities. Thus engaged, it procured the services of the accused to purchase hats of the individual makers found engaged in that business within a certain area and to sell them to the company. It was the custom among the hat makers at that time to have advanced to them by their purchasers, money sufficient to pay for materials and help. The defendant having no money to make these advances and to pay for the hats which he had engaged to purchase, certain sums were at various times advanced to him by C. Fressel & Co. In return for the advances, the accused at various times sold and delivered to the company, quantities of hats at an agreed price. In the course of time and just prior to the commencement of the prosecution, a liquidation of accounts resulted in disclosing the fact that the accused was in debt to C. Fressel & Co. for money advanced in the sum of P1,036.11.

The money advanced to the accused by C. Fressel & Co. was in the nature of a loan and *not a delivery* of *money to be used* for *a particular purpose or to be returned.*

Held: A person receiving money from another and failing to return it does not commit the crime of estafa unless it is clearly demonstrated that he received it "for safekeeping, or on commission, or for administration; or under any other circumstances giving rise to the obligation to make delivery of or to return the same."

Amounts paid by the students to the school to answer for the value of materials broken are not mere deposits.

The amounts paid by the students to the college, in order to answer for the value of materials broken, were no more "deposits" in law than bank "deposits" are so. There was no showing that the college undertook to keep safe the money in question and return it later to each student in the very same coins or bills in which it had been originally received. The Mindanao Agricultural College merely bound itself to reimburse or repay to each student, the amount "deposited" by him or by her, after deducting or setting off the value of broken equipment. The relation thus established between college and student was one of debtor and creditor, not one of depositor and depository; the transaction was a loan, not a deposit. As a loan, the college acquired the ownership of the money paid by the students, subject only

to the obligation of reimbursing equivalent amounts, unless a deduction should happen to be due. (People vs. Montemayor, *et al.*, G.R. No. L-17449, Aug. 30, 1962)

There is no estafa if the thing is received under a contract of sale on credit.

Where the articles were purchased by the accused *on credit,* even if *subsequently* the term "consignment" was used, the failure of the accused either to pay for the articles or to return them did not make him liable for estafa. (People vs. Santos, 3 C.A. Rep. 791)

Criminal liability for estafa not affected by novation of contract.

People vs. Benitez
(G.R. No. L-15923, June 30, 1960)

Facts: The accused was employed by Jose Cua as collector of rents of the houses owned by the latter. The accused made several collections amounting to P640.00 but failed to turn over said amount, or to account for it, to his employer. Upon demand, the accused offered to work in his employer's establishment, the sum of P100 to be deducted from his salary every month until the whole amount is fully paid. The offer and conditions for his employment were accepted by Jose Cua and reduced to writing. After working for only a few days, the accused did not report, whereupon Cua wrote to him a letter demanding settlement of his account. The accused having failed to pay the amount of his obligation, a complaint for estafa was filed against him. He was convicted and sentenced to suffer imprisonment.

Issue: Whether the accused's agreement with his employer converted his criminal liability into a civil obligation.

Held: The fact that the accused herein had, with the consent of the offended party, assumed the obligation of paying the rentals, which he collected, out of his own salary *after he had committed the misappropriation,* does not obliterate the criminal liability already incurred.

In order that novation of contract may relieve the accused of criminal liability, the novation must take place before the criminal liability is incurred; criminal liability for estafa already committed is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the state at its own volition. (People vs. Florido, 12 C.A. Rep. 551) And, in the case at bar, since the criminal liability of the appellants already took effect when they converted to their use the four tires which the complainant deposited with them and they thereby already committed estafa with such conversion and failure to return the

tires, any subsequent novation of their contract can no longer affect the already incurred criminal liability of the appellants for the crime of estafa under Article 315, par. 1(b) of the Revised Penal Code. (People vs. Bonilla, *et al.*,16 C.A. Rep. 560)

Novation of contract from one of agency to one of sale, or to one of loan, relieves defendant from incipient criminal liability under the first contract.

The record fully justifies the conclusion that it was the intention of the parties to consider the obligation a civil one. *Before the filing of the complaint,* the accused signed a "compromise" whereby he acknowledged the obligation and promised to pay. The complainant sought the execution of the *promissory notes,* making the appellant acknowledge the *existence of debt,* which directly and substantially amended the invoice *from* the contract of supposed agency to one of *sale.* (People vs. Doniog, C.A., 53 O.G. 4500)

The accused, *before any demand was made* on him *(which would have completed the offense* of estafa), persuaded complainant and the latter agreed, to lend him the price of the car and his share of the profit for two months. Under the facts, the contract of agency between complainant and appellant was converted into a contract of loan, with the result that the contract of agency was thereby novated, so that any *incipient* criminal liability under the first is thereby avoided. It would have been otherwise, had the crime of estafa been *completed,* for then the criminal liability of defendant cannot be compounded by subsequent agreement between the offender and the offended party. (People vs. Clemente, C.A., 65 O.G. 6892)

The novation theory may perhaps apply prior to the filing of the criminal information in court by the state prosecutors, because up to that time, the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the judicial authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability, as distinguished from the civil. The crime being an offense against the state, only the latter can renounce it. (People vs. Nery, 10 SCRA 244)

Acceptance of promissory note or extension of time for payment does not constitute novation.

When the offended party in an estafa case accepts a promissory note of the accused for the payment of the money *already* converted, the offense is not thereby obliterated. (Camus vs. Court of Appeals and People, 92 Phil. 85; People vs. Javier, 70 Phil. 550) The extension of time for the payment

of civil liability does not constitute novation. (People vs. Bautista, CA-G.R. No. 5448-R, Feb. 13, 1951)

2nd element of estafa with abuse of confidence under paragraph (b), subdivision No. 1, Art. 315.

It will be noted that there are three ways of committing estafa with abuse of confidence under Art. 315, No. 1(b).

They are:

1. By *misappropriating* the thing received.
2. By *converting* the thing received.
3. By *denying* that the thing was received.

"By misappropriating" or "by converting."

Paragraph (b), Subdivision No. 1 of Art. 315, was taken by the Code Commission from paragraph 5 of Art. 535 of the Spanish Penal Code of 1870 which used the words *"apropiaren"* and *"distrajeren"* which are translated into English with the words "misappropriating" and "converting," respectively.

The word *converting ("distraer")* connotes the act of *using* or *disposing* of another's property *as if it were one's own.* The word *misappropriating ("apropiar")* means to *own,* to take something *for one's own benefit.*

The words "convert" and "misappropriated" connote an act of using or disposing of another's property as if it were one's own or devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes, not only conversion to one's personal advantage but also every attempt to dispose of the property of another without right. (U.S. vs. Panes, 37 Phil. 118; Amorsolo vs. People, 154 SCRA 666)

Pledging a thing by the accused, which was received by him only to be sold on commission, constitutes the crime of estafa. (U.S. vs. Torres, 11 Phil. 606)

Deposit of money received in trust by accused in his personal account and his failure to account for it on demand is estafa. (Hayco vs. Court of Appeals, 138 SCRA 227)

Meaning of "conversion."

It presupposes that the thing has been devoted to a purpose or use different from that agreed upon.

Thus, when pieces of jewelry were delivered to an agent to be shown to prospective buyers, their delivery to a sub-agent *for the same purpose* does not constitute conversion. (People vs. Nepomuceno, 46 O.G. 6132)

Estafa by conversion.

Since pledge involves an act of ownership, the depositary who pledges a thing received by him for deposit uses it for a distinct purpose and accordingly commits estafa by conversion. (People vs. Campos, 40 O.G., Supp. 12, 7)

Pledging a thing by the accused which was received by him only to be sold on commission constitutes the crime of estafa. (U.S. vs. Torres, 11 Phil. 606)

The accused received a ring to sell under the condition that she was to return it the following day if not sold and without any authority to give it to sub-agent. The accused gave it to a sub-agent, who in turn delivered it to a third person in payment of the cloth that said sub-agent had obtained from said third person.

Held: Granting that the accused may not have had the intention of defrauding the owner of the ring when she received it, the accused certainly committed *abuse of confidence* when she *violated* the above *condition.* The filing of criminal action by the agent against the sub-agent is no defense. In giving the ring to a sub-agent, the accused assumed the right to dispose of it as if it were hers, thereby committing conversion and a clear breach of trust. (People vs. Flores, C.A., 47 O.G. 6210)

But the fact that an agent *sold* the thing received on commission *for a lower price* than the one fixed, does not constitute the crime of estafa. (U.S. vs. Torres, *supra)*

The better rule is that selling the thing on credit is estafa.

In the case of *U.S. vs. Morales,et al.*, 15 Phil. 236, it was held that the act of the agent in selling the jewelry on credit and taking promissory notes from the purchaser for the purchase price, is not estafa, there being no evidence of conversion of the property to the benefit of the accused or of some other person.

But in the case of *U.S. vs. Panes,* 37 Phil. 116, where the accused also sold to another on *credit,* the jewelry he had received from the complainant to be sold on commission and for cash, it was held that the accused was guilty of estafa. The decision was based on the rule that "to appropriate to one's own use includes not only conversion to one's personal advantage but *every attempt to dispose of the property of another without right."* (9 RCL 1275)

Estafa by misappropriation.

The appellant was the treasurer of the Manila Railroad Company. He took the sum of P8,330 out of the funds of the Manila Railroad Company,

replacing it with his personal check of the same amount, drawn on the Philippine National Bank. He directed the cashier to hold the check and not to deposit it on the current bank account of the Manila Railroad Company until the end of the month. The appellant used the amount of P8,330 for his personal and private purposes.

When the Insular Auditor made an examination of the accounts of the Manila Railroad Company on July 1, 1921, the check of the appellant was discovered and it was found out that it was carried in the accounts as part of the cash on hand. An inquiry at the Philippine National Bank disclosed that the appellant then had only P125.66 to his credit there, although later in the afternoon of that day, he deposited on his current account with the Philippine National Bank, the sum sufficient to cover the check.

Held: The appellant is guilty of estafa, even if he had no intention to permanently misappropriate the funds to himself. The law is clear and makes no distinction between permanent and temporary misappropriations. (U.S. vs. Sevilla, 43 Phil. 190)

Does momentary use by the agent of funds belonging to his principal constitute estafa?

Since in the momentary use of the funds belonging to his principal, the agent has no intention to defraud his principal, it would seem that he is not liable for estafa. As Art. 315 is worded, fraudulent intent is a necessary element of estafa.

In the case of *U.S. vs. Sevilla, supra,* it was held that fraudulent intent is not necessary, because the breach of confidence involved in the misappropriation or conversion of trust funds takes the place of fraudulent intent and is in itself sufficient.

The Supreme Court stated in that case that such view is further strengthened by the fact that of the nine paragraphs of Article 535 (now Art. 315), the paragraph under discussion is the only one in which the words "fraud" and "defraud" do not occur.

But there has been a change in the wording of the article defining and penalizing the crime of estafa.

Art. 315 begins with the following words: "Any person who *shall defraud* another by any of the means mentioned hereinbelow shall be punished by:" and the paragraph immediately preceding the definition of estafa with abuse of confidence states that "the *fraud* be committed by any of the following means."

The crime of estafa under Art. 315, par. 1 (b), is not committed when there is neither misappropriation nor conversion.

The fact that the accused spent only P39.55 for materials and nothing for labor of the amount of P753.54 he had received from the complainant for the purchase of materials and for the wages of the laborers, does not in itself prove the crime of estafa.

There must be proof of misappropriation or conversion. (Concepcion vs. People, 74 Phil. 63)

The delay in the fulfillment of a trust or in the delivery of the sum received on such account only involves civil liability. (U.S. vs. Bleibel, 34 Phil. 227)

When is an agent who gave to a sub-agent the thing received from his principal, guilty of misappropriation or conversion?

Such delivery was *not forbidden,* and in no wise incompatible with her duty toward her principals, or with the title of the latter. It is not contended and there is *nothing* that even remotely suggests, that appellant had reason *to mistrust* her sub-agents or that she *received anything* from them in exchange for the rings, or in *consideration* for the delivery thereof.

If not of misappropriation, may the appellant be declared guilty of conversion of the jewelry? We think not. As stated by Cuello Calon, conversion presupposes that the thing has been devoted to a purpose or use different from that agreed upon. That did not take place in the case at bar. The rings were delivered to appellant to be shown to prospective buyers and either sold or returned. In delivering them to her sub-agents, the appellant sought to achieve the same ends, as is proved by the receipts signed by the sub-agents ("for sale on commission or return"). The destination of the jewelry remained the same. The one originally agreed upon is sale on commission.

It is well to note that there is no proof whatever to show that the complainant *had forbidden* the accused to employ sub-agents. The absence of prohibition and the uses of the trade implied authority to appoint sub-agents as well as power to surrender temporarily the possession of the jewels to the sub-agent, for no one could be expected to purchase them without previous examination. (People vs. Nepomuceno, C.A., 46 O.G. 6131)

Where the complainant delivered the ring to the accused to be sold for cash on commission basis, and there is *no prohibition* on the part of the accused to deliver it to any agent for the same purpose of selling same on commission basis, and thereafter, the accused delivered the ring to her sub-agent upon a receipt, and there is *no evidence of connivance, collusion or conspiracy* between the accused and sub-agent to defraud complainant,

the accused cannot be held guilty of conversion of the ring. (People vs. Munsayac, C.A., 53 O.G. No. 15, 4855)

The accused, who had received a ring to sell under the condition that she was to return it the following day if not sold, *without any authority* to give it to sub-agent who later misappropriated it, is guilty of estafa. (People vs. Flores, C.A., 47 O.G. 6210)

The ruling in *People vs. Galsim* C.A., 45 O.G. 3466, to the contrary must be deemed superseded.

In giving the property to a sub-agent, the accused assumed the right to dispose of it as if it were hers, thereby committing *conversion* and a clear breach of trust. In estafa, damage to the offended party, not the gain of the offender, is the important consideration.

Withholding application by agent of money received.

Upon the question as to what circumstances will justify a party so receiving money in withholding the application of the same, to the agreed purpose, no fixed rule is announced; and it is stated that each case should be decided on its own particular facts, reference being made primarily to the good or bad faith exhibited by the accused in withholding the money from the use of which it was intended to be applied.

For this reason, a conviction for estafa under this paragraph of Art. 315 cannot be sustained against a person, be he agent, partner, or what-not, who has in *good faith retained* the property committed to his care *for the purpose of necessary self-protection against his principal* in civil controversies arising between the two with reference to the same or related matter. (U.S. vs. Berbari, 42 Phil. 152; see also the case of U.S. vs. Santiago, 27 Phil. 408)

Right of agent to deduct commission from amounts collected.

Can an agent with a right to a commission who collected money for the principal be held liable for estafa, if he failed to turn over that part of his collection to the latter?

It depends.

(1) If the agent is *authorized to retain his commission* out of the amounts he collected, there is no estafa. (People vs. Aquino, 52 Phil. 37)

(2) Otherwise, he is guilty of estafa, because the right to a commission does not make the agent a joint owner, with a right to the money collected. (People vs. Leacnon, 66 Phil. 737)

People vs. Jumawan
(L-28060, Feb. 27, 1970, 31 SCRA 825)

Facts: The accused retained the amount of P55.00 from his last collections, since the accrued commissions in the larger amount of P65.00 due and payable to him for previous collections which he had turned over in full to complainant had not been paid to him. The complainant, his principal, failed to pay the accused either on account of his earned commissions or his earned allowances at the rate of P1.50 per day, which should have been paid to him at the latest upon his turn-over of his collections. The reason for his not being paid was the business losses of complainant.

Held: Under the circumstances, the accused, who was unjustly exploited, is not criminally liable for his act of retaining the amount which was even less than what was actually and honestly due and owing to him by his principal. The complainant not having been damaged or prejudiced by the act of the accused in retaining and setting off what was due to him, the criminal action for estafa should be dismissed.

Estafa by denying having received the thing.

Thus, if A borrowed a ring from B to be used by the former on a certain occasion and later, when B asked A to return it, the latter *denied having received it,* A is guilty of estafa.

In the case of *U.S. vs. Yap Tian Jong,* 34 Phil. 10, the accused who denied having received a box of *sinamay* delivered to him by mistake was convicted of estafa.

Third element of estafa with abuse of confidence.

The third element is that the misappropriation, conversion, or denial by the offender has resulted in the *prejudice of the offended party.*

In estafa with abuse of confidence, it is not necessary that the offender should obtain gain. Thus, in the case of *People vs. Campos* (C.A., 40 O.G., Supp. 12, 7), it was held that "the law does not require that in this class of felony the pledgee should materially benefit by the transaction." In the case of *People vs. Flores* (C.A., 47 O.G. 6210), the accused who was found guilty of estafa by conversion did not benefit by the transaction, because it was the sub-agent who profited from the thing received.

"To the prejudice of another" — not necessarily of the owner of the property.

A handed his watch to *B* to be kept by him while *A* was engaged in certain professional work in a circus. Instead of returning the watch to *A, B*

pawned it in a pawnshop for a loan of P100. A, upon knowing it, immediately went to the pawnshop and recovered it without any expense on his part. Is *B* guilty of estafa considering that A suffered no damage?

Held: It is immaterial whether the loss was suffered by the owner or by a third person. Considering that in view of the literal terms of the provision of Art. 315, par. 1(b), which says *"to the prejudice of another,"* as well as its spirit and legal reason, whenever damages are caused as a consequence of the appropriation or conversion, the act constitutes the crime of estafa, even though the person who suffered the damage is a third party and not the one to whom the misappropriated or converted goods belong or to whom they are to be returned, for this is an incidental element which in no way affects the juridical nature of the crime. (Decision of the Supreme Court of Spain, cited in People vs. Yu Chai Ho, 53 Phil. 874)

Partnership — liability of partners for estafa.

Partners are not liable for estafa of money or property received for the partnership when the business commenced and profits accrued.

United States vs. Clarin
(17 Phil. 85)

Facts: L delivered to *T* P172, in order that the latter, in company with *C* and G, might buy and sell mangoes, and, believing that he could make some money in this business, the said *L* made an agreement with the three men by which the profits were to be divided equally between him and them.

T, C, and *G* did in fact traded in mangoes and obtained P203 from the business, but did not comply with the terms of the contract by delivering to L his half of the profits; neither did they render him any account of the capital.

Held: When two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves, a contract is formed which is called partnership.

When *L* put the P172 into the partnership which he formed with *T, C* and *G,* he invested his capital in the risks or benefits of the business of the purchase and sale of mangoes, and even though he had reserved the capital and conveyed only the usufruct of his money, it would not devolve upon one of his three partners to return his capital to him, but upon the partnership of which he himself formed part, or if it were to be done by one of the three specifically, it would be *T,* who, according to the evidence, was the person who received the money directly from *L.*

The P172 having been received by the partnership, the business commenced and profits accrued, the action that lies with the partner who furnished the capital for the recovery of his money is not a criminal action for *estafa,* but a civil one arising from the partnership contract for a liquidation of the partnership and a levy on its assets if there should be any.

No. 5 of Article 535 of the Penal Code (now Art. 315, par. 1[b]), according to which those are guilty of *estafa* "who, to the prejudice of another, shall appropriate or misapply any money, goods, or any kind of personal property which they may have received as a deposit, on commission, for administration or in any other character producing the obligations to deliver or return the same," (as, for example, in *commodatum, precarium,* and other unilateral contracts which require the return of the same thing received) does not include money received for a partnership; otherwise the result would be that, if the partnership, instead of obtaining profits suffered losses, as it could not be held liable civilly for the share of the capitalist partner who reserved the ownership of the money brought in by him, it would have to answer the charge of *estafa,* for which it would be sufficient to argue that the partnership had received the money *under obligation to return it.*

Failure of partner to account for partnership funds may give rise to a civil obligation only, not estafa.

Thus, where a partner sold the merchandise belonging to the partnership and failed to account for the purchase price, he is civilly liable to the partnership for the price. It is a debt due from a partner as part of partnership funds. (People vs. Alegre, Jr., C.A., 48 O.G. 5341)

Exception:

While it is true that ordinarily a partner who misappropriates the selling price of partnership property does not commit estafa, as it is a debt due from a partner as part of partnership funds, yet the *misappropriation* by a partner *of the share of another partner in the profits* would constitute estafa through misappropriation. (People vs. Clemente, C.A., 65 O.G. 6892)

A co-owner is not liable for estafa, but he is liable if, after the termination of the co-ownership, he misappropriates the thing which has become the exclusive property of the other.

Appellant induced Miguela Angel to buy the house of Martina Nebre for P3,000. She offered to advance P1,000, a portion of the purchase price, provided Miguela would pay it back with interest. Miguela agreed. Appellant

then caused the notary public to write the document of sale in her own name, instead of that of Miguela. Subsequently, appellant sold the house to Simsuangco and retained the price. Prior to said sale, however, Miguela had already paid appellant the amount advanced by her, plus interest.

Held: Appellant is guilty of estafa. It will be observed that there were two pivotal points against appellant in the matter of the alleged swindling: (a) she caused the notary to write the document of sale in her own name, instead of that of Miguela Angel; and (b) she subsequently sold the property to Simsuangco and retained the price. Now, bearing in mind that she had advanced a portion of the purchase money delivered to Martina Nebre, the contention could be made that, because she had some interest in the property, she committed no crime in disposing of it, but only a civil wrong, if any. We find, however, upon examination of the record that Miguela Angel repaid her with interest, the amount so advanced, and that was prior to the Simsuangco sale. (Mercado vs. People, 61 O.G. 1666)

Note: At the time of the sale to Simsuangco, the accused had no more interest in the property.

But when the money or property had been received by a partner for specific purpose and he later misappropriated it, such partner is guilty of estafa.

People vs. De la Cruz
(G.R. No. 21732, Sept. 3, 1924)

Facts: C and *P* formed a partnership for the purpose of purchasing and selling pigs, *P* being the manager and C the industrial partner. *P* delivered the sum of P2,999 to C, with instructions to go to Villasis, Pangasinan, and after paying various debts to certain persons in that municipality, to invest the remainder of the money in the purchase of pigs. C failed to make the payment of the debts, failed to purchase pigs, and appropriated the money for his own use.

Held: C is guilty of estafa, consisting in the fraudulent appropriation of the money which had been delivered to him *with specific instructions* to apply it to the uses of the partnership. This case is different from the case of *U.S. vs. Clarin,* 17 Phil. 84, because in that case, there was a mere failure on the part of the industrial partner to liquidate the affairs of the partnership and to pay over part of the profit to the capitalist partner.

In another case, where 75 cavans of palay were segregated from the partnership and were delivered to the accused, one of the partners, for the purpose of paying the same to the owner of the land, but the accused misappropriated the palay to his own personal use and benefit, it was held that he was guilty of estafa. (People vs. Campos, C.A., 54 O.G. 681)

4th element of estafa with abuse of confidence.

This is the only kind of estafa under Art. 315, where demand may be required. In estafa by means of deceit, demand is not necessary, because the offender obtains delivery of the thing wrongfully from the beginning. (U.S. vs. Asensi, 34 Phil. 750, cited in People vs. Scott, 62 Phil. 553) In estafa with abuse of confidence, the offender receives the thing from the offended party under a lawful transaction.

The mere failure to return the thing received for safekeeping or on commission, or for administration, or under any other obligation involving the duty to make delivery or return the same or deliver the value thereof to the owner could only give rise to a civil action and does not constitute the crime of estafa. *U.S. vs. Bleibel, supra; People vs. Nepomuceno, supra.* And the circumstance that the appellants did not appear anymore in complainant's store and that complainant failed to locate them did not dispense with the requirement of the law that formal demand must be made on the accused to return the articles received in trust or on commission, or to account for the proceeds of their sale, before the action is filed. (People vs. Bastiana, *et al.*, C.A., 54 O.G. 4300)

Demand is not required by law; but it is necessary, because failure to account, upon demand, is circumstantial evidence of misappropriation.

The facts clearly show that the sum of P6,000 belonging to Quasha had been misappropriated by petitioner herein, for he disappeared soon after receipt of said sum, in August, 1947, and when, in 1948, Quasha found him at the Manila Hotel and inquired what he had done with his (Quasha's) money, petitioner merely said, "that there was no use telling what happened," but that he would try to pay it back. Had *said money been* invested in rattan which later on was spoiled, as appellant tried to prove, he would have said so, instead of making to Quasha said statement, which, like his conduct prior and subsequently thereto, implies that he had misappropriated the funds entrusted to his custody.

It is urged that there can be no estafa without a previous demand, which allegedly has not been made upon herein petitioner, but the aforementioned query made to him by Quasha in Manila Hotel was tantamount to a demand. Besides, the law does not require a demand as a condition precedent to the existence of the crime of embezzlement. It so happens only that failure to account, upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation. The same may, however, be established by other proof, such as that introduced in the case at bar. (Tubb vs. People, *et al.*,101 Phil. 114)

Failure to account, upon demand, for funds or property held in trust is circumstantial evidence of misappropriation. (People vs. Sullano, G.R. No. L-18209, June 30, 1966)

Presumption of misappropriation arises only when the explanation of the accused is absolutely devoid of merit.

The appellant claims that his failure to return the amount delivered to him by the offended party was due to the fact that he had advanced it to several miners in gold in the ordinary course of business, but these miners perished in an accident before they were able to comply with their agreement. The explanation of the appellant, if it does not completely destroy the presumption that he has misappropriated the amount in question, at least raises reasonable doubt that he had misappropriated said amount. (People vs. Lopez, C.A.. 56 O.G. 5881-5882)

Even if the offender cannot be located, or there was agreement upon specific time for delivery or return of the thing received, demand cannot be dispensed with.

The demand to fulfill the trust or return the thing received must be made formally and before the action is filed. The circumstance that the offended party failed to locate the accused did not dispense with the compliance with the requirement of the law; nor could the inquiry from the accused of the money, made by her after the action had been filed, take the place of the demand contemplated therein. To hold that prior demand need not be proved "where the parties have agreed upon specific time for the delivery and return of the misappropriated property" is to depart unwarrantedly from the constant doctrine of the Supreme Court on the subject. (People vs. Pendon, C.A., 53 O.G. 174)

The ruling is different in these cases:

But in another case, it was held that if the offender is in hiding, prior demand is not necessary to institute the criminal action. The disappearing act of the offender is a clear indication of a premeditated intention to abscond with the thing he received from the offended party. The proven facts showed that the offender could not have complied with the demand, even if it had been made. (People vs. Villegas, C.A., 56 O.G. 11, 1938)

And it was also held in a case that where the receipt signed by the accused stipulated that he should turn over the proceeds of the sale or make an accounting thereof on a specified date, it in itself was a demand which would dispense with the necessity of another one after that date. (People vs. Librea, C.A., 48 O.G. 5305)

There is no estafa through negligence.

Article 315, in penalizing estafa by misappropriation or conversion differs radically from Article 217, punishing malversation of public funds in that the latter crime may take place if an accountable officer "shall permit any other person to take such public funds or property, wholly or partially." Estafa and malversation being both based on unfaithfulness or abuse of confidence of the agent, the absence of similar provision in the case of estafa cannot be devoid of significance; it clearly imports that in case of estafa, the profit or gain must be obtained by the accused personally, through his own acts, and his mere negligence in permitting another to take advantage of, or benefit from, the entrusted chattel cannot constitute estafa under Article 315(l-b). (People vs. Nepomuceno, C.A., 46 O.G. 6135)

Thus, when the accused who had received from the complainant the sum of P4,000.00, to be employed in the purchase of a car, entrusted and delivered the money to his business companions for the same purpose, but his said companions absconded with the money, the accused is not liable for estafa even if he was negligent in permitting other persons to take the benefit from the entrusted money. (People vs. Trinidad, C.A., 53 O.G. 731)

"Even though such obligation be totally or partially guaranteed by a bond."

This clause is used in paragraph (b), subdivision No. 1 of Art. 315.

Thus, a mortgage executed by the agent or salesman or a surety bond filed by the agent to answer for damages, advances, etc., *does not relieve him from criminal liability,* for this undertaking refers only to his civil liability. (People vs. Leachon, 56 Phil. 737)

The gravity of the crime of estafa is determined on the basis of the amount not returned before the institution of the criminal action.

In the crime of estafa, the gravity of the offense is not determined by the value which accused has delivered or has returned to the offended party after the criminal action is instituted, but by the value which is not delivered or returned upon the obligation to do so and before the institution of the criminal action. (People vs. Pagayon, 71 Phil. 337)

It is contended that since appellant had paid the sum of P62 on account of the amount of P12,052.57, the remaining sum of P11,990.57 should serve as the basis of determining the penalty to be suffered by the appellant. Thus, it is argued that because the amount embezzled by appellant does not exceed P12,000, his case falls under the second paragraph of Article 315 of the Revised Penal Code and he should therefore, be sentenced only to a minimum of one year, eight months and twenty-one days and a maximum

of two years, eight months and ten days. *Held:* There is no merit in this contention. It is a well-settled rule in this jurisdiction that payment made subsequent to the commission of the crime of estafa does not alter the nature of the crime committed nor does it relieve the defendant from the penalty prescribed by law. (Javier vs. People, 70 Phil. 550)

Estafa with abuse of confidence, distinguished from theft.

But a person who misappropriated the thing which he had received from the offended party may be guilty of theft, not estafa, if he acquired only the *material* or *physical* possession of the thing.

In theft, the offender *takes* the thing; in estafa, the offender *receives* the thing from the offended party.

If in receiving the thing from the offended party, the offender acquired also the juridical *possession* of the thing, and he later misappropriated it, he would be guilty of estafa.

The complainant having turned over the dollars to the accused in the belief that the same could be changed into pesos, only the material and transitory possession thereof was transferred thereby, the juridical possession remaining with complainant, and the subsequent misappropriation thereof by the accused makes him liable for theft, and not estafa. (People vs. Frias, C.A., 66 O.G. 9411)

In estafa, the offender receives the thing — he does not take the thing without the consent of the owner.

A was taking two large cattle to another town to sell them there. On the way, *A* became acquainted with *B* who was also going to sell a cow in that town. Taking advantage of the simplicity of A, *B* represented himself to the purchasers to be the owner of the large cattle belonging to A and effected their sale, with *A's* consent but without the latter's intervention except the delivery of the animals to their respective purchasers. *B* absconded with the money received by him from the purchasers. What crime was committed by *B*, theft or estafa?

Held: Estafa. The two large cattle were taken by *B* with the consent of A. *B* did not take the proceeds of the sale; he received them from the purchasers. But *B* received the proceeds of the sale to be held by him in trust for A. (See People vs. Darpeng, CA-G.R. No. 43650, Jan. 18, 1937, V. L. J. 190)

Not theft, because there is no taking or abstracting of the thing from anyone.

A is a tenant of several parcels of land. *A* entered into an agreement with *B*, whereby the former was to contribute 3 1/2 cavans of seed, several

animals and implements, and an amount of money, and sow the same, and *B* was to transplant the seed and take care of and harvest the crop, the profits to be divided between them, share and share alike, deducting the 30 cavans due to the owner of the land and one-half of the expenses defrayed by A. When the crop was harvested, *B* threshed the same and sold all the palay, without giving *A* any share in the proceeds thereof.

Is the crime committed theft?

No, because *B* was in possession of the palay. He did not take or abstract the same from anyone. (U.S. vs. Reyes, 6 Phil. 441)

The test to distinguish estafa from theft.

In theft, upon the delivery of the thing to the offender, *the owner expects an immediate return of the thing to him.* (Albert)

In the following cases, the owner expects the immediate return of the thing by the offender:

1. Certain Igorots who owned a bar of gold which they wanted to sell and bank notes which they wanted to change into silver coins gave them to the accused who promised to take the bar of gold to a silversmith and have it examined and to change the bank notes into silver coins, stating that she would return within a short time to report the result. The accused who never returned, because she disposed of them for her benefit, was found guilty of theft. (U.S. vs. De Vera, 43 Phil. 1000) In this case, the Igorots would naturally expect the immediate return of their bar of gold and bank notes, if the latter were not changed into silver coins.

2. The accused sold palay to the offended party who handed to him a P100-bill. The accused said she had no change and would step out for a moment to look for change. The offended party agreed because she had to go to another house, where she had also bought palay, in order to have the cereals measured. When the offended party returned, she was informed that the accused had left for another town. She absconded with the money.

Held: The crime committed is theft. The juridical possession was not transferred by delivery because there was *no agreement* by which the accused could exercise a better right of possession over the object received than the owner herself, or had any right to dispose of said object in a manner binding on the owner. (People vs. Aquino, C.A., 36 O.G. 1886)

Note: The delivery of the PlOO-bill was *only for the moment* and, with the *express obligation* on the part of the accused *to make immediate return of the same* if it could not be changed or else to give back to the offended party *an equivalent* in bills or coins of smaller denominations.

When the owner does not expect the immediate return of the thing he delivered to the accused, the misappropriation of the same is estafa.

Thus, in the case of *U.S. vs. Pascual,* 10 Phil. 621, where the accused appropriated the sum of P310 which had been entrusted to, and received by him with the obligation of delivering it to a third person, the owner of the money did not expect the immediate return of it to him, because what he expected upon its delivery to the accused, was that the latter would deliver it to the third person. The crime committed by the accused is estafa. (See also the case of U.S. vs. Figueroa, 22 Phil. 270)

Exception:

When the servant received money or other personal property from the master, with the obligation to deliver it to a third person and, instead of doing so, misappropriated it to the prejudice of the owner, the crime committed is qualified theft.

Servant, domestic, or employee who misappropriates the thing he received from his master or employer is not guilty of estafa.

Where the custody of personal property is only precarious and for a temporary purpose or for a short period and merely the effect of such relationship as master and servant, employer and employee, or master and domestic, the juridical or constructive possession remains in the owner until the conversion thereof by its custodian. (People vs. Marcelino Nicolas, *et al.*, C.A., 58 O.G. 472)

Constructive possession is the relation between the owner of the thing and the thing itself when the owner is not in the actual physical possession, but when it is still *under his control* and management, and *subject to his disposition.* (See U.S. vs. Juan, 23 Phil. 105)

The appellant, driver of the service truck of William Lines, Inc., caused a container to be filled with gasoline before the tank of the truck itself was loaded with gasoline. Shortly thereafter, the passenger truck "St. Francis" arrived. The appellant approached its driver, Manuel Gica, and asked Gica if the latter wanted to buy gasoline. When Gica answered that he did, the appellant repaired his truck, took the container which was full of gasoline and sold it to Gica. All the above circumstances clearly established that the appellant caused 19.2 liters of gasoline to be loaded on his gasoline container, out of the 50 liters covered by the requisition slip of William Lines, Inc., in whose account the said 50 liters of gasoline were charged for payment, for the purpose of selling it. *Held:* The appellant might be deemed to have material possession of the gasoline from the moment the requisition slip was

honored by the gas station employee, but the juridical possession remained in the complainant to whom the 50 liters of gasoline were to be charged for payment. Not having the juridical or legal possession of the gasoline, appellant is guilty of theft. (People vs. Batoon, C.A., 55 O.G. 1388)

Possession of agent distinguished from possession of teller of bank.

There is an essential distinction between the possession by a receiving teller of funds received from third persons paid to the bank, and an agent who receives the proceeds of sales of merchandise delivered to him in agency by his principal. In the former case, payment by third persons to the teller is payment to the bank itself; the teller is a mere custodian or keeper of the funds received, and has no independent right or title to retain or possess the same as against the bank. An agent, on the other hand, can even assert, as against his own principal, an independent, autonomous right to retain the money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault. (Guzman vs. Court of Appeals, 99 Phil. 704, citing Article 1915, New Civil Code)

Selling the thing received to be pledged for the owner is theft, when the intent to appropriate existed at the time it was received.

Thus, in a case where the accused, who received a ring from the offended party for the purpose of pledging it as security for a loan of P50 for the benefit of the offended party, sold it for P30 and spent for her own benefit the proceeds, it was held that she committed theft, not estafa. The *intent to appropriate* the ring *existed at the time it was received* from the owner, as shown by the fact that, upon receiving the ring, she immediately offered it for sale. (People vs. Trinidad, 50 Phil. 65)

Estafa with abuse of confidence and malversation, distinguished.

1. In both crimes, the offenders are entrusted with funds or property.
2. Both are *continuing* offenses.
3. But while in estafa, the funds or property are always *private;* in malversation, they are usually *public* funds or property.
4. In estafa, the offender is a private individual or even a public officer who is not accountable for public funds or property; in malversation, the offender who is usually a public officer is accountable for public funds or property.
5. In estafa with abuse of confidence, the crime is committed by misappropriating, converting or denying having received money, goods or

other personal property; in malversation, the crime is committed by appropriating, taking or misappropriating or consenting, or, through abandonment or negligence, permitting any other person to take the public funds or property.

When in the prosecution for malversation the public officer accountable for public funds is acquitted, the private individual allegedly in conspiracy with him may be held liable for estafa.

In a prosecution for malversation thru falsification of public documents, where the indicted public officials who are accountable for public funds are acquitted, thereby deleting the element of accountability of public funds from the charge, if the information avers conspiracy, the remaining accused who are not public officials or are public officials not accountable for public funds are open to conviction for estafa thru falsification of public documents. This, because estafa thru falsification of public documents is necessarily included in a charge of malversation of public funds thru falsification of public documents. (People vs. Salazar, *et al.*, 61 O.G. 5913, citing U.S. vs. Solis, 7 Phil. 196, 197-198)

Misappropriation of firearms received by a policeman is estafa, if it is not involved in the commission of a crime; it is malversation, if it is involved in the commission of a crime.

Where the accused policeman asked for the pistol of the offended party, on the pretext that it should be delivered to the Detective Bureau for examination, and that it would be returned in three days, and once in possession of the pistol, he sold it, it was held that the policeman was guilty of estafa. (People vs. Bautista, C.A., 48 O.G. 3430)

But a policeman, having custody of a firearm seized from a person without permit to possess it, is guilty of malversation for the disappearance of said firearm.

See *People vs. Magsino*, C.A., 50 O.G. 675, where a policeman was convicted of malversation for the disappearance of the explosives seized by him from a person who had no permit to possess them.

Estafa by taking undue advantage of the signature of the offended party in blank.

By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person. (Art. 315, No. 1[c])

Elements of estafa by taking undue advantage of the signature in blank.

1. That the paper with the signature of the offended party be in *blank.*
2. That the offended party *should have delivered* it to the offender.
3. That above the signature of the offended party a document is written by the offender without authority to do so.
4. That the document so written creates a liability of, or causes damage to, the offended party or any third person.

Example:

A left to B a blank paper with A's signature with a request to make a receipt for future payment to be made by a debtor; but instead, B wrote thereon a *vale* for some merchandise in the name of A. B made use of the merchandise for personal benefit. The *vale* so written created a liability against A and would cause damage to him, because the owner of the merchandise could make A pay for the value of the merchandise delivered to B by reason of the *vale.*

The paper with the signature in blank must be delivered by the offended party to the offender.

A was keeping blank papers with the signature of *B. C* stole one of them and wrote a document above the signature, creating liability against *B.* What crime was committed?

Falsification, because *C* made it appear that B participated in a transaction when in truth and in fact he did not so participate, or attributed to *B,* a statement other than that made by him. This is not estafa, because *C,* not having been entrusted with the signature in blank, could not have acted with *abuse of confidence,* which is the element of this form of estafa.

Estafa by means of deceit. (Art. 315, subdivisions Nos. 2 and 3)

The second and third forms of estafa defined in subdivisions Nos. 2 and 3 of Art. 315 are committed by means of deceit. It is committed either by means of false pretense or fraudulent act, or through fraudulent means.

Elements of estafa by means of deceit:

a. That there must be a *false pretense, fraudulent act* or *fraudulent means.*
b. That such false pretense, fraudulent act or fraudulent means must be made or executed *prior to* or *simultaneously with* the *commission* of the fraud.

c. That the offended party *must have relied* on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means.

d. That as a result thereof, the offended party suffered damage.

There is no deceit if the complainant was aware of the fictitious nature of the pretense.

Where the complainant was aware of the fictitious nature of the pretense, there is no estafa through false pretenses. Thus, where the charge of estafa was founded upon deceit, it being alleged that the money of which the bank was defrauded was obtained by means of false representation on the part of the accused Crisologo that he was the owner of the tobacco covered by the quedans, but the manager of the bank, who let the money out, knew that the tobacco was non-existent, the accused cannot be convicted of estafa by means of deceit. (People vs. Concepcion, 44 Phil. 544)

BY MEANS OF ANY OF THE FOLLOWING FALSE PRETENSES OR FRAUDULENT ACTS EXECUTED PRIOR TO OR SIMULTANEOUSLY WITH THE COMMISSION OF THE FRAUD:

By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits. (Art. 315, No. 2[a])

There are three ways of committing estafa under the provisions.

They are —

(1) by using *fictitious name;*

(2) by *falsely pretending to possess:* (a) power, (b) influence, (c) qualifications, (d) property, (e) credit, (f) agency, (g) business or imaginary transactions; or

(3) by means of other *similar deceits.*

Indispensable requirement for the application of Art. 315, No. 2(a).

In the prosecution for estafa under Article 315, paragraph 2(a) of the Revised Penal Code, it is indispensable that the element of deceit, consisting in the *false* statement or *fraudulent* representation of the accused, be made *prior to,* or, at least *simultaneously with,* the *delivery of the thing* by the

complainant, it being essential that such false statement or fraudulent representation constitutes the *very cause* or the *only motive* which induces the complainant to part with the thing. If there be no such prior or simultaneous false statement or fraudulent representation, any subsequent act of the accused, however fraudulent and suspicious it may appear, cannot serve as a basis for prosecution for that class of estafa. (People vs. Gines *et al.*, C.A., 61 O.G. 1365)

Estafa by using fictitious name.

There is use of fictitious name when a person uses a name other than his real name. Thus, when a person found a pawnshop ticket in the name of another and, using the name of that other person, redeemed the jewelry mentioned therein, he committed estafa by using a fictitious name. (See People vs. Yusay, 50 Phil. 598)

Estafa by falsely pretending to possess power.

In the following cases, the offended party was deprived of his property because of the false pretenses made by the offender, that is, by falsely pretending to possess power.

1. A wanted to get a carabao, valued at P77, from *B*, an ignorant Igorot. By means of a piece of paper which A delivered to *B*, *A* induced the latter to accept it as payment of his carabao upon A's representation and guarantee that it was an instrument which would make and coin paper and silver money after the lapse of seven Fridays, provided that *B* would offer prayers for the success of the enterprise. By reason of that misrepresentation, *B* delivered the carabao and accepted the worthless piece of paper in payment thereof.

   Held: A is guilty of estafa by falsely pretending that the worthless piece of paper possessed power, a statement which induced *B* to part with his carabao. (U.S. vs. De los Reyes, 34 Phil. 693)

2. Pretending to be a magician endowed with power to discover hidden treasures, the accused led the offended party to believe that under his house was a jar containing articles of great value, but that to obtain that jar, it was necessary for the offended party to give him P150 for the purchase of a certain substance and old gold coins to be used in extracting the hidden treasure. After receiving the money, the accused left and never returned.

   Held: The accused committed estafa. (People vs. Scott, 62 Phil. 555)

Estafa by falsely pretending to possess influence.

If the accused represented to the offended party, a Chinaman, that he had influence in Malacañang, the Bureau of Immigration, and the Department of Foreign Affairs, *when in truth and in fact he had no influence in any of said offices,* and said representation was made by him for the purpose of inducing the offended party, who was interested in the entry of his family for permanent residence in the Philippines, to give him money and the offended party gave him the amount asked for his alleged services, which he later spent for his own benefit, the accused is guilty of estafa.

Estafa by falsely pretending to possess qualifications.

The offended party had a civil case in a justice of the peace court involving his real estate. The accused, by means of false representation that he was qualified in law to represent the offended party in that civil case, succeeded in obtaining from the latter, the title deeds of his lands. The accused later refused to redeliver them on demand by the owner.

Held: The accused was guilty of estafa. The basis of the penalty is the value of the paper, not that of the land, because the loss of the title deeds does not mean necessarily the loss of the land. This case differs from that where the thing in controversy is a negotiable instrument such as a promissory note or check. (U.S. vs. Del Castillo, 35 Phil. 413)

Estafa by falsely pretending to possess property (money).

A ordered certain building materials from *B* on the pretense that he was building a house and that *he had sufficient funds to pay in cash* the value of said materials on completion of their delivery, when in truth and in fact, he had no money. *B* could not recover the materials because *A* disposed of them.

Held: A was guilty of estafa. (People vs. Santos, 71 Phil. 490)

A creditor who deceived his debtor is liable for estafa.

Appellant admits, among others, the evidence for the prosecution to the effect that on January 31, 1964, he falsely represented to one Illuminado Jaud that he had 200 cavans of palay for sale; that on the following day, by means of that deceit and/or false pretense, he succeeded in obtaining from Jaud the sum of P3,000.00 for the purchase of the palay; that he had in fact no palay for sale to Jaud; that upon reaching the place where the palay was indicated by appellant to be taken from, Jaud found that the palay did not belong to appellant; and that appellant absconded with the money and refused to return the same.

In making this admission, appellant claims, however, that he had merely conceived of a plan by which he could obtain from Jaud the sum of P3,000.00 which was the amount of the latter's indebtedness to him. He thus argues that he cannot be convicted of estafa because of the absence of criminal intent and/or the element of fraud since he received only what complainant Jaud had owed him.

Held: We do not share appellant's view. Assuming to be true that complainant had owed him that much, and the deceit was merely employed by appellant as a means to collect from the former — although we are skeptical about the truth of this assertion — appellant nonetheless is clearly liable for the crime of estafa. If it was wrong for the complainant to refuse to pay his obligation to appellant, it was not right either for appellant to employ unlawful means to enable him to collect. A wrong cannot justify another wrong. Appellant's contention that there is absence of criminal intent or fraud is untenable. The plan, as conceived by him, if true, was precisely born of a desire to commit fraud. The plan itself carried a criminal intent. (People vs. Rubaton, C.A., 65 O.G. 5048, issue of May 19, 1969)

Estafa by falsely pretending to possess credit.

In a case where the accused, by stating and representing themselves to the employees of Sun Photo Supply that they were merchants with *credit,* business and means with which to pay for 10 dozen rolls, Kodak film No. 116, valued at P72, succeeded in inducing the employees of Sun Photo Supply to give and deliver, as in fact the latter gave and delivered to said accused, the goods and merchandise on credit, the accused knowing that their statements and representations that they had credit, business and means were false, and disappeared and absconded themselves with said goods and merchandise, it was held that they were guilty of estafa. (People vs. Kaw Liong, *et al.*, 57 Phil. 839)

Estafa by falsely pretending to possess agency.

In a case where the accused, falsely pretended to the depositary of certain goods that he was sent by the depositor of the goods to get them and succeeded by means of such false pretense in obtaining the goods which he converted to his own use, it was held that the accused was guilty of estafa. (People vs. Contreras, C.A., 47 O.G. 782) The accused falsely pretended to possess the agency of the depositor.

Estafa by falsely pretending to possess business.

The accused, pretending to be engaged in the business of buying and selling hogs, represented to the offended party that they (accused) had purchased some hogs in Pampanga but could not secure delivery because

they were short of funds in the sum of P285.00 and that the hogs could be sold in Manila at a profit. Because of this representation, the offended party gave money. The accused in reality had no such business and spent the money.

Held: The accused were guilty of estafa. (People vs. Acuña, *et al.*, 58 Phil. 976)

A branch manager of an insurance company who still accepted a fire insurance application despite his knowledge from newspapers that the insurance company has been suspended is guilty of estafa for not returning the premium he received. The deliberate concealment by the petitioner of the fact that his company was no longer authorized to engage in the business of insurance when he signed and issued the fire insurance policy and collected the premium payment constitute fraudulent representations or fraudulent pretenses. (Salcedo vs. Court of Appeals, 139 SCRA 59)

Estafa "by means of other similar deceits."

Deceit, not covered by any of those specifically mentioned in subdivision 2, paragraph (a), but similar to any of them, may give rise to estafa under that phrase "by means of other similar deceits."

In presenting a deed of donation *mortis causa,* known to be vitiated by lack of consent, to the Office of the Register of Deeds to register the same and to secure new transfer certificates of title in her name, the accused in effect falsely represented that the deed was validly executed and the lots described therein actually donated to her. She thereby committed estafa by means of other similar deceits, defined in Article 315, No. 2(a), of the Revised Penal Code, and this notwithstanding the fact that the deceit was practiced against the Register of Deeds and the damage is incurred by the supposed donor or her estate, for the law only requires, to hold a person liable for estafa, that he defrauded another by any of the means therein enumerated. (People vs. Papa, C.A., 71 O.G. 1660)

The pretense must be false.

In estafa by means of deceit under subdivision 2(a) of Art. 315, there must be evidence that the *pretense* of the accused that he possesses power, influence, etc., is *false.*

In the absence of proof that the representation of the accused was actually false, criminal intent to deceive cannot be inferred. (People vs. Urpiano, C.A. 60 O.G. 6009, citing the ruling in the cases of People vs. Lagasca, G.R. No. 4230-R, June 5, 1960, and U.S. vs. Adriatico, 7 Phil. 187)

People vs. Wilson Yee
(C.A., 55 O.G. 1223)

Facts: **The evidence for the prosecution shows that appellant Yee, an immigration broker, told the complainant Cua that he (Yee) could help the latter bring his family into this country because he had influence in Malacañang, the Bureau of Immigration and the Department of Foreign Affairs. Upon this representation, Cua entered into an agreement with Yee for the entry of his family for permanent residence in the Philippines. Cua gave P2,000 to Yee. After waiting for a long time without hearing from Yee, Cua went to the Bureau of Immigration to check on the papers for the entry of his wife and child, but he found that no such papers had been filed. Thereafter, he went to Yee's office, inquired why no papers were prepared and demanded the return of the money. Yee promised to give back the amount but failed to do so.**

Held: **From the fact of non-compliance by appellant with his part of the supposed agreement, the trial court concluded that his representation that he possessed influence was false. The premises do not justify the conclusion.** *Not a scintilla of evidence was adduced to prove that appellant's pretense of influence was not true* **and therefore fraudulent. In the absence of proof that his representation was actually false, criminal intent to deceive cannot be inferred. There is nothing in the record from which we can infer that when he received the advance payment, the appellant had no intention of rendering the service contracted by him, and since** *it was not shown that he in fact possessed no influence* **nor that his inaction was due to his lack of influence, he cannot justifiably be held guilty of deliberate misrepresentation, and his failure or inability to render the service could have been due to a change of mind, if not to a lawful cause. Non-performance on his part and his failure to return the money give rise only to civil liability. (Abeto vs. People, 90 Phil. 581)**

The offended party must be deprived of his property by any of the false pretenses mentioned in paragraph 2(a).

The offender *must be able to obtain something* **from the offended party** *because of the false pretense,* **that is, without which the offended party would not have parted with it.**

This being a form of estafa by means of *deceit,* **the false pretense should be the efficient cause of the defraudation and, hence, it should be made either** *prior to,* **or** *simultaneously with,* **the act of fraud.**

Estafa by means of deceit and theft, distinguished.

What materially distinguishes estafa from theft is not the presence or absence of fraud or deceit but whether only material possession or both the juridical and physical possession of the thing was transferred.

Thus, where the accused, a book account posting clerk of a company, induced the shop clerks of the latter to believe that they had incurred shortages of stock in the shops under their care but owned by the company, through the manipulation of ledger cards pertaining to such shops, and to cover up the alleged shortages, caused such clerks to deliver to him and his family, various merchandise which he subsequently misappropriated, the crime committed is theft, not estafa.

The juridical or legal possession of the merchandise delivered by the shop clerks to the accused was not transferred, at least from the owner thereof. Only the physical or material possession of said merchandise was transferred from one employee of the offended party to another, for the merchandise was delivered to the accused in the hope that he would remedy an alleged shortage of the spare parts. (People vs. Escalante, C.A., 59 O.G. 718)

Where commission salesman took back the machines from prospective customers and misappropriated them, the crime committed is theft, not estafa.

A commission salesman who misappropriated the machines he took back from prospective customers *making* them *believe* that *in retaking said machines he was acting on behalf of his employer* when in *fact* he *was* not, is *guilty of theft,* not estafa. The *physical possession secured by him did not vest in him the juridical possession necessary for the crime of estafa.* From a legal viewpoint, he had taken and carried away the machines without the knowledge and consent of the owner thereof. (People vs. Maglaya, L-29243, Nov. 28, 1969, 30 SCRA 606)

Estafa through falsification.

Where a person succeeds in withdrawing money from a deposit account of another *by stealing the latter's passbook* for such deposit and *forging* the *depositor's signature* on the *withdrawal receipt* of the Postal Savings Bank issued by the bank, he commits the crime of estafa through falsification of an official document. (People vs. Pineda, C.A., 37 O.G. 525)

Note: In a decision of the Supreme Court of Spain of Nov. 22, 1883, similar facts were held to be constituting the crime of theft, not estafa through falsification, "because the *false representation* made by the offender was nothing but *a continuation* and *natural development and consequence* of the crime of theft already committed."

Any person who falsifies, counterfeits or imitates the signatures of the officials appearing in the traffic police sticker, a sort of road or bridge pass, and sells it, is liable for estafa thru falsification of a public or official document. (People vs. Asistio, C.A., 59 O.G. 8625)

Estafa through false pretense made in writing is only a simple crime of estafa, not a complex crime of estafa through falsification.

People vs. Samonte Vda. de Guia
(105 Phil. 1288)

Facts: The defendant, as unremarried widow of Rufino de Guia, who had died in action in Corregidor, had applied for, and was subsequently granted, by the Government of the United States, a pension and the benefits of a life insurance. Although admittedly she later married one Aniano F. Gili, and she knew that this fact extinguished her rights to said pension and benefits, she kept on cashing the checks sent to her therefor by the U.S. Veterans Administration, which had not been notified of her remarriage.

Held: The checks in question were made payable to "Adelaida Samonte Vda. de Guia as unremarried widow of Rufino de Guia," and that in order to collect the amount of said checks she had to *write* on the back thereof "Adelaida Samonte Vda. de Guia as unremarried widow of Rufino de Guia." She thus misrepresented that she was still the "unmarried widow of Rufino de Guia," not only by using this specific expression, but also by adding to her maiden name the phrase "Vda. de Guia," instead of signing, either as Mrs. Aniano F. Gili, or as Adelaida Samonte Gili, or as Adelaida Gili. She had to resort to said misrepresentation in order to cash each check and thus collect what she knew was not due to her, thereby defrauding the offended party. Consequently, the defendant is clearly guilty of *estafa.*

Attempted estafa through forgery.

After forging 1/8 unit of the Philippine Charity Sweepstakes ticket, by altering a figure thereon and making it appear a prize-winning number, the accused presented it at the Philippine Charity Sweepstakes Ticket Office for the purpose of cashing it, but the forgery was noticed there and the accused failed to get the prize. (People vs. Balmores, 85 Phil. 493)

Fraud in estafa by means of deceit must be proved with clear and positive evidence.

People vs. Salapare
(C.A., 56 O.G. 4039)

The prosecution contends that the appellant *falsely represented* to the complainant the real status of the car, because at the time it was offered to him, the appellant made him understand that he bought the car for his personal use and that it was not in anyway encumbered. On this point, the testimony of complainant finds no corroboration on record. On the other

hand, we have the positive assertion of the appellant to the effect that he made no misrepresentation whatsoever regarding the car. The declaration of the appellant to this effect, was corroborated by his witness, who averred, among others, that he heard the appellant tell the complainant that the purchase price on the car was not then fully paid.

If the bargain was bad, the complainant was simply unfortunate.

> "The foolish may lose all they have to the wise; but that does not mean that the law will give it back to them again. Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. Courts cannot constitute themselves guardians of persons who are not legally incompetent." (Vales vs. Villa, 35 Phil. 769)

We are, therefore, of the belief that there having been no misrepresentation and/or concealment regarding the status of the car in question, on the part of the appellant, no criminal liability attaches to the transactions under consideration. Fraud, being an essential element of estafa under subsec. 2(a), Art. 315, R.P.C, must be proved with clear and positive evidence.

By altering the quality, fineness, or weight of anything pertaining to his art or business. (Art. 315, No. 2[b])

Estafa by altering the quality, fineness or weight of anything pertaining to his art or business.

The estafa by altering the quality, fineness, or weight of anything pertaining to his art or business may be illustrated in the case of a jeweler who, for instance, defrauded a person who had delivered to him a diamond and piece of gold to be made into ring by changing the stone with one of lower quality.

Manipulation of scale is punished underthe Revised Administrative Code.

But the owner of a store who manipulated his scale should be punished under the provisions of the Administrative Code.

Violation of the Weights and Measures Act.

1. Selling a supposed *ganta* of rice which did not fill the measure at the edges by nearly a half of an inch, is not estafa, because it is specially

penalized under the Weights and Measures Act. However slight the shortage may have been, if it was the *result* of *fraud,* the accused is guilty under the said Act. (U.S. vs. Cheng Chua, 31 Phil. 302)

2. Using a one-deciliter measure that was false or which appeared to have been altered after it had been officially scaled, thereby defrauding the purchasing public, is a violation of the Weights and Measures Act. (U.S. vs. Vicente, 35 Phil. 623)

By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case the offender shall be punished by the maximum period of the penalty. (Art. 315, No. 2[c])

Estafa by pretending to have given bribe.

This is committed by any person who would ask money from another for the alleged purpose of bribing a government employee, when in truth and in fact the offender intended to convert the money to his own personal use and benefit.

Thus, a person who obtains money from another by falsely pretending that with that money he will bribe the doctor in charge of the physical examination of the offended party so as to declare him unfit for compulsory service in the Army, is guilty of estafa under this paragraph.

But if he really gives the money to the doctor, the crime is corruption of public officer.

"Without prejudice to the action for calumny which the offended party may x x x bring against the offender."

Note that in addition to the crime of estafa, the offender may still be liable for the crime of defamation which the government employee allegedly bribed may deem proper to bring against the offender.

Estafa by means of fraudulent acts.

The acts must be fraudulent.

The acts must be fraudulent, that is, the acts must be characterized by, or founded on, deceit, trick or cheat.

Note that while in *false pretenses* the deceit consists in the use of deceitful words, in fraudulent acts the deceit consists principally in deceitful *acts.*

This being also *estafa by means of deceit,* the fraudulent acts must be performed *prior to* or *simultaneously with* the commission of the fraud.

Like in other forms of deceit, the offender must be able to obtain something from the offended party *because* of the fraudulent acts, that is, without which, the offended party would not have parted with it.

By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and / or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (Art. 315, No. 2[d], as amended by Rep. Act No. 4885, approved June 17, 1967)

Estafa by postdating a check or issuing a check in payment of an obligation.

Elements:

1. **That the offender postdated a check, or issued a check in payment of an obligation;**
2. **That such postdating or issuing a check was done *when* the offender *had no funds in the bank,* or *his funds deposited* therein were *not sufficient* to cover the amount of the check.**

The check issued must be genuine, and not falsified.

The act of signing a check with a *fictitious name* and falsely pretending that said check could be cashed at the bank, the accused knowing that it could not be cashed, and on the strength of such false pretense the accused obtained from the offended party a certain amount in exchange for the worthless check, constitutes estafa by means of false pretense under paragraph 2(a), and not estafa by postdating or issuing a check under paragraph 2(d) of Art. 315. (People vs. Bisquera, C.A., 51 O.G. 248)

If the check is falsified and the same is cashed with the bank, or exchanged for cash, the crime committed is estafa through falsification of a commercial document.

The check must be postdated or issued in payment of an obligation contracted at the time of the issuance and delivery of the check.

The phrase "By postdating a check, or issuing such check in payment of an obligation" in Art. 315, No. 2(d), is not changed by Republic Act No. 4885, except that the word "such" is replaced by the article "a" in relation to the check issued. The elimination of the word "such" is in accordance with the decision of the Supreme Court in the case of *People vs. Fernandez,* 59 Phil. 619, that the word as used in the first line of subsection (d) is an error in the English translation, and that the provision does not apply exclusively to postdated checks.

The meaning given to the phrase, "in payment of an obligation", is that the check should not be postdated or issued in payment of *pre-existing* obligation.

Thus, when a check was issued in payment of a debt contracted *prior* to such issuance, there is no estafa, even if there is no fund in the bank to cover the amount of the check. (People vs. Lilius, 59 Phil. 339)

The reason for the rule is that deceit, to constitute estafa, should be the efficient cause of the defraudation as such should be either prior to, or simultaneously with, the act of fraud. (People vs. Fortuno, 73 Phil. 407)

The crime of estafa under Art. 315, par. No. 2(d), Revised Penal Code, notwithstanding the amendment, remains and continues to be a form of swindling by means of deceit. The phrase "prior to, or simultaneously with, the commission of the fraud" indicates that to constitute this form of estafa, the fraudulent act of postdating or issuing a check in payment of an obligation should be the efficient cause of defraudation and as such it should be either prior to, or simultaneously with, the act of fraud. x x x The offender must be able to obtain money or other property from the offended party because of the issuance and delivery of a check, whether postdated or not, that is, the latter would not have parted with his money or other property were it not for the issuance of check. (People vs. Cua, C.A., 72 O.G. 3182)

The rule that the issuance of a bouncing check in payment of a pre-existing obligation does not constitute estafa has not at all been altered by the amendatory act. (R.A. No. 4885)

Under Article 315(2)(d) of the Revised Penal Code, as amended by Republic Act No. 4885, the false pretense or fraudulent act must be executed prior to or simultaneously with the commission of the fraud to constitute estafa. Republic Act No. 4885 did not change the rule established in Article 315(2)(d) as interpreted in *People vs. Lilius,* 59 Phil. 339, and *People vs. Fortuno,* 73 Phil. 407. (People vs. Sabio, Sr., 86 SCRA 568)

As aptly observed by an eminent commentator on the Revised Penal Code, in order to convict an accused for estafa under Article 315, par. 2(d), the accused must have obtained the goods because of the check. (Luis B. Reyes, The Revised Penal Code, 1971 Rev. Ed., p. 664) Indeed, under the circumstances of this case, it cannot be said that appellants obtained the goods because of the postdated check they issued. (People vs. Gloria and Cabarles, CA-G.R. No. 15490-CR, July 15, 1975)

When check is issued in substitution of a promissory note it is in payment of pre-existing obligation.

Thus, when a person purchased merchandise, signed a promissory note therefor, and on the date of maturity he gave a check for the amount stated in the promissory note, but the check was dishonored by the bank for lack of funds, that person is not liable for estafa. (People vs. Canlas, C.A., 38 O.G. 1092)

The accused must be able to obtain something from the offended party by means of the check he issues and delivers.

Thus, if *A* bought from the store of *B* goods worth P200 and issued a worthless check for P200 in payment of the same, it appearing that *B* would not have delivered the goods to A were it not for the check issued by the latter, the crime committed by *A* was estafa. Note that *A obtained the goods* from B *because* of the check.

In a case where the accused issued a check to Lee Hua Hong in exchange for P4,000, but the check was dishonored by the bank for lack of funds, it was held that the accused was guilty of estafa. (Ang Tek Lian vs. Court of Appeals, 87 Phil. 383) Note that the accused was *able to obtain* the P4,000 *because* of the check he issued.

Exception: When the check issued is not "in payment of an obligation."

When postdated checks are issued and intended by the parties only as promissory notes, there is no estafa even if there are no sufficient funds in the bank to cover the same.

People vs. Roque Obieta
(C.A., 52 O.G. 5224)

Facts: On July 9, 1953, A sold a Chevrolet used car to B for the agreed price of P6,450, and the latter delivered to the former on the same date, four postdated checks drawn against the Philippine Trust Company, the

first, for P450 payable on July 7, 1953; the second, for P2,000 payable on July 28, 1953; the third, for P2,000 payable on August 28, 1953; and the fourth, for P2,000 payable on September 28, 1953. The amounts of the first and second checks were on the dates of their maturity paid in full by B to A in the latter's establishment in the City of Manila. Only a partial payment, however, of P900 was made on the amount of the third check, and the amount represented by the fourth check was not paid at all. This notwithstanding, A did not present the third and fourth checks to the Philippine Trust Company for encashment on the dates they respectively fell due, or on any subsequent dates. The third and fourth checks were endorsed by A to the legal officer of the United States Naval Base at Sangley Point and the said checks were presented by the said legal officer to the bank for encashment on February 16, 1954, but they were dishonored for lack of funds.

Held: It is true that the postdated checks in question were issued in payment of an obligation which would not have been contracted were they not issued, in view of A's claim that he would not have transferred ownership of his car were said checks not issued and delivered to him. But these checks were not intended for presentation and encashment with the bank against which they were drawn; that they were delivered as mere security for the payment by installments of the purchase price of A's car, which was the procedure followed by B to space payments of his numerous obligations; and that the agreement was that it would be redeemed with cash in A's establishment as they fall due. The said checks were not intended by the parties to be such but *only as promissory notes,* and that the complainant knew the risk he was running. Hence, B did not commit the crime of estafa.

When the check is issued by a guarantor, there is no estafa.

When the accused was persuaded to act merely as a guarantor by guaranteeing by means of a check, the payment of the materials ordered by another person, a fact which was known to the vendor of the materials, and the check issued was dishonored for lack of funds, the accused is not guilty of estafa. The check was not issued in payment of an obligation. (People vs. Suarez, 2 C.A. Rep. 982)

"When the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check."

The mere fact that the drawer had *insufficient* or *no funds* in the bank to cover the check at *the time* he *postdated* or *issued* a check, is sufficient to make him liable for estafa.

Republic Act No. 4885 eliminated the phrase "the offender knowing that at the time he had no funds in the bank."

In view of the elimination of that phrase, it is *not* now a defense that the drawer, through oversight, did not know that he had insufficient or no funds in the bank when he postdated or issued the check. He should verify first the amount of his deposit before postdating or issuing a check.

Under subparagraph (d), paragraph 2, Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, it is not necessary that the drawer should know at the time that he issued the check that the funds deposited in the bank were not sufficient to cover the amount of the check. (People vs. Bool, *et al.*, 18 C.A. Rep. 741)

RA 4885 merely established the *prima facie* evidence of deceit and eliminated the requirement that the drawer inform the payee that he had no funds in the bank or the funds deposited by him were not sufficient to cover the amount of the check. (Villarta vs. Court of Appeals, 150 SCRA 336)

Prima facie evidence of deceit.

The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. (Second sentence of Rep. Act No. 4885)

It will be noted that if the drawer of the check is able to deposit the amount necessary to cover his check within three (3) days from receipt of notice that said check has been dishonored, he is not liable for estafa.

The explanatory note of Senate Bill No. 413, which became Republic Act No. 4885 states:

"It is true that a check may be dishonored without any fraudulent pretense or fraudulent act of the drawer. Hence, the drawer is given three days to make good the said check by depositing the necessary funds to cover the amount thereof. Otherwise, a *prima facie* presumption will arise as to existence of fraud, which is an element of the crime of *estafa.*"

Good faith is a defense in a charge of estafa by postdating or issuing a check.

Thus, where the accused issued a postdated check, believing in good faith that he would be able to deposit in the bank, sufficient funds to pay said check when presented for collection, but, contrary to his expectations, was unable to make the necessary deposit, he cannot be held guilty of the

crime of estafa, it appearing that a few days before the due date, foreseeing his inability to raise the amount of the check, the accused went to see the complainant and asked him not to present the check to the bank for collection and at the same time offered to pay the amount thereof in installments to which the latter agreed. (People vs. Villapando, 56 Phil. 31)

Stopping payment of check.

While there are times in business transactions when one is justified in stopping payment of checks issued by him, if checks were issued by defendant and he *received money for them* and stopped payment and *did not return the* money and if *at the time* the check was issued, he had the intention *of stopping* payment, he is guilty of estafa. (U.S. vs. Poe, 39 Phil. 466)

The person who uses the check may also be liable.

One who got hold of a check *issued by another,* knowing that the drawer had no sufficient funds in the bank, and *used* the same in the *purchase of goods, is guilty of estafa.* (People vs. Isleta, *et al.,* 61 Phil. 332)

Petitioner's act in negotiating directly and personally the postdated check issued by his co-accused and then obtaining value from complainant through deceit and fraudulent representations, is the efficient cause which constitute estafa under par. 2(d) of Art. 315 of the Revised Penal Code. Though he did not issue nor indorse the postdated checks, he is still liable for estafa because of his guilty knowledge that his co-accused had no funds in the bank when he negotiated it. (Zagado vs. Court of Appeals, 178 SCRA 146)

The payee or person receiving the check must be defrauded.

The payee or person who received the check must be damaged or prejudiced.

Presidential Decree No. 818, which took effect on October 22, 1975, amends Article 315 of the Revised Penal Code by increasing the penalties for estafa committed by means of bouncing checks, as follows:

SECTION 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Art. 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

1st. The penalty of *reclusiontemporal*[5] if the amount of the fraud is over P12,000 pesos but does not exceed P22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be imposed shall be no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed *reclusion perpetua*;

2nd. The penalty of *prision mayor*[6] in its maximum period, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *prision mayor* in its medium period,[7] if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *prision mayor* in its minimum period,[8] if such amount does not exceed 200 pesos.

Application of P.D. No. 818.

Presidential Decree No. 818 applies only to estafa under paragraph 2 (d) of Article 315, and does not apply to other forms of estafa under the other paragraphs of the same article. (See People vs. Villaraza, 81 SCRA 95) Hence, the penalty prescribed in P.D. No. 818, not the penalty provided for in Article 315, should be imposed when the estafa committed is covered by paragraph 2(d) of Article 315.

BATAS PAMBANSA BLG. 22

SECTION 1. *Checks without sufficient funds.* — Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment,

[5]See Appendix "A," Table of Penalties, No. 28.
[6]See Appendix "A," Table of Penalties, No. 22.
[7]See Appendix "A," Table of Penalties, No. 21.
[8]See Appendix "A," Table of Penalties, No. 20.

which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

BP Blg. 22 may be violated in two ways:

1. By making or drawing and issuing any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.
2. Having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, by failing to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Elements of the offense defined in the first paragraph of Section 1:

1. That a person makes or draws *and* issues *any* check.
2. That the check is made or drawn and issued *to apply on account or for value.*

3. That the person who makes or draws and issues the check *knows at the time of issue* that he does not have sufficient funds in or credit with the drawee bank *for the payment of such check in full* upon its presentment.
4. That the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, *without any valid reason,* ordered the bank to stop payment.

Elements of the offense defined in the second paragraph of Section 1:

1. That a person has *sufficient funds* in or credit with the drawee bank *when* he makes or draws and issues a check.
2. That he *fails to keep sufficient funds* or to maintain a credit to cover the *full* amount of the check if presented *within a period of 90 days* from the *date appearing thereon.*
3. That the check is dishonored by the drawee bank.

Gravamen of BP 22 is the issuance of a check.

Gravamen of BP 22 is the issuance of a check, not the nonpayment of an obligation. (Lozano vs. Martinez, 146 SCRA 323) The law has made the mere act of issuing a bum check a *malum prohibitum.* (People vs. Laggui, 171 SCRA 305; People vs. Manzanilla, 156 SCRA 279)

The check may be made or drawn and issued to apply on account or for value.

BP 22 does not make a distinction as to whether the bad check is issued in payment of an obligation or to merely guarantee an obligation. (Que vs. People, 154 SCRA 160)

It should be noted that BP Blg. 22 punishes the making or drawing and issuing of any check that is subsequently dishonored, even in payment of pre-existing obligation, as indicated in Section 1 thereof by the phrase "to apply on account." Section 1 also punishes the making or drawing and issuing of a check that is subsequently dishonored, in payment of an obligation contracted at the time of the issuance of the check, as indicated by the words "for value." In the latter case, is the person who made or drew and issued the check liable for estafa under the Revised Penal Code and also under BP Blg. 22?

Assemblyman Estelito Mendoza, who authored BP Blg. 22, expressed the view that "if he issues a check in payment (of) or contemporaneously with

incurring an obligation, then he will be liable not only for estafa but also for violation of this Act." His reason is that "(t)he Supreme Court in several cases has decided that where there is a variance between the elements of an offense in one law and another law, there will be no double jeopardy." He cited the element of damage in estafa, which is not required in BP Blg. 22.

In view of the purpose of the enactment of BP Blg. 22, the crime defined and penalized there is against public interest, while the crime of estafa is against property. Deceit is an element of estafa. This is not required under BP Blg. 22.

"Knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank."

BP Blg. 22 requires that the person who made or drew and issued the check knew *at the time of issue* that he did not have sufficient funds in or credit with the drawee bank for the payment of such check in *full* upon its presentment.

If he had sufficient funds in or credit with the drawee bank at the time he issued the check, but later he withdrew all his funds from or lost credit with the drawee bank, is he liable if the check is subsequently dishonored? Under the first paragraph of Section 1, he is not liable, because at the time he issued the check, he knew that he had sufficient funds in or credit with the drawee bank. Note the words "knowing at the time *of issue."* But he may *be* liable under the second paragraph of Section 1, if he fails to keep sufficient funds or to maintain a credit to cover the full amount of the check.

What is the effect of ordering the bank to stop payment of the check without any valid reason upon the liability of the drawer or maker who issued the check? If the drawer or maker had in fact no sufficient funds or credit, and the check would have been dishonored for that reason had not the drawer or maker ordered the bank to stop payment, he is liable.

It is no defense then that the drawer of the check ordered the bank to stop payment, if he had no sufficient funds or credit and the check would have been dishonored had he not made the order. The law regards the order of stopping payment as a mere pretext of the drawer to avoid criminal liability.

The order to the bank to stop payment of the check must be *without any valid* reason.

Illustration. There was a mistake in naming the payee of the check: the drawer ordered the bank to stop payment; and it appeared that the drawer knew at the time the check was issued that he had no sufficient funds in the bank. In this case, the drawer is not liable, even if the check would have been dishonored for insufficiency of funds had he not ordered

the bank to stop payment, because there was a valid reason (wrong payee) for ordering the bank to stop payment.

It is no defense either that the check was not actually dishonored, for the fourth element mentions two alternatives, namely: (1) that the check is subsequently dishonored, or (2) that it *would have been* dishonored had not the drawer ordered the bank to stop payment.

Hence, the possibility that the check would have been dishonored by the drawee bank for insufficiency of funds or credit had not the drawer, without any valid reason, ordered the bank to stop payment, is sufficient.

As regards the offense defined in the second paragraph of Section 1, it is no defense that when he made or drew and issued the check, the drawer had sufficient funds in or credit with the drawee bank. What the second paragraph of Section 1 punishes is the failure of the drawer to keep sufficient funds in the drawee bank or to maintain a credit to cover the full amount of the check.

Suppose that the drawer had kept sufficient funds in the drawee bank for 100 days from the date appearing thereon to cover the check he had issued. The next day he withdrew all the funds. When the check was presented later on that day to the drawee bank, it was dishonored. Is the drawer liable? No. The check was not presented within a period of 90 days from the date appearing thereon.

BP Blg. 22 specifies the person or persons liable when the check is drawn by a corporation, company or entity. The person or persons who actually signed the check in behalf of such drawer shall be liable under the Act.

"Policy of the Supreme Court on the matter of the imposition of penalties for violation of B.P. Blg. 22."

Lack of written notice of dishonor is fatal.

While, indeed, Section 2 of B.P. 22 does not state that the notice of dishonor be in writing, taken in conjunction, however, with Section 3 of the law, *i.e.*, that where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal. A mere oral notice or demand to pay would appear to be insufficient for conviction under the law. (Domagsang vs. Court of Appeals, G.R. No. 139292, Dec. 5, 2000)

No disputable presumption of knowledge of insufficiency of funds when there is no receipt of notice of dishonor.

The absence of proof that drawer received any notice informing her of the fact that her checks were dishonored and giving her five working days

within which to make arrangements of payment of the said checks prevents the application of the disputable presumption that she had knowledge of the insufficiency of her funds. Absent such presumption, the burden shifts to the prosecution to prove that the drawer had knowledge of the insufficiency of funds when the drawer issued the checks; otherwise, the drawer cannot be held liable under the law. (Caras vs. Court of Appeals, G.R. No. 129900, Oct. 2, 2001)

Notice of dishonor to corporation is not notice to officer who issued the check.

If the drawer or maker is an officer of the corporation, the notice of dishonor to the said corporation is not notice to the employee or officer who drew or issued the check for and in its behalf. (Marigumen vs. People, G.R. No. 153451, May 26, 2005) Responsibility under B.P. Blg. 22 is personal to the accused; hence, personal knowledge of the notice of dishonor is necessary. Consequently, constructive notice to the corporation is not enough to satisfy due process. (Lao vs. Court of Appeals, 274 SCRA 572 [1997])

Policy of the Supreme Court on the matter of the imposition of penalties for violation of B.P. Blg. 22.

"Section 1 of B.P. Blg. 22 (An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds for Credit and for Other Purposes) imposes the penalty of imprisonment of not less than thirty (30) days but not more than one (1) year OR a fine of not less than but not more than double the amount of the check, which fine shall in no case exceed P200,000, OR both such fine and imprisonment at the discretion of the court.

"In its decision in *Eduardo Vaca vs. Court of Appeals* (G.R. No. 131714, 16 November 1998, 298 SCRA 656, 664), the Supreme Court (Second Division) per Mr. Justice Vicente V. Mendoza, modified the sentence imposed for violation of B.P. Blg. 22 by deleting the penalty of imprisonment and imposing only the penalty of fine in an amount double the amount of the check. In justification thereof, the Court said:

> "Petitioners are first time offenders. They are Filipino entrepreneurs who presumably contribute to the national economy. Apparently, they brought this appeal, believing in all good faith, although mistakenly, that they had not committed a violation of B.P. Blg. 22. Otherwise, they could simply have accepted the judgment of the trial court and applied for probation to evade a prison term. It would best serve the ends of criminal justice if in fixing the penalty within the range of discretion allowed by S1, par. 1, the same

philosophy underlying the Indeterminate Sentence Law is observed, namely, that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order. In this case, we believe that a fine in an amount equal to double the amount of the check involved is an appropriate penalty to impose on each of the petitioners."

In the recent case of *Rosa Lim vs. People of the Philippines* (G.R. No. 130038, 18 September 2000), the Supreme Court *en banc,* applying *Vaca* also deleted the penalty of imprisonment and sentenced the drawer of the bounced check to the maximum of the fine allowed by B.P. Blg. 22, *i.e.,* P200,000, and concluded that "such would best serve the ends of criminal justice."

"All courts and judges concerned should henceforth take note of the foregoing policy of the Supreme Court on the matter of the imposition of penalties for violation of B.P. Blg. 22." (Supreme Court Administrative Circular No. 12-2000, November 21, 2000)

Rule of preference in imposing penalties in BP Blg. 22.

Supreme Court Administrative Circular No. 13-2001 issued on February 14, 2001 clarified that the clear tenor and intention of Administrative Circular No. 12-2000 is not to remove imprisonment as an alternative penalty, but to law down a rule of preference in the application of the penalties provided for in B.P. Blg. 22.

Administrative Circular No. 13-2001 further clarified that "Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provision of B.P. Blg. 22 such that where the circumstances of the case, for instance, clearly indicate good faith or a clear mistake of fact without taint of negligencc, the imposition of fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant that imposition of fine alone rests solely upon the judge. Should the judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not to be deemed a hindrance."

In the case of *Tan, et al. vs. Mendez, Jr.,* G.R. No. 138669, June 6. 2002, the Supreme Court reiterated that (a) Supreme Court Administrative Circular No. 12-2000, as clarified by Administrative Circular No. 13-2001. merely established a rule of preference in imposing penalties in B.P. 22 cases. and (b) there was no intention to decriminalize B.P. 22. It was held:

"Supreme Court Administrative Circular No. 12-2000. as clarified by Administrative Circular No. 13-2001, established a rule of preference in imposing penalties in B.P. 22 cases. Section 1 of B.P.

22 imposes the following alternative penalties for its violation, to wit: (a) imprisonment of not less than 30 days but no more than one year; or (b) a fine of not less but not more than double the amount of the check which fine shall not exceed P200,000.00; or (c) both such fine and imprisonment at the discretion of the court.

"The rationale of Adm. Circular No. 12-2000 is found in our ruling in *Eduardo Vaca vs. Court of Appeals* and *Rosa Lim vs. People of the Philippines.* We held in those cases that it would best serve the ends of criminal justice if, in fixing philosophy underlying the Indeterminate Sentence Law is observed, *i.e.*, that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order.

"To be sure, it is not our intention to decriminalize violation of B.P. 22. Neither is it our intention to delete the alternative penalty of imprisonment. The propriety and wisdom of decriminalizing violation of B.P. 22 is best left to the legislature and not this Court. As clarified by Administrative Circular No. 13-2001, the clear tenor and intention of Administrative Circular No. 12-2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided in B.P. 22. x x x"

SEC. 2. ***Evidence of knowledge of insufficient funds.*** **— The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.**

Presumption of drawer's knowledge of insufficient funds.

It will be noted that BP Blg. 22 requires that the person who makes or draws and issues a check must have knowledge at the time of issue that he does not have sufficient funds in or credit with the drawee bank.

Section 2 establishes *prima facie* evidence of knowledge of such insufficiency of funds or credit. The making, drawing and issuance of a check, payment of which is refused by the drawee because of insufficient funds in or credit with such bank, is *prima facie* evidence of knowledge of insufficiency of funds or credit, when the check is presented within 90 days from the date of the check.

In *People vs. Laggui, supra,* it was held that the maker's knowledge of the insufficiency of his funds is legally presumed from the dishonor of his check for insufficiency of funds.

Exceptions:

a. When the check is presented *after* 90 days from the date of the check.

b. When the maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) *banking* days after receiving notice that such check has not been paid by the drawee.

The presumption of knowledge of insufficiency of funds or credit does not lie when the check is presented after 90 days from the date of the check, because Section 2, which establishes the presumption, requires that the check be presented within ninety (90) days from the date of the check.

The element of knowledge of insufficiency of funds or credit is not present and, therefore, the crime does not exist, when the drawer either —

(1) pays the holder of the check the amount due thereon within five (5) *banking days* after receiving notice that such check has not been paid by the drawee; or

(2) makes arrangements for payment in full by the drawee of such check within five *(5) banking* days after notice of non-payment.

Prima facie evidence does not arise where notice of non-payment is not sent to the maker or drawer of the check.

If notice of non-payment by the drawee bank is not sent to the maker or drawer of the bum check, or if there is no proof as to when such notice was received by the drawer, then the presumption or *prima facie* evidence as provided in Section 2 of B.P. Blg. 22 cannot arise, since there would simply be no way of reckoning the crucial 5-day period. (Danao vs. Court of Appeals, *et al.*, G.R. No. 122353, June 6, 2001)

SEC. 3. *Duty of drawee; rules of evidence.* — It shall be the duty of the drawee of any check, when refusing to pay the same to the holder thereof upon presentment, to cause to be written, printed, or stamped in plain language thereon, or attached thereto, the reason for drawee's dishonor or refusal to pay the same: *Provided,* That where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal. In all prosecutions under this Act, the introduction in evidence of any unpaid and dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid, shall be *prima facie* evidence of the making or issuance of said check, and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached by the drawee on such dishonored check.

Notwithstanding receipt of an order to stop payment, the drawee shall state in the notice that there were no sufficient funds in or credit with such bank for the payment in full of such check, if such be the fact.

Section 3 requires the drawee, who refuses to pay the check to the holder thereof, to cause to be written, printed or stamped in plain language thereon, or attached thereto, the reason for his dishonor or refusal to pay the same. Where there are no sufficient funds in or credit with it, the drawee bank shall explicitly state that fact in the notice of dishonor or refusal.

If the drawee bank received an order to stop payment from the drawer, the former shall state in the notice that there were no sufficient funds in or credit with it for the payment in full of the check, if such be the fact.

In all prosecutions under BP Blg. 22, the introduction in evidence of any unpaid and dishonored check with the drawee's refusal to pay stamped or written thereon, or attached thereto, shall be *prima facie* evidence of —

(1) the making or issuance of the check;

(2) the due presentment to the drawee for payment and the dishonor thereof; and

(3) the fact that the same was properly dishonored for the reason written, stamped or attached by the drawee on such dishonored check.

The prosecution has to present in evidence only the unpaid and dishonored check with the drawee's refusal to pay stamped or written thereon, or attached thereto. It *would not be necessary* to prove the making or issuance of the check by the drawer; the due presentment of the check to the drawee for payment and the dishonor thereof; and the fact that the same was properly dishonored for the reason written, stamped or attached by the drawee on the dishonored check.

SEC. 4. *Credit construed.* — The word **"credit"** as used herein shall be construed to mean an arrangement or understanding with the bank for the payment of such check.

SEC. 5. *Liability under the Revised Penal Code.* — Prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code.

Issuing a check in payment of an obligation, which is subsequently dishonored, may be punished under the Revised Penal Code and under BP Blg. 22. Such act of issuing a check without or with insufficient funds in the bank may be punished under both laws. There is no double jeopardy if each statute requires proof of an additional fact which the other does not. Hence, an acquittal or conviction under either statute does not exempt the defendant from prosecution or conviction under the other. (U.S. vs. Capurro, *et al.*,7 Phil. 24)

In estafa under Article 315 No. 2(d), Revised Penal Code, as amended by Republic Act No. 4885, the act constituting the offense is postdating or issuing a check in payment of an obligation when the offender had no funds in the bank or his funds deposited therein were not sufficient to cover the amount of the check.

The mere fact that the drawer had insufficient or no funds in the bank to cover the amount of the check at the time he postdated or issued it, is sufficient to make him liable for estafa.

Deceit is an element of estafa and may be presumed from the failure of the drawer to deposit the amount necessary to cover the check within three (3) days from receipt of notice of dishonor for lack or insufficiency of funds in the bank. Deceit is not required in BP Blg. 22.

There must be damage in estafa, the same being the basis of the penalty.

The penalty for the commission of any of the acts penalized in Section 1 of BP Blg. 22 is fixed without regard to the amount of the damage if any is caused. The fine is based on the amount of the check, not on the damage caused. Hence, damage is not an element of the offenses defined in BP Blg. 22.

In other words, while under BP Blg. 22 deceit and damage are immaterial, the Revised Penal Code requires the additional facts of deceit and damage to convict the defendant of estafa.

May the drawer who was acquitted or convicted under the Revised Penal Code for estafa be prosecuted under B.P. Blg. 22?

Yes. While B.P. Blg. 22 requires the drawer's knowledge of lack or insufficiency of funds in the drawee bank at the time of issuance of the check, the Revised Penal Code does not require such knowledge. Hence, the acquittal or conviction of the drawer under the Revised Penal Code is not a bar to his prosecution or conviction under B.P. Blg. 22, because the latter law requires the additional fact of the drawer's knowledge of lack or insufficiency of funds. (U.S. vs. Capurro, *et al., supra)*

SEC. 6. ***Separability clause.*** — If any separable provision of this Act be declared unconstitutional, the remaining provisions shall continue to be in force.

SEC. 7. ***Effectivity.***- This Act shall take effect fifteen days after publication in the Official Gazette.

Approved, April **3, 1979.**

Estafa by issuing bad check is a continuing crime.

In a case, the alleged deceit was said to have taken place in Malolos, Bulacan, while the damage in Caloocan City, where the checks were dishonored by the drawee banks. Jurisdiction can, therefore, be entertained by either the Malolos court or the Caloocan court. While the subject checks were written, signed, or dated in Caloocan City, they were not completely

made or drawn there, but in Malolos, Bulacan, where they were uttered and delivered. (People vs. Yabut, 76 SCRA 624)

By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like without paying therefor, with intent to defraud the proprietor or manager thereof, or by obtaining credit at a hotel, inn, restaurant, boarding house, lodging house, or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house, or apartment house after obtaining credit, food, refreshment, or accommodation therein without paying for his food, refreshment, or accommodation. (Art. 315, No. 2[e])

Estafa by obtaining food or accommodation at a hotel, etc.

There are three ways of committing estafa under the provisions:

1. By obtaining food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house or apartment house without paying therefor, *with intent to defraud* the proprietor or manager thereof;
2. By obtaining credit at any of said establishments by the use of any *false pretense;* or
3. By *abandoning* or *surreptitiously removing* any part of his baggage from any of said establishments after obtaining credit, food, refreshment or accommodation therein, *without paying therefor.*

Example:

The accused stayed as a paying guest at the hotel, known as the Town House, located along Dewey Boulevard, Manila, from September 29 to November 16, 1949. He surreptitiously left the hotel, leaving his worthless baggage in the hotel and without paying his account. He was convicted of estafa. (People vs. Amala, CA-G.R. No. 6936-R, Aug. 27, 1952)

THROUGH ANY OF THE FOLLOWING FRAUDULENT MEANS:

By inducing another, by means of deceit, to sign any document. (Art. 315 No. 3[a])

Estafa by inducing another to sign any document.

Elements:

(1) That the offender *induced* the offended party to sign a document.

(2) That *deceit be employed* to make him sign the document.

(3) That the offended party *personally* signed the document.

(4) That prejudice be caused.

There must be an inducement.

The offender must *induce* the offended party to sign the document. If the offended party is *willing* and ready *from* the *beginning* to sign the document and there is deceit as to the character or contents of the document, because the contents are different from those which the offended party told the accused to state in the document, the crime is falsification.

Deceit must be employed.

Where the complainants alleged that they signed a conveyance of their hereditary interest to the accused, thinking that the same was a power of attorney, but it appeared that *no misrepresentation* was made by the accused, he was not guilty of estafa. The remedy of the complainants would be a civil action.

There can be no conviction for estafa under this paragraph in the absence of proof that the *defendant made statements tending to mislead the complainant as to the character of the document executed by him.* (U.S. vs. Barnes, 3 Phil. 704)

Example of estafa by inducing another to sign document.

While a person was detained and *anxious to obtain liberty,* the accused induced him through fraud and deceit to sign what was represented to him to be a mortgage deed of his land for the purpose of securing the payment of attorney's fees, whereas the instrument was really an absolute conveyance of the property. (U.S. vs. Berry, 6 Phil. 370)

Distinguished from the case of *U.S. vs. Capule,* 24 Phil. 12.

A couple who owned a tract of land, desired and told the accused to draw up a power of attorney to represent them in court in a pending suit involving said property. But the accused, without the knowledge and consent of the couple, caused a document to be prepared setting forth a sale

in his favor and made it appear therein that the same was executed by the spouses as vendors.

Held: Falsification by attributing to the couple statements other than those in fact made by them.

In *U.S. vs. Malong,* 36 Phil. 821, where the crime committed was held to be estafa, the accused made misrepresentations to mislead the complainants as to the character of the documents executed by them.

The distinction seems to be that in the case of *U.S. vs. Berry,* the accused induced by means of deceit the offended party to sign the document; whereas, in the case of *U.S. vs. Capule,* there was no inducement, for the offended party was willing and ready from the beginning to sign the document in the belief that it contained statements made by them.

In falsification by attributing to persons who have participated in an act or proceeding statements other than those in fact made by them, the offended party made statements to be embodied in a document, but the offender, in preparing the document, attributed to the offended party, statements different from those made by the latter.

By resorting to some fraudulent practice to insure success in a gambling game. (Art. 315, No. 3[b])

Estafa by resorting to some fraudulent practice to insure success in gambling.

Examples:

1. Inducing the offended party, who did not know how to play the game of blackjack, allegedly to cheat a rich friend by making pre-arranged signals in which the offended party was trained by the accused, and causing the offended party to lose Pl,140 on the first game with the supposed rich friend and telling the offended party to play again and recover their losses, and on the second game, instead of recovering, the offended party lost again in the amount of P600, realizing only too late that she was being fooled in the games by the accused and his confederate, is estafa under Art. 315, par. 3(b). (People vs. Romero, C.A., 53 O.G. 695)

   The rule in Civil Law that no action can be filed on an immoral or illegal contract (Art. 1141, C.C.) has no application in the prosecution for estafa, even if the offended party consented to the fraudulent scheme.

2. Some moments before the cockfight, the accused removed the gaff from one of the gamecocks and replaced it in an entirely different

manner from that in which it was before, without the knowledge and consent of its owner. In that manner the gamecock was fixed, it could not inflict mortal wounds on and kill its opponent. As a result, the owner lost his bet of P100. (U.S. vs. Ner, 18 Phil. 534)

By removing, concealing or destroying, in whole or in part, any court record, office files, documents or any other papers. (Art. 315, No. 3[c])

Estafa by removing, concealing or destroying documents.

Elements of this kind of estafa:

1. That there be *court record, office files, documents or any other papers.*
2. That the offender *removed, concealed* or *destroyed any of* them.
3. That the offender had *intent to defraud another.*

If there is no intent to defraud, the act of destroying court record will be malicious mischief.

Thus, a person who destroys the record of a criminal case for the purpose of affording immunity to the persons accused therein, commits *malicious mischief,* not estafa, because the intention of the culprit is not to defraud. (Guevara)

He is guilty of malicious mischief, because he deliberately causes damage to the record of the court with evil motive. (See Art. 327)

Examples of this kind of estafa:

1. *Concealing document or any other paper.*

A person who concealed a document evidencing a deposit of P2,600 which came into his possession when he offered to collect the deposit, is guilty of estafa. It is not necessary to inquire whether as a matter of fact the complainant has ever succeeded in collecting the deposit or not. The extent of the fraud in this case should be graded according to the amount which the document represents. (U.S. vs. Tan Jenjua, 1 Phil. 39)

2. *Destroying documents.*

Destruction of promissory note given back to the maker to be replaced with a new one to renew the loan, without making a new promissory note is estafa because by destroying the old one, the offended party was dispossessed of the evidence of a debt. (U.S. vs. Kilayko, 31 Phil. 371)

A bookkeeper who destroyed the chits evidencing his purchases on credit of merchandise from his employer, so he could avoid payment is guilty of estafa through falsification. (People vs. Dizon, 47 Phil. 350)

Is the act of destroying a promissory note, given to cover losses in gambling, by the maker thereof estafa?

In the case of *U.S. vs. Gomez Ricoy,* 1 Phil. 595, it was held that where the maker of a promissory note, given to cover losses incurred at *monte* in a gambling house, obtains possession of his note and conceals or destroys it, he is *prima facie* guilty of estafa.

A dissenting Justice stated that such promissory note has no value, intrinsic or extrinsic; it is void and can not be ratified; it can not therefore be the subject of estafa.

Distinguished from infidelity in the custody of documents (Art. 226).

1. The crime of infidelity in the custody of documents, as defined in Art. 226, and this kind of estafa are similar in that the *manner* of committing the offenses is the same.
2. But while under Art. 226, the offender is a public officer who is officially entrusted with the document; in this kind of estafa, the offender is a private individual or even a public officer who is not *officially entrusted* with the documents.
3. In estafa, there is intent to defraud. This element is not required in infidelity in the custody of documents.

Elements of deceit and abuse of confidence may co-exist.

It will be noted that in general, estafa is committed either by means of deceit or with abuse of confidence. (U.S. vs. Rivera, 23 Phil. 383)

But deceit may co-exist with abuse of confidence in the commission of estafa. Thus —

A intervened as a mediator between B and C in a transaction of sale. A told B, the owner of the property, that C would buy it for P500, when in truth and in fact, C was buying it for P600. When C paid through A, the latter gave B only the P500, pocketing the P100. (See U.S. vs. Lim, 36 Phil. 682)

Inducing the complainant to deliver to the accused the complainant's dollar bills on the false pretext of changing them with Philippine pesos at the rate of P4.00 to each dollar bill, with the obligation of giving the Philippine pesos to the complainant or of returning the dollar bills if these could not be so exchanged and once in possession of the dollar bills the

accused disappeared under the false pretense that he was just going out to buy something and instead misappropriated the dollar bills, is estafa under subparagraph (b), paragraph 1 of Article 315 of the Revised Penal Code (People vs. Franco, C.A., 64 O.G. 1790)

If there is no deceit, no abuse of confidence, there is no estafa, even if there is damage. There is only civil liability.

When a person has received from another, a thing *without* deceit or has disposed of the thing received *without* abuse of confidence, if the latter suffers damage, the remedy is a civil action, not a criminal action for estafa.

Damage or prejudice capable of pecuniary estimation.

This is the second element of any form of estafa.

The element of damage or prejudice may consist in:

1. The offended party being deprived of his money or property, as result of the defraudation;
2. Disturbance in property rights; or
3. Temporary prejudice.

Disturbance in property rights.

Thus, the fact that the typewriter which had been rented from the offended party was sold to another person by the accused, made him liable for estafa, even if the typewriter was recovered by the owner, because the complainant at least suffered disturbance in his property rights in the said typewriter and in the possession thereof. (U.S. vs. Goyenechea, 8 Phil. 117)

Payment made subsequent to the commission of estafa does not extinguish criminal liability or reduce the penalty.

Payment made subsequent to the commission of the crime of estafa does not alter the nature of the crime committed nor does it relieve the defendant from the penalty prescribed by law. The partial payment made subsequent to the commission of estafa does not reduce the amount actually misappropriated, which is the basis of the penalty. (Javier vs. People, 70 Phil. 550)

The basis of the penalty in estafa is the amount or the value of the property misappropriated and not delivered or returned *before* the institution of the criminal action. (People vs. Pagayon, 71 Phil. 337)

Acceptance of partial payment by the offended party or the amount misappropriated by the accused is not one of the means of extinguishing criminal liability under Art. 89. (People vs. Gervacio, 102 Phil. 687)

The crime of estafa is not obliterated by acceptance of promissory note.

When the offended party in an estafa case accepts a promissory note of the accused for the repayment of the money already converted, the offense is not thereby obliterated. (Camus vs. Court of Appeals, 92 Phil. 85)

Temporary prejudice.

The accused pretended to be an agent of a company. He offered to sell a filter to the complainant who was prevailed upon to buy it. He issued a check for P20. The accused promised to deliver the filter on the same day. When the filter was not delivered on time, the complainant telephoned the company. Learning that the accused was not an agent there, the complainant notified the bank to suspend payment. The accused never presented it for payment. *Held:* The check was payable to "cash" and, therefore, negotiable. While the accused had said check in his possession, the offended party could not dispose of the amount. (People vs. Santiago, 54 Phil. 814)

A private person who procures a loan by means of deceit through a falsified public document of mortgage, but who effects full settlement of the loan within the period agreed upon, does not commit the crime of estafa, there being no disturbance of proprietary rights and no person defrauded thereby. The crime committed is only falsification of a public document.

Article 315 of the Revised Penal Code provides thus:

> "Any person who *shall defraud* another by any of the means mentioned herein below shall be punished . . ."

There can be no estafa unless there is a person defrauded. In the instant case, the supposed aggrieved party received complete payment of the loan presumably within the period agreed upon. Insofar as she was concerned, there had been no disturbance of her proprietary rights. That being the case, *no estafa has been committed.* Had the loan not been paid for, she would have been defrauded, for she could not have foreclosed the property mortgaged. That had not happened, however. While the accused used deceit in the procurement of the loan, it is, however undeniable that they effected full settlement thereof. The supposed aggrieved party has not, therefore, been defrauded.

Is there falsification of public document? The answer is obviously in the affirmative. The deed of mortgage is a public document and, as we stated, all material matters contained therein are false for which one of the accused is responsible. In falsification of public document, prejudice to a third party is not necessary. (People vs. Cura, *et al.*, 55 O.G. 9242-9243)

The accused cannot be convicted of estafa with abuse of confidence under an information alleging estafa by means of deceit.

Under the definition of *estafa* (Art. 315, par. 1[b]), it is an essential element of the crime that the money or goods misappropriated or converted by the accused to the prejudice of another was received by him "in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same. No *such allegation appears in the above information.* Consequently, we agree with appellant that he can not be convicted thereunder of the crime of estafa as defined by the article mentioned above. (Guzman vs. Court of Appeals, 99 Phil. 708)

Complex crime of theft and estafa.

A, intending to redeem certain jewels, took the pawnshop tickets from her wardrobe, but as she had to do something, she gave the pawnshop tickets to B, her servant, so that the latter might take care of them temporarily. A completely forgot about them. One week later, B went out of the house and met C who got them and refused to return them, alleging they were of no value, notwithstanding the insistent demands made by B. Then C redeemed the jewels without the knowledge and consent of A or B.

Held: C is guilty of the complex crime of theft and estafa, the former a necessary means to commit the latter. C, with intent to gain, took the pawnshop tickets without the consent of either A or B. This is theft. By redeeming the jewels by means of the pawnshop tickets, he committed *estafa* using a fictitious name. (People vs. Yusay, 60 Phil. 598)

Art. 316. ***Other forms of swindling.*** — The penalty of *arresto mayor* in its minimum and medium periods[9] and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

1. Any person who, pretending to be the owner of any

[9]See Apeendix "A," Table of Penalties, No. 1.

real property, shall convey, sell, encumber, or mortgage the same;

2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded;

3. The owner of any personal property who shall wrongfully take it from its lawful possessor, to the prejudice of the latter or any third person;

4. Any person who, to the prejudice of another, shall execute any fictitious contract;

5. Any person who shall accept any compensation given him under the belief that it was in payment of services rendered or labor performed by him, when in fact he did not actually perform such services or labor;

6. Any person who, while being a surety in a bond given in a criminal or civil action, without express authority from the court or before the cancellation of his bond or before being relieved from the obligation contracted by him, shall sell, mortgage, or, in any other manner, encumber the real property or properties with which he guaranteed the fulfillment of such obligation.

Par. 1 — By conveying, selling, encumbering, or mortgaging any real property, pretending to be the owner of the same.

Elements:

1. That the thing be *immovable,* such as a parcel of land or a building.
2. That the offender *who is not the owner* of said property *should represent* that *he is the owner thereof.*
3. That the offender should have executed an act of ownership (selling, leasing, encumbering or mortgaging the real property).
4. That the act be made to the prejudice of the owner or a third person.

Examples:

1. A sold a parcel of land to B. Later, A sold the same parcel of land to C, representing to the latter that he (A) was the owner thereof.

At the time he sold the land to C, A was no longer the owner of the property.

2. The accused, as president of the Federal Films, Inc., and knowing that the corporation was a mere lessee of Cine Palace in Cavite City, represented to the offended party, the owner of Cine Nacional in Manila, then being leased by the corporation, that the corporation was the owner of the land and building of Cine Palace to induce the offended party to accept a mortgage of the real property as security for the payment of the P3,000 monthly rent of Cine Nacional. During the lease of Cine Nacional, the corporation could not pay the monthly rent of P3,000. Damage was caused to the offended party when he could not realize any amount from the mortgage to satisfy the unpaid rental. (Velasco vs. Court of Appeals, 90 Phil. 688)

The thing disposed of must be real property.

If the property is a chattel, the act is punishable as estafa under Art. 315, that is, by falsely pretending to possess property or by means of other similar deceits. (Albert)

Building as real property.

It is the doctrine in this jurisdiction that true buildings (not ones merely superimposed on the soil) are real property by incorporation, whether they be erected by the owner of the land or by a usufructuary or lessee. (People vs. Buencamino, CA-G.R. No. 12267-B, Aug. 24, 1955)

There must be existing real property.

Where the accused sold non-existent land, he is guilty of estafa by means of false pretenses under paragraph No. 2(a) of Art. 315, not of other form of swindling under paragraph No. 1 of Art. 316. (U.S. vs. Cara, 41 Phil. 828)

Deceit consisting in false pretense as to ownership of the real property must be employed by the offender.

A had been occupying certain lots of the Friar Lands belonging to the Government. He executed a document which reads, as follows: "Received from Mr. Alfonso x x x the sum of P700 for transferring my rights of possession of the lots x x x." A never pretended to be the owner of the land in question. He sold not the land but only his right of possession over it.

Held: For the commission of the crime of estafa penalized under subsection 1 of Art. 316, there is need of deceit employed by the accused,

consisting in false pretense with regard to his ownership of the real property sold, conveyed or encumbered. (People vs. Absalud, CA-G.R. No. 116979-R, Feb. 21, 1955)

Article 316, No. 1 of the Revised Penal Code, penalizes only a person who pretends to be the owner and not one who claims to be the owner. Where the accused claims to be the owner of a parcel of land, and especially where his ownership is evidenced by a Certificate of Title, it cannot be said that he pretended to be the owner thereof, even if his ownership is defective and he may be compelled to return the property to the person found to be the owner of the property. (People vs. Adriatico, 15 C.A. Rep. 1002)

Even if the deceit is practiced against the second purchaser and the damage is incurred by the first purchaser, there is violation of paragraph No. 1 of Art. 316.

A sold a piece of land with *pacto de retro* to B. A failed to repurchase the land and B became the owner thereof. While still in possession and claiming to be still the owner of said property, A sold it to C who bought it in ignorance of the fact that the property had already been alienated. C registered the sale in his favor. B lost the property because by not registering the sale in his favor, he was divested of his title.

When prosecuted for estafa, A argued that since the deceit was practiced by him against C, the second purchaser, while the damage fell on B, the first purchaser, he is not guilty of estafa.

Held: Such argument is not sustainable. Those acts constitute the crime of estafa. (U.S. vs. Drilon, 36 Phil. 834)

Is intent to cause damage sufficient?

Since the penalty of fine prescribed by Art. 316 is based on the *"value of the damage caused,"* mere intent to cause damage is not sufficient. There must be actual damage caused by the act of the offender.

In *People vs. Fermin*, C.A., 72 O.G. 5783, the Court of Appeals erred in stating that the 4th element of the offense is that "there must be damage or prejudice to a third person or intent to cause such damage or prejudice."

Art. 316, par. 1, and Art. 315, par. 2(a), compared.

The court *a quo* found the appellant guilty of estafa under Article 316, par. 1, of the Revised Penal Code, obviously on the opinion that the threshing machine was a real property as contemplated in this provision of the law.

The machinery remains classified as immovable while it stays installed for the purpose of the industry or work. But once the property

is removed from its installation, as was to be expected in the case at bar if the sale was to be made, it ceases to be a real property but returns to its original classification as personal property. By this, we do not mean, however, that Article 315, par. 2(a) covers only cases where the property involved is personal property. Both personal and real property may be the subject of the crime under the law. But although Art. 316, par. 1 refers only to real property, its violation is confined to certain instances not common with those of Art. 315, par. 2(a). As we see it, Art. 316, par. 1 covers a specific situation where the offender *exercises* or *executes,* as part of the false representation, some *act of dominion or ownership over the property* to the damage and prejudice of the real owner of the thing. On the other hand, this circumstance need not be present for a crime to be committed under Art. 315, par. 2(a). In the case at bar, the evidence does not disclose that the appellant had exercised certain acts of ownership or dominion beyond his *mere pointing of the property to the offended party and his claim that he was the owner thereof.* This is, therefore, a proper case for the application of Art. 315, par. 2(a). (People vs. Suratos, C.A., 62 O.G. 1963)

Par. 2 — By disposing of real property as free from encumbrance, although such encumbrance be not recorded.

Elements:

1. That the thing disposed of be real property.
2. That the offender knew that the real property was encumbered, whether the encumbrance is recorded or not.
3. That there must be *express representation* by the offender that the real property is *free* from encumbrance.
4. That the act of disposing of the real property be made to the damage of another.

Example:

A mortgaged his property to B. Later, A, *misrepresenting that said property* is *free from encumbrance,* mortgaged it again, this time to C.

But if C *knew* that the property had already been mortgaged to B, C cannot complain, as there is neither deceit nor fraud.

"Shall dispose of the same."

The act constituting the offense is *disposing* of the real property *falsely representing* that it is free from encumbrance.

The term "shall dispose" includes encumbering or mortgaging.

Meaning of "encumbrance."

The term "encumbrance" includes every *right* or *interest* in the land which exists in favor of third persons.

An outstanding *mortgage,* an ordinary lease, an *attachment,* the *lien* of a judgment, and an *execution sale* subject to redemption are encumbrances on the land.

The offended party must have been deceived, that is, he would not have granted the loan had he known that the property was already encumbered.

Appellant does not deny having received from the complainant the sum of P2,500.00 by way of loan and that to secure the same he executed in his favor a deed of chattel mortgage on a *two-story house expressly warranting therein that the same was free from any lien or encumbrance.* It developed however that such warranty is not true for it was later *discovered that the same property had already been previously mortgaged by appellant in favor of spouses Alejandro Anatolio and Juliana de la Torres which mortgage was still subsisting.* It is evident that *the appellant obtained the loan from complainant through false representation* or *deceit* which is one of the elements constituting the crime of estafa. It is apparent that the complainant granted the loan to appellant in the belisf that the security offered was good and sufficient to guarantee his investment because it was free from any lien or encumbrance. *Had he known that it was already encumbered, the likelihood was that he would not have granted the loan, which proves the fraud of which he was a victim.* (People vs. Galsim, G.R. No. L-14577, Feb. 29, 1960)

When the loan had already been granted when defendant offered the property as security for the payment of the loan, Art. 316, par. 2, is not applicable.

Exhibit A, "Kasulatan ng Garantiya," executed by the defendant, reads as follows:

> **"Ako, GERARDO RUBIA, x x x, ay alang-alang at dahil sa halagang anim na libong piso/P6,000.00), salaping Filipino, sa amin ay *ipinahiram* na akin namang tinatanggap ng buong kasiyahan sa kay LOLITA L. LUNA, x x x ay sa pamamagitan ng kasulatang ito ay aking *iginagarantiya* ang x x x."**

It will be noted that the defendant *had already been granted* loan of P6,000.00 by the complainant Lolita L. Luna, when said defendant *offered the properties* to guarantee the payment of said loan. Defendant did not, therefore, sell or dispose of the said properties to the complainant, knowing the same to be already encumbered, so as to make her liable under Article 316, paragraph 2, of the Revised Penal Code. (Dissenting — People vs. Rubia Vda. de Torres, C.A., 62 O.G. 9270)

"Although such encumbrance be not recorded."

Notwithstanding this phrase in paragraph No. 2 of Art. 316, in certain cases, it was held that the encumbrance must be legally constituted.

An enforceable *verbal agreement,* previously made, to mortgage the real property as a security for a loan is not an encumbrance on the property, because a *promise to mortgage* is not an encumbrance. (U.S. vs. Mendezona, 1 Phil. 696; People vs. Vda. de Agoncillo, CA., 50 O.G. 4884; People vs. Bacolod, 64 Phil. 1056)

The attachment does not constitute an encumbrance *until it is registered.* (U.S. vs. Regalado y Sta. Ana, 1 Phil. 125)

The mortgage of a parcel of registered land which is not registered, is void. (People vs. De la Cruz, C.A., 52 O.G. 4725)

In all these cases, the accused, who were charged with other forms of swindling under paragraph No. 2 of Art. 316, were acquitted.

However, in one case, the Court of Appeals held that for purposes of violation of Article 316, paragraph 2 of the Revised Penal Code, it is immaterial whether the encumbrance be considered as a deed of sale with right of repurchase or as an equitable mortgage and whether said encumbrance is registered and annotated in the certificate of title, for under Article 316, it is not necessary that encumbrance be registered. (People vs. Gurango, *et al.,* 15 C.A. Rep. 271)

In *Antazo vs. People,* 138 SCRA 284, the Supreme Court held that a person who executes a Deed of Sale over a parcel of land "free from all liens and encumbrances" after full payment of the purchase price when in fact the land has been mortgaged and is the subject of a levy on execution, commits estafa. The fact that encumbrance on land sold "free from all liens and encumbrances" was registered with the Register of Deeds does not change the character of the act as estafa.

Usurious loan with equitable mortgage is not an encumbrance on the property.

Where the unregistered deed of conveyance previously executed by the accused, be it a *pacto de retro* or absolute sale is in reality a mere

usurious contract of loan with equitable mortgage, the execution by the said accused of a subsequent deed of absolute sale of the same property in favor of another with a warranty therein that the property sold is free from liens and encumbrances, does not constitute the crime of estafa under Article 316, par. 2, of the Revised Penal Code. The usurious loan contract, including its accessory obligation of equitable mortgage, being null and void (Arts. 1352, 1409, 2052 and 2086, Civil Code), no legal encumbrance on the property was created thereby.

Since at the time appellant executed the second deed of sale on May 24, 1957, he had actually returned more than the capital received by him, and since under the Usury Law he was not liable for the interest and in fact could recover whatever sum he might have delivered on that account, the loan had been extinguished by payment and the equitable mortgage to guarantee the said loan, discharged as a consequence. In other words, when appellant sold the house to Renato R. Vera, there was in legal contemplation no more lien or encumbrance thereon, and hence his statement to that effect did not constitute a misrepresentation within the meaning of Article 316, paragraph 2, of the Revised Penal Code, under which he was prosecuted and convicted by the trial court. (People vs. Masangkay, C.A., 58 O.G. 3565)

The thing disposed of must be real property.

If the thing encumbered is personal property, Art. 319 applies, because Art. 319 punishes him who *sells or pledges* personal property which is already subject to an encumbrance.

The offender must know that the real property is encumbered.

Thus, if the accused *did* not know that the property he acquired had been mortgaged and sold the same as free from encumbrance, the accused is not criminally liable.

Real property may be registered under any system of registration.

This paragraph applies whether the property is registered under the Spanish system of transfer of property or it is registered under the Land Registration Act.

The Land Registration Act might make it more difficult to consummate the crime, but it does not change the nature of the act. (People vs. Uehara, 34 O.G. 477)

The third element requires misrepresentation, fraud, or deceit.

The motion of misrepresentation, fraud, or deceit involves acts or spoken or written words by a party to mislead another into believing

something to be true when it is not in fact. The element of fraud in the crime of estafa under Art. 316, par. 2, cannot be implied. (People vs. Mariano, C.A., 40 O.G., Supp. 4, 91)

The mere fact that the encumbered real property is disposed of again by the owner does not in itself constitute swindling or a violation of Article 316 of the Revised Penal Code. It is necessary to prove that there was fraud or deceit in the second disposition. The vendor must have made express representations to the second buyer that the property was free from encumbrance. Fraud cannot be presumed from the mere fact that there was a second sale. The law does not prohibit the sale of encumbered real property. What is penalized is the fraud or deceit committed by the vendor in representing that the property is not encumbered. (People vs. Gurango, *et al.* C.A., 67 O.G. 2930)

When the third element is not established, there is no crime.

In the deed of sale executed by the accused, no express mention of the existence of the encumbrance in question was made. It merely recites that the vendor is "the legal and absolute owner of the house," which is true; and that she bound herself "to defend the vendee from any and all claims which may arise as a result of this conveyance." What really took place was that *it did not* occur *to the parties to* discuss whether there were any encumbrances on said property.

Held: Under the facts, therefore, it cannot be held that the accused was guilty of misrepresentation and fraud. Her passive attitude is insufficient to constitute fraud within the meaning of the law. The fraud contemplated in the law must be the result of some overt acts. There must be *express representation* that the real property is free from encumbrance. It cannot be deemed implied. Silence as to such encumbrance does not involve a crime. (People vs. Buencamino, C.A., 51 O.G. 6341)

Appellant argues the registration of the deed of sale with right of repurchase, Exh. B, in favor of Regelio Cariaga was sufficient notice to Diosdado Cruz, as registration is constructive notice to the whole world. Under appellant's contention, the crime of estafa which consists in the disposition of immovable property as unencumbered, knowing it to be encumbered, could never be committed if the first disposition was registered in the office of the Register of Deeds. This is not justified by the wordings in paragraph 2, Art. 316 of the Revised Penal Code, to wit: "Any person who, knowing that real property is encumbered shall dispose of the same, although such encumbrance be not recorded." The words "although such encumbrance be not recorded x x x" obviously implies that the crime is committed whether the first disposition is recorded or not. For the purpose of the commission of the offense, it is the false pretenses or representations

of the owner that constitute deceit. It is his disposition of the property knowing it to be encumbered that constitutes fraud. For that purpose, the criminal law does not require that the victim should make an inquiry or investigation in the office of the Register of Deeds to find out the actual status or condition of the property. (People vs. Mirasol, 18 C.A. Rep. 654)

There must be damage caused.

If no damage should result from the sale, no crime of estafa would be committed by the vendor, as the element of damage would then be lacking. (People vs. Mariano, C.A., *supra)*

Is the intention to cause damage sufficient? The basis of fine, in addition to imprisonment, is the "value of the damage *caused."*

But it is *not necessary* that the act be made *to the prejudice of the owner of the land.* (People vs. Luzentales, C.A., 55 O.G. 48)

"Shall dispose of the same as free from encumbrance."

The phrase "as free from encumbrance" is omitted in paragraph 2 of Art. 316. The Spanish text says *"El que dispusiere de un inmueble* como *libre, sabiendoque estaba gravado, etc."*

The omitted phrase "as free from encumbrance" is the basis of the ruling that *silence as to such encumbrance does not involve a crime.*

Par. 3 — By wrongfully taking by the owner his personal property from its lawful possessor.

Elements:

1. That the offender is the *owner of personal property.*
2. That said personal property is in the *lawful possession of another.*
3. That the offender *wrongfully takes* it from its lawful possessor.
4. That prejudice is thereby caused to the possessor or third person.

Example:

The accused pawned his watch to the complainant. Later, pretending to have the money for redeeming the watch, the accused asked the offended party to give him the watch. Once in possession of it, he carried it away without paying the loan for which it was given to the offended party as security. (People vs. Fajardo, 49 Phil. 206)

The offender must be the owner of personal property.

Note that the *offender* must be the *owner of the personal property.* If he is a third person and his purpose in taking it is to return it to the owner, it is theft, since the abstraction was made with the intent that another might profit thereby. (Albert)

If the owner took the personal property from its lawful possessor without the latter's knowledge and later charged him with the value of the property, is it theft or estafa?

In no case may the owner be held guilty of theft of his own property, because one of the elements of theft is that the property *belongs to another.* But if the owner, after taking it without the consent of the possessor, *charged the possessor with the value of said property,* the crime committed is theft. (U.S. vs. Albao, 29 Phil. 86)

Note: Although the property belongs to the offender, yet by charging the former possessor with its value, the offender intends to take another's money and at the same time exhibits an intent to gain. This is the reason for the ruling in the case of *U.S. vs. Albao, supra.*

But in charging the lawful possessor with its value, will not the owner make a false pretense, which is a form of deceit, and, therefore, the crime is estafa?

The personal property must be in the lawful possession of another.

A knew that B had found a ring belonging to C. A, without the knowledge and consent of B, took it from the latter's chest and gave it to C, its owner.

Is A liable under the third paragraph of Art. 316?

No, because B was not the lawful possessor of the ring. The finder of lost property has no right to possess the same, it being his obligation to give it to its owner or to the authorities.

The offender must wrongfully take the personal property from its lawful possessor.

The *taking* is wrongful when it is *without the consent* of the *possessor,* or when *deceit is employed* by the owner of the personal property in inducing the possessor to give it to him.

Thus, where the accused, who had delivered his ring to the offended party as collateral to a loan, falsely manifested and fraudulently represented to the latter that he had a buyer of the ring, promising to return it, if not

sold, or to pay the loan out of the proceeds of the sale, and once in possession thereof never fulfilled his promise, he is liable under Art. 316, par. 3. (People vs. Villacorta, 2 C.A. Rep. 425)

Does the phrase "shall wrongfully take it" include taking by violence?

If the owner takes the thing from the bailee by means of violence or intimidation, with intent to charge the bailee with its value, the crime is robbery. (U.S. vs. Albao, 29 Phil. 86)

In view of that ruling, it would seem that if the thing is taken by means of violence, without intent to gain, it would not be *estafa,* but grave coercion. (Art. 286)

"To the prejudice of the latter or any third person."

A pledged his watch to B, his roommate in a dormitory, to secure a loan of P30. One evening, A took the watch from the drawer of B's table, without the latter's knowledge and consent and used it when A went to a dance party. Later, when A returned and was about to put back the watch in the drawer of B's table, the latter surprised him.

Is A liable under the third paragraph of Art. 316?

No, because there was no damage caused to B.

Par. 4 — By executing any fictitious contract to the prejudice of another.

The crime of estafa by executing a fictitious contract to the prejudice of another may be illustrated in the case of a person who *simulates* a conveyance of his property to another, for the purpose of defrauding his creditors. (Guevara)

The above illustration would be a case of fraudulent insolvency (Art. 314), if the conveyance is real and made for a *consideration,* and not simulated, to prejudice a creditor.

But in a case, the Supreme Court held that it was a violation of Art 314, R.P.C, even if the consideration was fictitious.

Tan Diong was a merchant in good standing in the municipality of Kinoguitan, Misamis Oriental. Pastora Padla was his wife and Eustaquio Baranda was the husband of the latter's niece. Prior to June, 1931, Tan Diong had become indebted to various merchants of Cebu, and a judgment against him had been rendered in favor of Lim Tian Ting & Co. for more than five

thousand pesos. Upon this judgment, an execution had been issued, but it realized only the sum of P198.23 from certain personal property levied upon in Tan Diong's store. Tan Diong and his wife had previously owned various parcels of real property in the municipality but investigation showed that prior to the events mentioned they had transferred all to their co-defendant Eustaquio Baranda.

The evidence amply shows that these conveyances were made for the purpose of putting the property beyond the reach of Tan Diong's creditors, and that the consideration mentioned in the deeds of conveyance from Tan Diong and wife to Baranda was *fictitious.* (People vs. Tan Diong, *et al.*, 59 Phil. 538)

Note: The accused were prosecuted for, and accused Tan Diong was convicted of, the crime defined and penalized under Art. 523 of the old Penal Code. (now Art. 314, R.P.C.)

Par. 5 — By accepting any compensation for services not rendered or for labor not performed.

The crime in this paragraph consists in *accepting any compensation* given the accused who did not render the service or perform the labor for which payment was made.

But this kind of estafa requires *fraud* as an important element. If there is no fraud, it becomes payment not owing, known as *solutio indebiti* under the Civil Code, with civil obligation to return the wrong payment.

It would seem that what constitutes estafa under this paragraph is the malicious *failure to return* the compensation wrongfully received.

If the money in *payment of a debt* was delivered to a wrong person, Art. 316, par. 5, is not applicable, in case the person who received it later refused or failed to return it to the owner of the money, Art. 315, subdivision 1(b), is applicable.

Par. 6 — By selling, mortgaging or encumbering real property or properties with which the offender guaranteed the fulfillment of his obligation as surety.

Elements:

1. That the offender is a *surety* in a bond given in a criminal or civil action.

2. That he guaranteed the fulfillment of such obligation with his real property or properties.
3. That he *sells, mortgages,* or, in any other manner *encumbers* said real property.
4. That such sale, mortgage or encumbrance is (a) *without express authority from the court,* or (b) made *before* the *cancellation* of his bond, or (c) *before* being *relieved* from the obligation contracted by him.

There must be damage caused under Art. 316.

A executed a bond in the sum of P1,000 as one of the sureties for the administrator appointed by the court in the intestate proceedings of a deceased person. In order to qualify as such surety, A exhibited his Transfer Certificate of Title No. 9683, covering a parcel of land. Before the cancellation of said bond and without judicial authority, A sold the land. There was no express finding in the judgment that the sale made by A resulted in any *actual* damage to the estate of the deceased.

Held: The penalty prescribed in Art. 316 is *arresto mayor* in its minimum and medium periods *and* a fine of not less than the *value* of the *damage caused* and not more than three times such value. Such fine is *not* merely an alternative penalty. It seems clear that Art. 316 contemplates the existence of damage as an element of the offense. The damage should not be merely potential or speculative. The cases of *U.S. vs. Goyenechea,* 8 Phil. 117, and *U.S. vs. Malong,* 36 Phil. 821, referring to disturbance of property rights, are not applicable, because the property involved in those cases belonged to the offended party, while in this case the property sold by the accused was his own. (Castillo vs. People, 73 Phil. 489)

Art. 317. ***Swindling a minor.*** — Any person who, taking advantage of the inexperience or emotions or feelings of a minor to his detriment, shall induce him to assume any obligation or to give any release or execute a transfer of any property right in consideration of some loan of money, credit, or other personal property, whether the loan clearly appears in the document or is shown in any other form, shall suffer the penalty of *arrestomayor*[1] and a fine of a sum ranging from 10 to 50 per cent of the value of the obligation contracted by the minor.

[1] See Appendix "A," Table of Penalties, No. 1.

Elements:

1. That the *offender takes* advantage of the *inexperience* or *emotions* or *feelings* of a minor.
2. That he *induces* such minor (1) *to assume* an obligation, or (2) *to give release,* or (3) *to execute* a transfer of any property right.
3. That the consideration is (1) *some loan of money,* (2) *credit,* or (3) *other personal property.*
4. That the transaction is to the *detriment* of such minor.

Example:

The act of causing a minor to sign a receipt for P480 when as a matter of fact the minor received P400 only, coupled with the circumstance that the minor was a fugitive from the house of his parents and was very badly in need of money was sufficient to constitute estafa under this article. (Guevara)

Note: Actual proof of deceit or misrepresentation is *not essential,* as it is sufficient that the offender takes advantage of the inexperience or emotions of the minor.

Real property not included.

Element No. 3 specifies loan of money, credit or other personal property as a consideration. Real property is not included because it cannot be made to disappear, since a minor cannot convey real property without judicial authority. (Albert)

What is the age of the minor?

When the Code is silent as to the age of the minor as the offended party or victim of the offense, it is understood that he must be under 21 years, as provided in the Civil Code.

Art. 318. ***Other deceits.*** — The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of *arresto menor or* a fine not exceeding 200 pesos.

Other deceits are:

1. By *defrauding* or *damaging* another by any *other deceit* not mentioned in the preceding articles.
2. By *interpreting dreams,* by *making forecasts,* by *telling fortunes,* or by taking advantage of the credulity of the public in any other similar manner, *for profit or gain.*

Scope of this article.

Any other kind of conceivable *deceit* may fall under this article. As in other cases of estafa, *damage* to the offended party is required.

Fraudulently obtaining a loan on the promise that realty would be mortgaged as security for said loan, which promise was not fulfilled because the borrower sold the property, would constitute estafa under Art. 541 of the old Penal Code, now Art. 318. (U.S. vs. Mendezona, 1 Phil. 696)

A railroad conductor, who collected P1.22 from a passenger and issued a ticket for a shorter journey for which the proper charge was P0.18 and pocketed the difference, is guilty of estafa under Art. 318. (U.S. vs. Reyes, 1 Phil. 249)

If the tenant, who sold the landlord's share in the harvest and failed to deliver the proceeds of the sale to the landlord, is not liable for estafa under Art. 315, he may be held liable under the first paragraph of Art. 318. (People vs. Carulasdulasan, 95 Phil. 8)

Estafa by hiring and using public vehicle without money to pay the fare.

Where the accused hired and used a vehicle and then failed to pay the fare, because he had no money, he was guilty of estafa under Art. 534, No. 1 of the old Penal Code, as amended by Act No. 3244, in connection with Arts. 535, No. 1, and 536 of said Code. (People vs. Santiago, 55 Phil. 266; People vs. Sunga, 54 Phil. 210; People vs. Espino, 47 Phil. 977)

The deceits in this article include false pretenses and fraudulent acts.

To give genuine copper cents the appearance of silver *pesetas* by whitening them with quicksilver for the purpose of defrauding third persons by deceiving them as to the real value of the coins, constitutes estafa under this article and not that of counterfeiting money. (U.S. vs. Basco, 6 Phil. 110) *Note:* This is by fraudulent act.

A person who presents himself to another to serve as domestic helper and obtains money in advance and later, on some pretext, leaves the service is guilty of estafa under this article. (People vs. Panlileo, G.R. No. 35536, April 8, 1932) *Note:* This is by false pretenses.

Application of Art. 318.

People vs. Ganasi
(C.A., 61 O.G. 3603)

Facts: The accused incurred a debt from complainant, Dionisio Dacanay, in the amount of P3,500.00. As security for the debt, the accused offered to mortgage Lot No. 1 to the complainant. Pursuant to said offer, he showed to the latter a plan of the lot, and accompanied him for an ocular inspection of the premises. Finding the land suitable for a carpentry shop which he intended to build, Dacanay consented to the execution of a deed of mortgage in his favor by the accused covering Lot No. 1. When the said obligation became due, the accused, being unable to raise the amount, decided to sell the previously mortgaged property to the complainant, the same to answer for everything he owed the latter. Thereafter, the complainant went to the Register of Deeds of Benguet to have his ownership over Lot No. 1 registered. Much to his surprise, he was informed that what the accused had sold was not Lot No. 1 but Lot No. 2 composed mostly of uneven and hilly terrain and which was worthless for what he intended to use it.

Held: While the accused is correct in saying that article 316 of the Revised Penal Code does not apply, the Solicitor General erred in stating that the offense comes within the purview of paragraph 1(a) of Article 315. The Solicitor General misconstrues the meaning of paragraph 1(a) of Article 315. Under the provision of law, the obligation to deliver already exists, and the offender on making delivery has altered the substance, quantity or quality of the thing delivered. The facts of this case before us are not foursquare with the above-quoted provision of law. Here, the accused deceitfully pointed to Dacanay one parcel of land, offering it as security, on the strength of which deceit, Dacanay parted with his money. The deceit practiced by Ganasi preceded the alienation of by Dacanay of his money. It is therefore clear that there was no alteration substance, quantity or quality

in the sense intended by paragraph 1(a) of Article 315 in Ganasi's execution of the mortgage and later of the sale.

Since the facts of this case are not covered by any of the provisions of Articles 315, 316 and 317, the offense committed by Ganasi must perforce come within the meaning and intendment of the blanket provisions of paragraph 1(a) of Article 318.

Note: **Another reason why Art. 315, par. 1(a) is not applicable is that the estafa under par. 1(a) is one with abuse of confidence, while the accused employed deceit to defraud the offended party.**

Chapter Seven

CHATTEL MORTGAGE

Art. 319. ***Removal, sale or pledge of mortgaged property.*** — The penalty of *arresto* ***mayor***[1] or a fine amounting to twice the value of the property shall be imposed upon:

1. Any person who shall knowingly remove any personal property mortgaged under the Chattel Mortgage Law to any province or city other than the one in which it was located at the time of the execution of the mortgage, without the written consent of the mortgagee or his executors, administrators, or assigns.

2. Any mortgagor who shall sell or pledge personal property already pledged, or any part thereof, under the terms of the Chattel Mortgage Law, without the consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds of the province where such property is located.

Object of Art. 319.

The object of the penal provisions of the Chattel Mortgage Law, from which Art. 319 of the Revised Penal Code was taken, is to give the necessary sanction to the provision of the statute in the interest of the public at large, so that in all cases wherein loans are made and secured under the terms of the statute, the mortgage debtors may be deterred from the violation of its provisions and the mortgage creditors may be protected against loss or inconvenience resulting from the wrongful removal or sale of the mortgaged property. (U.S. vs. Kilayko, 32 Phil. 619)

[1]See Appendix "A," Table of Penalties, No. 1.

Purpose of paragraph No. 1 of Art. 319.

One of the purposes of Art. 319, par. No. 1, is the protection of the mortgagee who should be able to have a ready access to, and easy reach of, the property subject of the mortgage. (People vs. Mata, C.A., 58 O.G. 6287)

Acts punishable under Art. 319:

1. By knowingly removing any personal property mortgaged under the Chattel Mortgage Law to *any province* or *city* other than the one in which it was located at the time of execution of the mortgage, *without the written consent* of the mortgagee or his executors, administrators or assigns.
2. By *selling* or *pledging* personal property *already pledged,* or any part thereof, under the terms of the Chattel Mortgage Law, *without the consent* of the mortgagee *written on the back of the mortgage and noted on the record thereof in* the office of the register of deeds of the province where such property is located.

The chattel mortgage must be valid and subsisting.

It is essential that there be a valid and subsisting chattel mortgage. If the chattel mortgage does not contain an *affidavit of good faith* and *is not registered,* it is void and cannot be the basis of a criminal prosecution under Art. 319. (People vs. Vda. de Agoncillo, C.A., 50 O.G. 4884)

Elements of knowingly removing mortgaged personal property:

a. That personal property is *mortgaged* under the Chattel Mortgage Law.

b. That the offender *knows* that such property is so mortgaged.

c. That he *removes* such mortgaged personal property to *any province* or *city* other than the one in which it was located at the time of the execution of the mortgage.

d. That the removal is *permanent.*

e. That there is *no written consent* of the mortgagee or his executors, administrators or assigns to such removal.

Liability of person other than the mortgagor.

Is the *third person* who removed the property to another province, knowing it to have been mortgaged under the Chattel Mortgage Law, liable under this article? Yes, because the offender is *any person* who shall

knowingly remove the mortgaged personal property to another province or city without the written consent of the mortgagee, etc.

If the chattel mortgage is not registered, there is no violation of Art. 319; no felonious intent when transfer of personal property is due to change of residence.

Appellant's contention is to the effect that, having filed a collection suit based on the promissory note before the Manila Municipal Court, P.E. Domingo & Co., Inc. is considered to have abandoned the chattel mortgage as basis for relief, whether civil or criminal; or, in the event that such is not the case, the chattel mortgage should be considered merely as a pledge before its registration on January 2, 1952, so that there could be no violation thereof pursuant to Art. 319, par. 1, of the Revised Penal Code.

Held: Where the crime or offense not only disturbs the public order but also injures the property rights of an individual, the right to file the complaint is personal to the latter. Hence, in the case at bar, it having abandoned a foreclosure suit against defendant-appellant, P.E. Domingo & Co., Inc. was without legitimate basis to proceed against him in a criminal case based on the same cause of action.

As regards the second point of defense, although it may be true that registration was not a necessary requisite to the validity of a chattel mortgage under the old law (Act No. 1508), nevertheless, the same has been deemed amended by the provision of Art. 2140 of the new Civil Code, which took effect on August 30, 1950, and which now makes it indispensable that the document be registered. This amendment definitely favors the appellant; as such it must retroact to cover an act committed before the amendment. Thus, even in the supposition that appellant has committed a violation of Art. 319, par. 1, of the Revised Penal Code, with the old Chattel Mortgage Law as basis, such violation was no longer a crime at the time of his prosecution on June 27, 1952, due to the advent of the new Civil Code; and this must be so far under the laws already in force at the time of the initiation of the criminal action, the document which became the basis of prosecution was only a mere pledge, not a chattel mortgage.

The evidence shows that appellant and his family transferred their residence to Allen, Samar, long before December, 1951. Their bringing the piano with them was a step taken towards giving more protection to the safety and security of their property including the piano, not only for their own benefit but also for that of the mortgagee, P.E. Domingo & Co.

It would be absurd to suppose that in transferring their residence to Allen, Samar, the appellant and his family should leave behind a valuable property, such as a piano, in the care of just anybody. We believe that this could not have been the intent of the legislature in enacting the law. In this

respect, we consider the transfer of the piano to Allen, Samar, as without any felonious intent to prejudice or cause damage upon the mortgagee. The transfer was warranted by the family's *bona fide* intention to change residence. (People vs. Mata, C.A., 58 O.G. 6287)

Example of violation of par. No. 1 of Art. 319.

The accused mortgaged his piano then in Manila to the offended party to secure the payment of his debt to the latter in the amount of P350. Thereafter, the accused took the piano to Calibo, Capiz, without the offended party knowing the removal of the piano. (U.S. vs. Rimon, 23 Phil. 13)

The removal of the mortgaged personal property must be coupled with intent to defraud.

Thus, when the cabs of the Globe Taxi, Inc., mortgaged under the Chattel Mortgage Law, were removed after notifying the mortgagee from Manila, where they were at the time the loan was negotiated, to Quezon City, because the fire department had ordered the closing of its gas station in Manila, there was no violation of Art. 319, since the removal *was justified* and there was no *fraud* in the transfer of the location of the garage. (People vs. Torres, C.A., 51 O.G. 6280)

Filing a civil action for collection, not for foreclosure of chattel mortgage, relieves the accused of criminal responsibility.

If the mortgagee elected to file a suit for collection, not foreclosure, thereby abandoning the mortgage as basis for relief, the removal of the property to the province other than that where it was originally located at the time of the mortgage is not a violation of par. No. 1 of Art. 319. (People vs. Mata, C.A., 58 O.G. 6287)

Elements of selling or pledging personal property already pledged:

a. That personal property is *already pledged* under the terms of the Chattel Mortgage Law.

b. That the offender, who is the mortgagor of such property, *sells* or *pledges* the same or any part thereof.

c. That there is *no consent* of the mortgagee *written on the back of the mortgage and noted* on the record thereof in the office of the register of deeds.

House may be subject of chattel mortgage by agreement of the parties.

Although a house is generally considered an immovable property and should, therefore, ordinarily be the subject of a real estate mortgage, this will not preclude prosecution of the appellants under Article 319, paragraph 2, for as can be seen from Exhibit B itself, the appellants and Verdon undoubtedly agreed to make the house in question the subject of the chattel mortgage Exhibit B. (Paras, 2 Civil Code, 1963 ed., p. 9; Evangelista vs. Abad, 36 O.G. 2913; Tomines vs. San Juan, 45 O.G. 2935) And Exhibit B having been made and registered under the terms of the Chattel Mortgage Law, subsequent sale or pledge of the property covered by Exhibit B, without the consent of the first mortgagee written on the back of the mortgage and noted on the record, constitutes violation of Article 319, paragraph 2. (People vs. Daproza, *et al,* C.A., 62 O.G. 5961-5964)

Second chattel mortgage is included.

Under Art. 319 of the Code, which penalizes the mortgagor who sells or pledges a mortgaged property without the consent of the mortgagee, within the terms of the Chattel Mortgage Law, a *second mortgage* is, aside from sale or pledge, contemplated by the law, for the Spanish text uses the word "hipoteca." (People vs. Vda. de Agoncillo, CA-G.R. No. 9113 R, April 8, 1954)

The consent of the mortgagee must be (1) in writing, (2) on the back of the mortgage, and (3) noted on the record thereof in the office of the register of deeds.

Thus, if the consent of the mortgagee is written only on a separate piece of paper, the sale or pledge of the property by the mortgagor is a violation of Art. 319.

Damage is not necessary.

It will be noted that damage to the mortgagee is not essential.

Chattel mortgage may give rise to estafa by means of deceit.

People vs. Calsim
(58 O.G. 7213)

Facts: The accused obtained a loan from one Mauro Magno in the amount of P2,500.00 payable within a period of five years, and to secure

its payment, the former executed in favor of the latter a *deed of chattel mortgage* assigning and conveying by way of *first mortgage* a two-story house located in the City of Manila.

It appeared that the house in question had already been previously mortgaged by its owner to a certain De la Torre. As a result, the deed of mortgage executed by the accused in favor of Magno was refused registration by the register of deeds. Magno demanded the return of his money from the accused but the latter failed to do so.

Held: It is evident that the appellant obtained the loan from complainant through false representation or deceit which is one of the elements constituting the crime of estafa. It is apparent that the complainant had granted the loan to appellant in the belief that the security offered was good and sufficient to guarantee his investment because it was free from any lien or encumbrance. Had he known that it was already encumbered, the likelihood was that he would not have granted the loan, which proves the fraud of which he was a victim.

But appellant contends that under the facts proven, he cannot be guilty of estafa for there is nothing to show that complainant has suffered any damage or injury as a result of the execution of the second mortgage.

This contention is untenable. While the mortgage executed by appellant in favor of complainant is for a period of five years and that period has not yet expired, it does not follow that complainant has not suffered any damage or injury as a consequence of the fraud for indeed he has been deprived of the use of his money because of such fraud while he stands to lose it in view of his failure to obtain the registration of the deed of mortgage. It must be noted that when complainant tried to register the mortgage in the office of the register of deeds, the latter refused registration for the apparent reason that the same could not be registered as first encumbrance on the property. Under the circumstances, the damage or injury that such failure of registration has caused the complainant is apparent and constitutes one of the elements of estafa under the law. (U.S. vs. Goyenechea, 8 Phil. 117; U.S. vs. Malong, 36 Phil. 821)

Distinguished from estafa (Art. 316) by disposing of encumbered property.

In both offenses there is the selling of a mortgaged property. In estafa under Art. 316, par. 2, the property involved is *real property;* in sale of mortgaged property (Art. 319), it is *personal property.*

But to constitute the crime of *estafa,* it is sufficient that the real property mortgaged be sold as free, even though the vendor may have obtained the consent of the mortgagee in writing.

Selling or pledging of *personal property* already pledged or mortgaged is committed by the mere failure to obtain the consent of the mortgagee in writing, even if the offender should inform the purchaser that the thing sold is mortgaged. (People vs. Alvarez, 45 Phil. 472)

The purpose of the law in Art. 319 is to protect the *mortgagee;* in Art. 316, the purpose is to protect the *purchaser,* whether the *first* or the *second.*

Chapter Eight

ARSON AND OTHER CRIMES INVOLVING DESTRUCTION

Note:

Articles 320 to 326-B are repealed or amended by Presidential Decree No. 1613. **See page 830 of this Book II.**

The laws on arson in force today are P.D. 1613 and Art. 320, as amended by Rep. Act No. 7659. The provisions of P.D. 1613 which are inconsistent with RA No. 7659 (such as Section 2 of P.D. No. 1613) are deemed repealed.

Art. 320. ***Destructive arson.*** **— The penalty of** ***reclusion perpetua to*** **death**[1] **shall be imposed upon any person who shall burn:**

1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, or committed on several or different occasions;

2. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to official governmental function or business, private transaction, commerce, trade workshop, meetings and conferences, or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings, public conveyance or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and

[1]**The Indeterminate Sentence Law is not applicable.**

regardless also of whether the building is actually inhabited or not.

3. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.

4. Any building, factory, warehouse installation, and any appurtenances thereto, which are devoted to the service of public utilities.

5. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

Irrespective of the application of the above enumerated qualifying circumstances, the penalty of *reclusion perpetua* to death shall likewise be imposed when the arson is perpetrated or committed by two (2) or more persons or by a group of persons, regardless of whether their purpose is merely to burn or destroy a building or the burning merely constitutes an overt act in the commission of another violation of law.

The penalty of *reclusion perpetua* to death shall also be imposed upon any person who shall burn:

1. Any arsenal, shipyard, storehouse, or military power or fireworks factory, ordinance, storehouse, archives, or general museum of the Government.

2. In an inhabited place, any storehouse or factory of inflammable or explosive materials.

If as a consequence of the commission of any of the acts penalized under this Article, death results, the mandatory penalty of death shall be imposed. *(As amended by Republic Act No. 7659)*

Destructive Arson.

Article 320 of *The Revised Penal Code,* as amended by RA 7659, contemplates the malicious burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories and other

military, government or commercial establishments by any person or group of persons. The classification of this type of crime is known as *Destructive Arson,* which is punishable by *reclusion perpetua* to death.

The reason for the law is self-evident: to effectively discourage and deter the commission of this dastardly crime, to prevent the destruction of properties and protect the lives of innocent people. Exposure to a brewing conflagration leaves only destruction and despair in its wake; hence, the State mandates greater retribution to authors of this *heinous crime*. The exceptionally severe punishment imposed for this crime takes into consideration the extreme danger to human lives exposed by the malicious burning of these structures; the danger to property resulting from the conflagration; the fact that it is normally difficult to adopt precautions against its commission, and the difficulty in pinpointing the perpetrators; and, the greater impact on the social, economic, security and political fabric of the nation. (People vs. Soriano, G.R. No. 142565, July 29, 2003)

Penalty for Destructive Arson resulting in death.

If as a consequence of the commission of any of the acts penalized under Art. 320, death should result, the mandatory penalty of death shall be imposed (Art. 320, as amended by Rep. Act No. 7659). However, pursuant to Rep. Act No. 9346 which prohibited the imposition of the death penalty, the mandatory penalty of death for Destructive Arson where death ensues is now downgraded to *reclusion perpetua* with no eligibility for parole.

Destructive Arson, distinguished from Simple Arson under PD No. 1613.

The nature of *Destructive Arson* is distinguished from *Simple Arson* by the degree of perversity or viciousness of the criminal offender. The acts committed under Art. 320 of *The Revised Penal Code* constituting *Destructive Arson* are characterized as *heinous* crimes "for being grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society." On the other hand, acts committed under PD 1613 constituting *Simple Arson* are crimes with a lesser degree of perversity and viciousness that the law punishes with a lesser penalty. In other words, *Simple Arson* contemplates crimes with less significant social, economic, political and national security implications than *Destructive Arson.* (People vs. Soriano, G.R. No. 142565. July 29, 2003)

Art. **321.** *Other forms of arson.* — When the arson consists in the burning of other property and under the circumstances given hereunder, the offender shall be punished:

1. By *reclusion temporal* to *reclusion perpetua*:[2]

(a) If the offender shall set fire to any building, farmhouse, warehouse, hut, shelter, or vessel in port, knowing it to be occupied at the time by one or more persons;

(b) If the building burned is a public building and the value of the damage caused exceeds 6,000 pesos;

(c) If the building burned is a public building and the purpose is to destroy evidence kept therein to be used in instituting prosecution for the punishment of violators of the law, irrespective of the amount of the damage;

(d) If the building burned is a public building and the purpose is to destroy evidence kept therein to be used in any legislative, judicial or administrative proceedings, irrespective of the amount of the damage: *Provided, however,* That if the evidence destroyed is to be used against the defendant for the prosecution of any crime punishable under existing laws, the penalty shall be *reclusion perpetua;*

(e) If the arson shall have been committed with the intention of collecting under an insurance policy against loss or damage by fire.

2. By *reclusion temporal*:[3]

(a) If an inhabited house or any other building in which people are accustomed to meet is set on fire, and the culprit did not know that such house or building was occupied at the time, or if he shall set fire to a moving freight train or motor vehicle, and the value of the damage caused exceeds 6,000 pesos;

[2]See Appendix "A," Table of Penalties, No. 32.
[3]See Appendix "A," Table of Penalties, No. 28.

(b) If the value of the damage caused in paragraph (b) of the preceding subdivision does not exceed 6,000 pesos;

(c) If a farm, sugar mill, cane mill, mill central, bamboo grooves, or any similar plantation is set on fire, and the damage caused exceeds 6,000 pesos; and

(d) If grain fields, pasture lands, or forests, or plantings are set on fire, and the damage caused exceeds 6,000 pesos.

3. By *prision mayor*:[4]

(a) If the value of the damage caused in the cases mentioned in paragraphs (a), (c) and (d) in the next preceding subdivision does not exceed 6,000 pesos;

(b) If a building not used as a dwelling or place of assembly, located in a populated place, is set on fire, and the damage caused exceeds 6,000 pesos;

4. By *prision correccional* in its maximum period to *prision mayor* in its medium period:[5]

(a) If a building used as a dwelling located in an uninhabited place is set on fire and the damage caused exceeds 1,000 pesos;

(b) If the value of the damage caused in the case mentioned in paragraphs (c) and (d) of subdivision 2 of this article does not exceed 200 pesos.

5. By *prision correccional* in its medium period to *prision mayor* in its minimum period,[6] when the damage caused is over 200 pesos but does not exceed 1,000 pesos, and the property referred to in paragraph (a) of the next preceding subdivision is set on fire; but when the value of such property does not exceed 200 pesos, the penalty next lower in degree than that prescribed in this subdivision shall be imposed.

[4]See Appendix "A," Table of Penalties, No. 19.
[5]See Appendix "A," Table of Penalties, No. 18.
[6]See Appendix "A," Table of Penalties, No. 16.

6. The penalty of *prision correccional* in its medium and maximum periods,[7] if the damage caused in the case mentioned in paragraph (b) of subdivision 3 of this article does not exceed 6,000 pesos but is over 200 pesos.

7. The penalty of *prision correccional* in its minimum and medium periods,[8] if the damage caused in the case mentioned in paragraph (b) of subdivision 3 of this article does not exceed 200 pesos.

8. The penalty of *arresto mayor*[9] and a fine ranging from fifty to one hundred per centum of the damage caused shall be imposed, when the property burned consist of grain fields, pasture lands, forests, or plantations when the value of such property does not exceed 200 pesos. *(As amended by Rep. Act No. 5467, approved May 12, 1969)*

Art. 322. *Cases of arson not included in the preceding articles.* — Cases of arson not included in the next preceding articles shall be punished:

1. By *arresto mayor* in its medium and maximum periods,[10] when the damage caused does not exceed 50 pesos;

2. By *arresto mayor* in its maximum period to *prision correccional* in its minimum period,[11] when the damage caused is over 50 pesos but does not exceed 200;

3. By *prision correccional* in its minimum and medium periods,[12] if the damage caused is over 200 pesos but does not exceed 1,000; and

4. By *prision correccional* in its medium and maximum periods,[13] if it is over 1,000 pesos.

[7]See Appendix "A," Table of Penalties, No. 15.
[8]See Appendix "A," Table of Penalties, No. 14.
[9]See Appendix "A," Table of Penalties, No. 1.
[10]See Appendix "A," Table of Penalties, No. 6.
[11]See Appendix "A," Table of Penalties, No. 8.
[12]See Appendix "A," Table of Penalties, No. 14.
[13]See Appendix "A," Table of Penalties, No. 15.

Art. 323. ***Arson of property of small value.*** — The arson of any uninhabited hut, storehouse, barn, shed or any other property the value of which does not exceed 25 pesos, committed at a time or under circumstances which clearly exclude all danger of the fire spreading, shall not be punished by the penalties respectively prescribed in this chapter, but in accordance with the damage caused and under the provisions of the following **chapter.**[14]

Art. 324. ***Crimes involving destruction.*** — Any person who shall cause destruction by means of explosion, discharge of electric current, inundation, sinking or stranding of a vessel, intentional damaging of the engine of said vessel, taking up the rails from a railway track, maliciously changing railway signals for the safety of moving trains, destroying telegraph wires and telegraph posts, or those of any other system, and, in general by using any other agency or means of destruction as effective as those above enumerated, shall be punished by *reclusion temporal*[15] if the commission has endangered the safety of any person; otherwise, the penalty of *prision mayor*[16] shall be imposed.

Elements of crimes involving destruction:

1. The offender causes destruction.
2. Destruction is caused by any of the following means:
   a. explosion
   b. discharge of electric current
   c. inundation, sinking or stranding of a vessel, or intentional damaging of the engine of said vessel
   d. taking up the rails from a railway track
   e. maliciously changing railway signals for the safety of moving trains

[14]See Article 329.
[15]See Appendix "A," Table of Penalties, No. 28.
[16]See Appendix "A," Table of Penalties, No. 19.

f. destroying telegraph wires and telegraph posts, or those of any other system

g. using any other agency or means of destruction as effective as those above enumerated

Crimes Involving Destruction, as Terrorism.

Under RA No. 9372 (Human Security Act of 2007), approved on March 6, 2007, a person who commits an act punishable under Art. 324 (Crimes Involving Destruction) thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism, and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole.

Art. 325. ***Burning one's own property as a means to commit arson.*** **— Any person guilty of arson or causing great destruction of property belonging to another shall suffer the penalty prescribed in this chapter, even though he shall have set fire to or destroyed his own property for the purpose of committing the crime.**

Art. 326. ***Setting fire to property exclusively owned by the offender.*** **— If the property burned shall be the exclusive property of the offender, he shall be punished by** *arresto mayor* **in its maximum period to** ***prision correccional*** **in its minimum period,**[17] **if the arson shall have been committed for the purpose of defrauding or causing damage to another, or prejudice shall actually have been caused, or if the thing burned shall have been a building in an inhabited place.** ***(As amended by Rep. Act No. 5467)***

Art. 326-A. ***In cases where death resulted as a consequence of arson.*** **— If death resulted as a consequence of arson**

[17]See Appendix "A," Table of Penalties, No. 8.

committed on any of the properties and under any of the circumstances mentioned in the preceding articles, the court shall impose the death penalty.

Art. 326-B. *Prima facie evidence of* ***arson.*** — Any of the following circumstances shall constitute *prima facie* evidence of arson:

1. If after the fire, are found materials or substances soaked in gasoline, kerosene, petroleum, or other inflammables, or any mechanical, electrical, chemical, or electronic contrivance designed to start a fire, or ashes or traces of any of the foregoing;

2. That substantial amount of inflammable substance or materials were stored within the building not necessary in the course of the defendant's business; and

3. That the fire started simultaneously in more than one part of the building or locale under circumstances that cannot normally be due to accidental or unintentional causes: *Provided, however,* That at least one of the following is present in any of the three above-mentioned circumstances:

(a) That the total insurance carried on the building and/or goods is more than 80 per cent of the value of such building and/or goods at the time of the fire;

(b) That the defendant after the fire has presented a fraudulent claim for loss.

The penalty of *prision* ***correccional***[18] shall be imposed on one who plants the articles above-mentioned, in order to secure a conviction, or as a means of extortion or coercion. *(As amended by Rep. Act No. 5467, approved May* ***12, 1969)***

[18] See Appendix "A," Table of Penalties, No. 10.

PRESIDENTIAL DECREE NO. 1613
AMENDING THE LAW ON ARSON

SECTION 1. *Arson.* — Any person who burns or sets fire to the property of another shall be punished by *Prision Mayor.*[19]

The same penalty shall be imposed when a person sets fire to his own property under circumstances which expose to danger the life or property of another.

SEC. 2. *Destructive Arson.* — The penalty of *Reclusion Temporal* in its maximum period to *Reclusion Perpetua*[20] shall be imposed if the property burned is any of the following:

1. Any ammunition factory and other establishment where explosives, inflammable or combustible materials are stored.

2. Any archive, museum, whether public or private, or any edifice devoted to culture, education or social services.

3. Any church or place of worship or other building where people usually assemble.

4. Any train, airplane or any aircraft, vessel or watercraft, or conveyance for transportation of persons or property.

5. Any building where evidence is kept for use in any legislative, judicial, administrative or other official proceeding.

6. Any hospital, hotel, dormitory, lodging house, housing tenement, shopping center, public or private market, theater or movie house or any similar place or building.

7. Any building, whether used as a dwelling or not, situated in a populated or congested area.

SEC. 3. *Other Cases of Arson.* — The penalty of *Reclusion Temporal* to *Reclusion Perpetua*[21] shall be imposed if the property burned is any of the following:

[19]See Appendix "A," Table of Penalties, No. 19.
[20]See Appendix "A," Table of Penalties, No. 34.
[21]See Appendix "A," Table of Penalties, No. 32.

1. Any building used as offices of the government or any of its agencies;

2. Any inhabited house or dwelling;

3. Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel;

4. Any plantation, farm, pasture land, growing crop, grain field, orchard, bamboo grove or forest;

5. Any rice mill, sugar mill, cane mill or mill central; and

6. Any railway or bus station, airport, wharf or warehouse.

SEC. 4. *Special Aggravating Circumstances in Arson.* — The penalty in any case of arson shall be imposed in its maximum period:

1. If committed with intent to gain;

2. If committed for the benefit of another;

3. If the offender is motivated by spite or hatred towards the owner or occupant of the property burned;

4. If committed by a syndicate.

The offense is committed by a syndicate if it is planned or carried out by a group of three (3) or more persons.

SEC. 5. *Where Death Results From Arson.* — If by reason of or on the occasion of arson death results, the penalty of *Reclusion Perpetua* to death[22] shall be imposed.

SEC. 6. *Prima Facie Evidence of Arson.* — Any of the following circumstances shall constitute *prima facie* evidence of arson:

1. If the fire started simultaneously in more than one part of the building or establishment.

2. If substantial amount of flammable substances or materials are stored within the building not of the offender nor for household use.

[1]See Appendix "A," Table of Penalties, No. 37.

3. If gasoline, kerosene, petroleum or other flammable or combustible substances or materials soaked therewith or containers thereof, or any mechanical, electrical, chemical, or electronic contrivance designed to start a fire, or ashes or traces of any of the foregoing are found in the ruins or premises of the burned building or property.

4. If the building or property is insured for substantially more than its actual value at the time of the issuance of the policy.

5. If during the lifetime of the corresponding fire insurance policy more than two fires have occurred in the same or other premises owned or under the control of the offender and/or insured.

6. If shortly before the fire, a substantial portion of the effects insured and stored in a building or property had been withdrawn from the premises except in the ordinary course of business.

7. If a demand for money or other valuable consideration was made before the fire in exchange for the desistance of the offender or for the safety of the person or property of the victim.

SEC. 7. *Conspiracy to Commit Arson.* — Conspiracy to commit arson shall be punished by *Prision Mayor* in its minimum period.[23]

SEC. 8. *Confiscation of Object of Arson.* — The building which is the object of arson including the land on which it is situated shall be confiscated and escheated to the State, unless the owner thereof can prove that he has no participation in nor knowledge of such arson despite the exercise of due diligence on his part.

Sec. 9. *Repealing Clause.* — The provisions of Articles 320 to 326-B of the Revised Penal Code and all laws, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this decree are hereby repealed or amended accordingly.

[23]See Appendix "A," Table of Penalties, No. 20.

Sec. 10. *Effectivity.*— This Decree shall take effect immediately upon publication thereof at least once in a newspaper of general circulation.

Done in the City of Manila, this 7th day of March, nineteen hundred and seventy-nine.

Arson, defined.

Arson is defined as the malicious destruction of property by fire.

Kinds of arson.

1. Simple Arson (Sec. 1, P.D. No. 1613)
2. Destructive Arson (Art. 320, as amended by R.A. No. 7659)
3. Other cases of arson (Sec. 3, P.D. No. 1613)

PD 1613 is the governing law for Simple Arson.

PD 1613 which repealed Arts. 321 to 326-B of *The Revised Penal Code* remains the governing law for *Simple Arson.* This decree contemplates the malicious burning of public and private structures, regardless of size, not included in Art. 320, as amended by RA 7659, and classified as *other cases of arson.* These include houses, dwellings, government buildings, farms, mills, plantations, railways, bus stations, airports, wharves and other industrial establishments. Although the purpose of the law on *Simple Arson* is to prevent the high incidence of fires and other crimes involving destruction, protect the national economy and preserve the social, economic and political stability of the nation, PD 1613 tempers the penalty to be meted to offenders. This separate classification of *Simple Arson* recognizes the need to lessen the severity of punishment commensurate to the act or acts committed, depending on the particular facts and circumstances of each case. (People vs. Soriano, G.R. No. 142565, July 29, 2003]

Attempted, frustrated and consummated arson.

1. A person, intending to burn a wooden structure, collects some rags, soaks them in gasoline and places them beside the wooden wall of the building. When he is about to light a match to set fire to the rags, he is discovered by another who chases him away.

   The crime committed is attempted arson, because the offender commences the commission of the crime directly by overt acts (placing

the rags soaked in gasoline beside the wooden wall of the building and lighting a match) but he does not perform all the acts of execution (the setting of fire to the rags) due to the timely intervention of another who chases away the offender.

2. If that person is able to light or set fire to the rags but the fire was put out before any part of the building was burned, it is *frustrated.* (U.S vs. Valdez, 39 Phil. 240)

3. But if before the fire was put out, it had burned a part of the building, it is *consummated.*

Any *charring* of the wood of a building, whereby the *fiber* of the wood is *destroyed,* is sufficient. It is not necessary that the wood should be ablaze. (4 Am. Jur. 88-89)

And the mere fact that a building is scorched or discolored by heat is not sufficient to constitute consummated arson.

Setting fire to the contents of a building constitutes the consummated crime of *setting fire to a building,* even if *no part* of the building was burned. (U.S. vs. Go Foo Suy, 25 Phil. 187)

In attempted arson, it is not necessary that there be a fire.

It is not necessary that there be a fire before the crime of attempted arson can be committed, notwithstanding the ruling in the case of *People vs. Garcia,* 49 O.G. 558, where a blaze having been started, it was held that the crime committed was attempted arson. The law does not lay down any hard and fast rule insofar as attempted arson, or any attempted crime for that matter, is concerned. The peculiar facts and circumstances of a particular case should carry more weight in the decision of the case. In the case of *People vs. Garcia,* the action of the defendant to set fire to the contents of the building was prompted not by a desire to burn the hospital but to give vent to his anger against the head of the Provincial Hospital with whom he had a heated discussion. There were no prior acts by the defendant in that case which would tend to show a determination or resolution to burn the building. In the case at bar, however, there is abundant evidence manifesting the defendant's desire to burn the building. He adhered resolutely to that desire by performing acts that would carry into effect his plan.

Furthermore, reviewing the scant decisions of the Supreme Court on the crime of arson, this Court noted that the presence of blaze does not necessarily lead to the crime of attempted arson. On the contrary, when there is fire, the Supreme Court has held invariably that crime committed is either *frustrated* arson or *consummated* arson, never attempted. Thus, in the case of *U.S. vs. Go Foo Suy,* 25 Phil. 187, it was held that setting fire to the contents of a building constitutes the consummated crime of setting

fire to a building, even if no part of the building was burned; in the case of *U.S. vs. Valdes*, 39 Phil. 240, if the defendant has started a blaze by burning rags soaked with gasoline placed near the building but the fire is put out before any part of the building commences to burn, the crime is *frustrated arson;* and in the case of *People vs. Hernandez,* 54 Phil. 122, if a part of the building commences to burn, the crime is consummated arson, however small is the portion of the building burned. (People vs. Go Kay, C.A., 54 O.G. 2225)

Burning of Houses, considered Simple Arson under PD 1613.

Where the properties burned by accused-appellant are specifically described as *houses,* contemplating *inhabited houses* or *dwellings* under PD 1613 and the descriptions as alleged in the Information particularly refer to the structures as *houses* rather than as buildings or edifices, the applicable law is Sec. 3, par. 2, of PD 1613, and not Art. 320, par. 1 of the Revised Penal Code. In case of ambiguity in construction of penal laws, it is well-settled that such laws shall be construed strictly against the government, and liberally in favor of the accused. (People vs. Soriano, G.R. No. 142565, July 29, 2003]

Sec. 3, par. 2, P.D. No. 1613.

If the property burned is an inhabited house or dwelling, it is not required that the house be occupied by one or more persons and the offender knew it when the house was burned.

There is no complex crime of arson with homicide.

P.D. No. 1613 provides that if by reason of or on the occasion of *arson,* death results, the penalty of *reclusion perpetua* to death shall be imposed. The crime of homicide is absorbed.

Considering that PD 9346 prohibits the imposition of the death penalty, only the penalty of *reclusion perpetua* shall be imposed for arson resulting in death.

Prima face evidence of arson.

Any of the seven (7) circumstances enumerated in Sec. 6 of P.D. No. 1613 shall constitute *prima face* evidence of arson.

Standing alone, unexplained or uncontradicted, any of those circumstances is sufficient to establish the fact of arson.

Arson under P.D. 1613, as Terrorism.

Under Republic Act No. 9372, otherwise known as the Human Security Act of 2007, approved on March 6, 2007, a person who commits an act punishable as Arson under P.D. 1613 thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism, and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole. (Sec. 3)

Chapter Nine

MALICIOUS MISCHIEF

Malicious mischief, defined.

Malicious mischief is the *willful damaging* **of another's property for the sake of causing damage due to** *hate, revenge* **or other** *evil motive.*

What are the crimes classified as malicious mischief?

They are:

1. **Special cases of malicious mischief. (Art. 328)**
2. **Other mischiefs. (Art. 329)**
3. **Damage and obstruction to means of communication. (Art. 330)**
4. **Destroying or damaging statues, public monuments or paintings. (Art. 331)**

Art. 327. ***Who are liable for malicious mischief.*** **— Any person who shall deliberately cause to the property of another any damage not falling within the terms of the next preceding chapter, shall be guilty of malicious mischief.**

Elements of malicious mischief:

1. **That the offender** *deliberately* **caused** *damage* **to the property** *of another.*
2. **That such act** *does not constitute arson* **or** *other crimes* **involving destruction.**
3. **That the act of damaging another's property be committed** *merely for the sake of damaging it.*

Note: **This third element presupposes that the offender acted due to** *hate, revenge* **or other** *evil motive.*

"Shall deliberately cause to the property of another any damage."

This phrase means that the offender should act under this impulse of a *specific desire to inflict injury* to another.

It follows that, in the very nature of things, *malicious mischief cannot be committed through negligence,* since *culpa and malice* are essentially incompatible. (Quizon vs. Justice of the Peace, *et al.*, 97 Phil. 342)

Killing the cow of another as an act of revenge is malicious mischief.

When the defendants were asked by the offended party why they butchered his cow, one of them replied: "We butchered it because the cow entered our property," and invited the offended party to come close and settle the matter. There being *no sufficient evidence that the intention* of the defendants was to *divide the meat among themselves,* it was held that the killing of the cow was an act of revenge and, therefore, the crime committed was that of malicious mischief. (People vs. Valiente, *et al.*, CA-G.R. No. 9442-R, Dec. 29, 1953)

Is it malicious mischief if the act of damaging another's property was inspired, not by hatred or by a desire for revenge, but by the mere pleasure of destroying?

Yes. Malicious mischief embraces those attempts against another's property inspired sometimes by hatred or a desire for revenge and sometimes by the mere pleasure of destroying. (See People vs. Siddayao, C.A., 53 O.G. 8163)

Thus, if the only evidence of the prosecution was that the defendant shot two pigs belonging to another and that the motive for the defendant's shooting at the pigs was that the animals were then loose inside his rice plantation, the defendant is not guilty of malicious mischief because he was not prompted by hatred or a desire for revenge when he shot the pigs. Nor did he shoot them for the mere pleasure of destroying. The Court found that when Siddayao saw the two pigs causing damage to his farm, he borrowed the rifle of Pascual Garcia, who was then with him, and fired twice which wounded the two pigs. At most, he might have incurred liability of purely civil in nature.

If no malice, only civil liability.

If there is no malice in causing the damage, the obligation to repair or pay for damages is only civil. (Art. 2176, C.C.)

Example:

A cut small coconut trees on a *disputed* land to clear it and for the *purpose of cultivating* that portion of the land. In view of his purpose, A is not liable for malicious mischief. He did not deliberately cause damage to the property of another, since the land is disputed and he believed that the coconut trees belonged to him.

But when the defendants, one of them and the father of the other were former occupants of the land, cut 80 coconut shoots, which were producing *tuba,* without having any right to do so, and that they occasioned thereby serious damage to the interests of those who planted the trees, the defendants executed this act, prompted, doubtless, by grievance, hate, or revenge, because the injured party had leased the land from the *hacienda* after one of them and the father of the other defendant had been expelled from said land by the owners. When the injured party tried to stop the damage they were causing to the property, the defendants threatened her and followed her as far as the road. In this case, the defendants are not only civilly, but also criminally, liable. (U.S. vs. Gerale, 4 Phil. 218)

The crime of damage to property (malicious mischief) is not determined solely by the mere act of inflicting injury upon the property of a third person, but it must be shown that the act had for its object, the injury of the property merely for the sake of damaging it. (U.S. vs. Gerale, *supra)*

Meaning of damage in malicious mischief.

Damage means not only loss but also diminution of what is a man's own. Thus, damage to another's house includes defacing it. (People vs. Asido, *et al.,* C.A., 59 O.G. 3646)

It is theft when there is intent to gain.

If after damaging the property, the offender removes or makes use of the fruits or objects of the damage, it is theft. (Art. 308, par. 2)

Damaging of property must not result from crime.

This article *does* not refer to mischief *resulting from a crime,* such as the damages caused by a robber in breaking the window, for the reason that such damages are mere incidents of the crime of robbery, and as such may give rise only to civil liability. (Guevara)

Also, when the accused chased his opponent who ran to the kitchen of the offended party, and tumbled some tables on his way, thereby breaking various objects, he was not guilty of malicious mischief, because he did not do it with deliberate or only purpose of causing damages. (People vs. Collantes, CA-G.R. No. 12086, Feb. 24, 1955)

May a person charged with malicious mischief be found guilty of damage to property through reckless imprudence?

Yes, because reckless imprudence is not a crime in itself. It is simply a way of committing it. The allegation in the information that the accused acted willfully, maliciously, unlawfully and criminally, not being objected to, includes the charge that he acted with negligence. Negligence is punishable when it results in a crime, as in this case. (People vs. Falier, 67 Phil. 529)

What are the cases of malicious mischief as regards the means employed and the nature of the damaged properties?

They are:

1. **Special cases of malicious mischief. (Art. 328)**
2. **Damage and obstruction to means of communications. (Art. 330)**
3. **Destroying or damaging statues, public monuments or paintings. (Art. 331)**

Art. 328. ***Special cases of malicious mischief.*** **— Any person who shall cause damage to obstruct the performance of public functions, or using any poisonous or corrosive substance; or spreading any infection or contagion among cattle; or who causes damage to the property of the National Museum or National Library, or to any archive or registry, waterworks, road, promenade, or any other thing used in common by the public shall be punished:**

1. By *prision correccional* in its minimum and medium periods,[1] if the value of the damage caused exceeds 1,000 pesos;

2. By *arresto mayor*,[2] if such value does not exceed the above-mentioned amount but is over 200 pesos; and

3. By *arresto menor*, if such value does not exceed 200 pesos.

[1] See Appendix "A," Table of Penalties, No. 14.
[2] See Appendix "A," Table of Penalties, No. 1.

The special cases of malicious mischief are:

1. Causing damage to obstruct the performance of public functions.
2. Using any poisonous or corrosive substance.
3. Spreading any infection or contagion among cattle.
4. Causing damage to the property of the National Museum or National Library, or to any archive or registry, waterworks, road, promenade, or any other thing used in *common* by the public.

These are called qualified malicious mischief.

The cases of malicious mischief enumerated in this article are the so-called *qualified* malicious mischief.

First case of qualified malicious mischief distinguished from sedition.

This mischief mentioned in the first clause (No. 1) is to be distinguished from sedition (Art. 139), in that the element of public and tumultuous uprising is not present in this crime.

The two offenses are, however, similar in that there is present in the commission of the offense, the intent to obstruct the performance of public functions.

Using poisonous or corrosive substance.

The poisonous substance may be used to kill large cattle or other animals of the offended party. The corrosive substance may be used to cause rust on a machine or to destroy property through the action of chemicals.

Art. 329. *Other mischiefs.* — The mischiefs not included in the next preceding article shall be punished:

1. By *arresto mayor* in its medium and maximum periods,[3] if the value of the damage caused exceeds 1,000 pesos;

2. By *arresto mayor* in its minimum and medium periods,[4] if such value is over 200 pesos but does not exceed 1,000 pesos; and

[3] See Appendix "A," Table of Penalties, No. 6.
[4] See Appendix "A," Table of Penalties, No. 5.

3. By *arresto menor* or fine of not less than the value of the damage caused and not more than 200 pesos, if the amount involved does not exceed 200 pesos or cannot be estimated. *(As amended by Com. Act No. 3999)*

Other mischiefs should not be included in Art. 328 — basis of penalty.

Mischiefs not included in Art. 328 are punished according to the value of the damage caused.

Even if the amount involved *cannot be estimated,* the penalty of *arresto menor* or fine not exceeding P200 is fixed by law.

A groom who allowed a horse under his care to die of hunger or a servant who released a bird from the cage, as an act of hate or revenge against its owner, is guilty of malicious mischief and the penalty is based on the value of the horse or bird.

Killing cows of another as an act of revenge.

The cows of B caused destruction to the plants of A. As an act of revenge, A and his tenants killed said cows.

Held: The crime being committed out of hate and revenge, is that of malicious mischief penalized in Art. 329, par. 3. (People vs. Valiente, *et al.*, CA-G.R. No. 9442-R, Dec. 29, 1953)

Scattering human excrement in public building is other mischief — value of damage cannot be estimated.

When several persons scattered coconut remnants which contained human excrements on the stairs and floor of the municipal building, including its interior, the crime committed is malicious mischief under Art. 329. (People vs. Dumlao, 38 O.G. 3715)

Art. 330. ***Damage and obstruction to means of communication.*** — The penalty of *prision correccional* in its medium and maximum **periods**[5] shall be imposed upon any person who shall damage any railway, telegraph or telephone lines.

[5]See Appendix "A," Table of Penalties, No. 15.

If the damage shall result in any derailment of cars, collision, or other accident, the penalty of *prision mayor* shall be imposed, without prejudice to the criminal liability of the offender for the other consequences of his criminal act.

For the purpose of the provisions of this article, the electric wires, traction cables, signal system, and other things pertaining to railways, shall be deemed to constitute an integral part of a railway system.

Damage and obstruction to means of communication.

Damage and obstruction to means of communication is committed by damaging any railway, telegraph or telephone lines.

Circumstance qualifying the offense.

If the damage shall result in any derailment of cars, collision, or other accident, a higher penalty shall be imposed.

"If the damage shall result in any derailment of cars, collision, or other accident."

The derailment or the collision of cars *should not have been purposely sought* for by the offender. It must have resulted from damage to railway, telegraph or telephone lines.

It should not be removing rails from railway track to cause destruction.

If the rails are removed from a railway track to cause destruction, the act constitutes crime involving destruction under Art. 324.

The object of the offender in Art. 330 is merely to *cause* damage; whereas in Art. 324, his object is to cause destruction.

Not applicable when the telegraph or telephone lines do not pertain to railways.

Art. 330 applies to person who cuts *telegraph or telephone wires*. But the telegraph or telephone lines must pertain to a railway system. It would seem that cutting the telephone wires or those for transmission of electric light or power, not pertaining to railways is not covered by Art. 330.

The second paragraph of Art. 330 speaks of damage to telegraph or telephone lines resulting in derailment of cars, collision, etc.

When a person or persons are killed.

What crime is committed if as a result of the damage caused to railway, certain passengers of the train are killed?

It depends. Art. 330 says "without prejudice to the criminal liability of the offender for other consequences of his criminal act." If there is *no intent to kill,* it is "damages to means of communication" with homicide because of the first part of Art. 4 and Art. 48. If *there is intent to kill,* and damaging the railways was the means to accomplish the criminal purpose, it is murder.

Art. 248, par. 3, says that murder is committed also "by means of derailment," meaning that it is the means to kill another.

Art. 331. ***Destroying or damaging statues, public monuments, or paintings.*** — Any person who shall destroy or damage statues or any other useful or ornamental public monuments, shall suffer the penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period.[6]

Any person who shall destroy or damage any useful or ornamental painting of a public nature shall suffer the penalty of *arresto menor* or a fine not exceeding 200 pesos, or both such fine and imprisonment, in the discretion of the court.

[6]See Appendix "A," Table of Penalties, No. 7.

Chapter Ten

EXEMPTION FROM CRIMINAL LIABILITY IN CRIMES AGAINST PROPERTY

Art. 332. ***Persons exempt from criminal liability.*** **— No criminal, but only civil liability shall result from the commission of the crime of theft, swindling, or malicious mischief committed or caused mutually by the following persons:**

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;

2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and

3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

The exemption established by this article shall not be applicable to strangers participating in the commission of the crime.

Crimes involved in the exemption:

1. **Theft,**
2. **Swindling (estafa),**
3. **Malicious mischief.**

Note: **Hence, if the crime is *robbery* or *estafa through falsification,* this article does not apply. Thus, if the son committed estafa through falsification of a commercial document against his father, he is criminally liable for the crime of falsification.**

Persons exempted from criminal liability.

1. **Spouses, ascendants and descendants, or relatives by affinity in the same line.**

2. The widowed spouse with respect to the property *which belonged to the deceased spouse before* the same *passed into the possession of another.*

3. Brothers and sisters and brothers-in-law and sisters-in-law, if *living together.*

There is only civil liability.

No criminal, but only *civil liability* shall result from the commission of any said crimes, *committed* or *caused* mutually by those persons. (Par. 1, Art. 332)

"Committed or caused mutually" by the persons mentioned in Art. 332.

A was indebted to *B* in the sum of P100. C, son of *B,* without the knowledge or consent of the latter, went to A and falsely represented to him that *B* sent him *(C)* to collect. Believing the statement of *C* to be true, *A* gave P100 to *C.* The money was not turned over to *B,* as *C* spent it for himself.

Is Art. 332 applicable?

No, because the offended party in this case is A, not B. Art. 332 is applicable only when the *offender* and the *offended* party are relatives and their relationship is any of those mentioned in said article.

Reason for exemption from criminal liability.

The law recognizes the *presumed* co-ownership of the property between the offender and the offended party.

This article does not apply to stranger who participates in the commission of the crime.

Strangers who participate in the commission of the crime are not exempt from criminal liability. (last par., Art. 332)

Thus, if a stranger cooperated with the son of the offended party in stealing the latter's money, the son is exempt from criminal liability but the stranger is criminally liable.

Stepfather, adopted father, natural children, concubine, paramour, included.

Stepfather and stepmother are included as ascendants by affinity. (People vs. Alvarez, 52 Phil. 65; People vs. Adame, *et al.,* C.A., 40 O.G., Supp. 12, 63)

A stepfather, who was angry with his stepson, took the suitcase of the latter with its contents and burned it in an orchard. As this crime should be treated as malicious mischief only, the stepfather is not criminally liable. (People vs. Alvarez, 52 Phil. 65)

An adopted or natural child should also be considered as relatives included in the term "descendants" and a concubine or paramour within the term "spouses." (Guevara)

Art. 332 applies to common-law spouses.

We should not draw hair-splitting distinction between a couple whose cohabitation is sanctioned by a sacrament or legal tie and another who are husband and wife *de facto.* In actual life, no difference in relationship exists. Even our Civil Code concedes to a man and a woman who live together as husband and wife without benefit of ceremony, the right of co-ownership to the "property acquired by either or both of them through their work or industry or their wages and salaries." (Article 144, Civil Code; People vs. Constantino, C.A., 60 O.G. 3605)

The widowed spouse who commits theft, estafa or malicious mischief with respect to property of deceased.

To be exempt from criminal liability, it is required that —

(1) the property *belongs* to the *deceased spouse;* and

(2) it *has not passed* into the possession of a *third person.*

Brothers and sisters and brothers-in-law and sisters-in-law must be living together at the time of the commission of any of the crimes of theft, estafa or malicious mischief.

Thus, when the accused, the brother-in-law of the offended party, *was living in the house of the offended party at the time* he received P1,000 from the latter to buy plumbing fixtures for her, and misappropriated it to her prejudice, there was only civil liability. (People vs. Navas, C.A., 51 O.G. 219)

Title Eleven
CRIMES AGAINST CHASTITY

What are the crimes against chastity?

They are:

(1) Adultery. (Art. 333)

(2) Concubinage. (Art. 334)

(3) Acts of lasciviousness. (Art. 336)

(4) Qualified seduction. (Art. 337)

(5) Simple seduction. (Art. 338)

(6) Acts of lasciviousness with the consent of the offended party. (Art. 339)

(7) Corruption of minors. (Art. 340)

(8) White slave trade. (Art. 341)

(9) Forcible abduction. (Art. 342)

(10) Consented abduction. (Art. 343)

Chapter One

ADULTERY AND CONCUBINAGE

Art. 333. ***Who are guilty of adultery.*** **— Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void.**

Adultery shall be punished by *prision correccional* in its medium and maximum periods.[1]

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree[2] **than that provided in the next preceding paragraph shall be imposed.**

Elements of adultery:

(1) **That the woman is *married;***

(2) **That she has *sexual intercourse* with a man *not her husband;***

(3) **That as regards the man with whom she has sexual intercourse, *he must know her to be married.***

The woman must be married.

The legitimacy of the marriage relation between the offended husband and the defendant wife is one of the circumstances which must necessarily attend the crime of adultery.

Once it is shown that a man and a woman lived as husband and wife, and none of the parties denied and contradicted the allegation in the complaint, the presumption of their being married must be admitted as a fact. (U.S. vs. Villafuerte, 4 Phil. 476)

[1] See Appendix "A," Table of Penalties, No. 15.
[2] See Appendix "A," Table of Penalties, No. 8.

The declaration of the husband is competent evidence to show the fact of marriage. A witness who was present at the time the marriage took place is likewise a competent witness to testify as to the marriage between the parties. (U.S. vs. Memoracion, *et al.*, 34 Phil. 633)

The offended party must be legally married to the offender at the time of the criminal case.

The person who initiates the adultery case must be an offended spouse, and by this is meant that he is still married to the accused spouse, at the time of the filing of the complaint. Thus, where the offended party (a foreigner) in an adultery case already obtained a divorce in his country before the adultery proceedings are commenced, he no longer has the right to institute proceedings against the offenders. (Pilapil vs. Ibay-Somera, 174 SCRA 653)

"Even if the marriage be subsequently declared void."

In view of this phrase used in Art. 333, it is not necessary that there be a valid marriage between the offended husband and the guilty woman.

There is adultery, even if the marriage of the guilty woman with the offended husband is subsequently declared void. (Art. 333)

Reason for punishing adultery even if the marriage is subsequently declared void.

At no time does the bond of matrimony contain a defect which by itself is sufficient to dissolve the union. Until the marriage is declared to be null and void by *competent authority in a final judgment,* the offense to the vows taken, and the attack on the family exists — the adultery reunites the essential conditions required for its punishment. (U.S. vs. Mata, 18 Phil. 490)

Note: In this case, the offended husband had been married in China before he married the accused Jacinta Mata in the Philippines.

Carnal knowledge may be proved by circumstantial evidence.

The finding in the possession of a married woman of several love letters signed by her paramour, their having been together in different places; and the fact that they were surprised in a well known assignation house which the accused woman admitted to have visited six times in company with her paramour are data and indications sufficient to convict them both of adultery. (U.S. vs. Legaspi, *et al.*, 14 Phil. 38)

The evidence which was considered sufficient: (1) photograph showing the intimate relations of the two accused; and (2) testimony of a witness to the effect that the two accused were in scant apparel and sleeping together. Such evidence is sufficient to show that the two accused had the opportunity to satisfy their adulterous inclination. (U.S. vs. Feliciano, 36 Phil. 753)

Direct proof of carnal knowledge is not necessary to sustain a conviction for adultery. In the very nature of things, it is seldom that adultery can be established by direct evidence. The legal tenet, therefore, has been and still is that circumstantial and corroborative evidence such as will lead the guarded discretion of a reasonable and just man to the conclusion that the criminal act of adultery has been committed, will suffice to bring about a conviction for that crime. In the instant case, defendant lived together as husband and wife in different places, at diverse times and for certain periods, and actually were seen lying together at late hours of the night in their underwears and caressing and embracing each other. These facts more than sufficiently prove the crime herein involved. (People vs. Dante, *et al,* C.A., 51 O.G. 801, citing U.S. vs. Legaspi, 14 Phil. 38, 40-41; U.S. vs. Feliciano, 36 Phil. 753, 754-755; People vs. Fernando, CA-G.R. No. 7148-R promulgated February 15, 1952)

Note: This kind of evidence is not sufficient for the application of Art. 247, which requires that a married person should surprise his spouse in the act of sexual intercourse with another person.

Each sexual intercourse constitutes a crime of adultery.

The first complaint for adultery covered the period from 1946 to March 14, 1947. The defendant-wife pleaded guilty and was sentenced. The second complaint for adultery, filed subsequently, covered the period from March 15, 1947 to Sept. 17, 1948. A motion to quash the second complaint was filed on the ground that they would be twice put in jeopardy of punishment for the same offense.

Held: The crime of adultery is an instantaneous crime which is consummated and completed at the moment of the carnal union. Each sexual intercourse constitutes a crime of adultery.

Even if the husband should pardon his adulterous wife, such pardon would not exempt the wife and her paramour from criminal liability for adulterous acts committed after the pardon had been granted, because the pardon refers to previous and not to subsequent adulterous acts. (People vs. Zapata and Bondoc, 88 Phil. 688, citing Cuello Calon, Derecho Penal, Vol. II, p. 569, and Viada [5th ed.] Vol. 5, p. 208, and Groizard [2nd ed.] Vol. 5, pp. 57-58)

Adultery, therefore, is *not a continuing offense.*

Essence of adultery.

The essence of adultery is the violation of the marital vow.

Gist of the crime.

The gist of the crime of adultery is the danger of introducing spurious heirs into the family, where the rights of the real heirs may be impaired and a man may be charged with the maintenance of a family not his own. (U.S. vs. Mata, 18 Phil. 490)

Abandonment without justification is not exempting, but only mitigating circumstance.

If the person guilty of adultery committed the offense while *being abandoned without justification* by the offended spouse, the penalty *next lower* in degree shall be imposed. (last par., Art. 333)

Abandonment could not serve her as an excuse or free her from the criminal responsibility she incurred by the breach of fidelity she owed her husband, for she had means within the law to compel him to fulfill the duties imposed upon him by marriage. (U.S. vs. Serrano, *et al.*, 28 Phil. 230)

Sheer necessity, mitigating liability of the married woman.

The husband who was believed dead, later returned and found his wife and children living with another man.

Although the woman was not abandoned by her husband in a way that would constitute the mitigating circumstance, for he left her in response to a duty, yet she was left helpless and in such a great need that she found herself in the predicament of committing adultery for the sake of her three children. Moreover, she then believed in good faith that her husband had died in the sea.

It was held that her responsibility arising from her act of giving herself up to the man who had lent her a helping hand during such time of want and need should be considered mitigated two-fold by sheer necessity. (People vs. Alberto, *et al.*, C.A., 47 O.G. 2438)

Both defendants are entitled to this mitigating circumstance.

Abandonment should be a mitigating circumstance for both offenders, and the rule in Art. 62, par. 3, that the mitigating or aggravating circumstances which arise from the private relationship of the accused with the offended party should be considered only as regards those having that relationship *should not* apply to the crime of adultery, because the act is only

one, judicially speaking, since the individual act in itself does not constitute the felony. (People vs. Avelino, C.A., 40 O.G., Supp. 11, 194)

The man, to be guilty of adultery, must have knowledge of the married status of the woman.

The man may be single or married.

With respect to the man, *knowledge* that the woman with whom he had sexual intercourse is married, is an essential element that must be established if he is to be convicted of adultery.

And although in the beginning, the man did not know of the woman's married status, but he continued his illicit relations with her after he gained knowledge of such status, he will be guilty of adultery as regards the sexual intercourse done after having such knowledge. (U.S. vs. Topiño, *et al.*, 35 Phil. 901)

A married man who is not liable for adultery, because he did not know that the woman was married, may be held liable for concubinage.

A married man might not be guilty of adultery, on the ground that he did not know that the woman was married, but if he appeared to be guilty of any of the acts defined in Art. 334, he would be liable for concubinage. (Del Prado vs. De la Fuerte, 28 Phil. 23)

But the married woman is guilty of adultery. If she knew that the man was married, she would be liable for concubinage also.

Effect of the acquittal of one of the defendants.

It does not operate as a cause for acquittal of the other.

Reasons of the Supreme Court:

(a) There may not be a joint criminal intent, although there is joint physical act.

(b) Thus, one of the parties may be insane and the other sane, in which case, only the sane could be held liable criminally.

(c) Thus, also, the man may not know that the woman is married, in which case, the man is innocent.

(d) Thus, also, the death of the woman during the pendency of the action cannot defeat the trial and conviction of the man. (U.S. vs. De la Torre and Gregorio, 25 Phil. 36)

(e) Even if the man had left the country and could not be apprehended, the woman can be tried and convicted. (U.S. vs. Topiño and Guzman, 35 Phil. 901)

Effect of death of paramour.

It will not bar prosecution against the unfaithful wife, because the requirement that both offenders should be included in the complaint is absolute only when the two offenders are alive. (See paragraph 2 of Art. 344)

Effect of death of offended party.

The proceedings must continue. The theory that a man's honor ceases to exist from the moment that he dies is not acceptable. Art. 353 seeks to protect the honor and reputation not only of the living but of dead persons as well. Moreover, even assuming that there is a presumed pardon upon the offended party's death, pardon granted after criminal proceedings have been instituted cannot extinguish criminal liability. (People vs. Diego, C.A., 38 O.G. 2537)

But if he dies before a complaint could be filed, the case cannot go on, because no one can sign and file the complaint.

Effect of pardon.

Art. 344 requires that —

1. The pardon must come *before* the institution of the criminal prosecution; and
2. Both the offenders must be pardoned by the offended party.

In view of these requirements, a motion to dismiss filed on behalf of the defendant wife *alone* based on an affidavit executed by the offended husband in which he pardoned her for her infidelity cannot prosper. (People vs. Infante, 57 Phil. 138)

Act of intercourse subsequent to adulterous conduct is an implied pardon.

The act of having intercourse with the offending spouse subsequent to adulterous conduct is, at best, an implied pardon of said adulterous conduct. But it does not follow that, in order to operate as such, an express pardon must also be accompanied by intercourse between the spouses thereafter. Where the pardon given is express — not merely implied — the act of pardon by itself operates as such whether sexual intercourse accompanies the same or not. (People vs. Muguerza, *et al.*, 13 C.A. Rep. 1079)

Effect of consent.

The husband, knowing that his wife, after serving sentence for adultery, resumed living with her co-defendant, did nothing to interfere with their relations or to assert his rights as husband. Shortly thereafter, he left for Hawaii where he remained for seven years completely abandoning his wife and child. *Held:* The second charge of adultery should be dismissed because of consent. (People vs. Sensano and Ramos, 58 Phil. 73)

Agreement to separate.

While the agreement is void in law, it is nevertheless, competent evidence to explain the husband's inaction after he knew of his wife's living with her co-accused. He may be considered as having consented to the infidelity of his wife, which bars him from instituting criminal complaint. (People vs. Guinucud, *et al.*,58 Phil. 621)

Under the law, there is no accomplice in adultery.

Under the law, there cannot be an accomplice in the crime of adultery, although in fact there can be such an accomplice. (Dec. of the Sup. Ct. of Spain of June 3, 1874; Viada, 3 Cod. Pen. 107)

Art. 334. *Concubinage.* — Any husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by *prision correccional* in its minimum and medium periods.[3]

The concubine shall suffer the penalty of *destierro*.[4]

Three ways of committing the crime of concubinage:

1. **By *keeping* a *mistress* in the conjugal dwelling; or**
2. **By having sexual intercourse, under *scandalous circumstances,* with a woman who is not his wife; or**
3. **By *cohabiting* with her in any other place.**

[3]See Appendix "A," Table of Penalties, No. 14.
[4]See Appendix "A," Table of Penalties, No. 10.

Elements:

(1) That the *man must* be married.

(2) That he committed any of the following acts:

a. *Keeping a* mistress in the *conjugal dwelling,*

b. *Having sexual intercourse under scandalous circumstances* with a woman who is not his wife;

c. *Cohabiting* with her in any other place.

(3) That as regards the woman, *she must know him to be married.*

Concubinage is a violation of the marital vow.

Like adultery, concubinage is a violation of the marital vow. It is, however, unlike adultery in the sense that the infidelity of the husband does not bring into the family, spurious offspring.

The offenders are the married man and the woman who knows him to be married.

The offender must be a *married man.* The woman becomes liable *only* when she *knew him to be married* prior to the commission of the crime.

A married man is not liable for concubinage for mere sexual relations with a woman not his wife.

A married man is liable for concubinage *only* when he does *any* of the three acts specified in Art. 334. If his sexual relations with a woman not his wife is not any one of them, he is not criminally liable. (People vs. Santos, *et al.,* C.A., 45 O.G. 2116)

Concubinage by keeping a mistress in the conjugal dwelling.

The wife left the conjugal home and lived with her parents because of troubles between her husband and herself. The husband *took into the house* his co-accused and they *lived together conjugally.* They were seen feeding and caressing each other.

Held: The husband was guilty of concubinage by keeping a mistress in the conjugal dwelling. When the mistress lived in the dwelling of the spouses for about two months, *no positive proof of actual intercourse* is necessary, it appearing that the mistress is pregnant not by any other man and that they were surprised on the same bed. (People vs. Bacon, C.A., 44 O.G. 2760)

"Scandalous circumstances" are not *necessary* to make a husband guilty of concubinage by keeping a mistress in the conjugal dwelling. (See U.S. vs. Macabagbag, *et al,* 31 Phil. 257)

Who is a mistress?

Although Josefa Diaz lived in the house of the spouses Hilao, *she was never considered as concubine* of accused Jesus Hilao. She was voluntarily taken and sheltered thereat and treated as an adopted child by the spouses. She did not live, dwell or remain in the spouses' dwelling in any capacity other than as a child or ward by the spouses. (People vs. Jesus Hilao, *et al.*, C.A., 52 O.G. 904)

Note: In view of the rulings in the cases of *People vs. Bacon, supra,* and *People vs. Hilao, supra,* it is necessary that the woman is *taken* by the accused *into the conjugal dwelling as a concubine.*

What is a conjugal dwelling?

By *"conjugal dwelling"* is meant the home of the husband and wife even if the *wife* happens to be *temporarily absent on any account.*

A house, constructed from the proceeds of the sale of conjugal properties of the spouses, especially where they had intended it to be so, is a conjugal dwelling, and the fact that the wife never had a chance to reside therein and that the husband used it with his mistress instead, does not detract from its nature. (People vs. Cordova, C.A., G.R. No. 19100-R, June 23, 1959, 55 O.G. 1042)

Concubinage by having sexual intercourse under scandalous circumstances.

It is only when the mistress is kept elsewhere (outside of the conjugal dwelling) that "scandalous circumstances" become an element of the crime. (U.S. vs. Macabagbag, *et al.*, 31 Phil. 257)

Scandal consists in any reprehensible word or deed that offends public conscience, redounds to the detriment of the feelings of honest persons, and gives occasion to the neighbors' spiritual damage or ruin. (People vs. Santos, *et al.*, 45 O.G. 2116)

The scandal produced by the concubinage of a married man occurs not only when (1) *he and his mistress live in the same room* of a house, but also when (2) *they appear together in public,* and (3) *perform acts in sight of the community* which give rise to *criticism* and *general protest* among the neighbors.

The qualifying expression "under scandalous circumstances" refers to the act of sexual intercourse which may be proved by circumstantial evidence.

The people in the vicinity are the best witnesses to prove scandalous circumstances.

If none of the acts of the defendants were proved by the testimony of the people from the vicinity, there is no scandal. The testimony of the offended wife that in a house she saw her husband and the other woman lying side by side and on several occasions she saw them going together to different places, is not sufficient to convict them of concubinage. (U.S. vs. Casipong, *et al.*,20 Phil. 178)

So, for the existence of the crime of concubinage by having sexual intercourse under scandalous circumstances, the offender must be so *imprudent* and *wanton* as to offend modesty and that innate sense of morality and decency of the people in the neighborhood.

When spies are employed, there is no evidence of scandalous circumstances.

When spies are employed for the purpose of watching the conduct of the accused and it appearing that *none of the people living in the vicinity has observed* any suspicious conduct on his part in relation with his co-accused, there is no evidence of scandalous circumstances. (U.S. vs. Campos Rueda, 35 Phil. 51)

Concubinage by cohabiting with a woman in any other place.

In the third way of committing the crime, *mere cohabitation* is sufficient. Proof of scandalous circumstances is not necessary. (People vs. Pitoc, *et al.*,43 Phil. 760)

Where a married man and a woman began their illicit relations in 1937 and went to Naga where they dwelt together as husband and wife in the house of one Alfonsa Toledo, occupying one room in which they slept alone, it was held that his association with his co-accused is sufficient to constitute a cohabitation within the meaning of the law *even disregarding* proofs of *actual sexual intercourse.* (Ocampo vs. People, 72 Phil. 268)

Meaning of "cohabit."

The term "cohabit" means to *dwell together, in the manner of husband and wife,* for some period of time, as distinguished from occasional, transient interviews for unlawful intercourse. Hence, the offense is not a single act of adultery; it is *cohabiting* in a state of adultery which may be *a week, a month, a year or longer.* (People vs. Pitoc, *et al.*, 43 Phil. 760)

Thus, there is no concubinage if a married man is surprised in the act of sexual intercourse with a woman not his wife in a hotel.

Thus, also, a person who keeps a mistress in an apartment furnished by him is *not guilty* of concubinage if he *does not live or sleep with* her in said apartment.

In the case of *People vs. Santos, et al.*, C.A., 45 O.G. 2116, where in a room in the Philippine General Hospital the offended wife surprised her husband and another woman lying on the same bed, her husband wearing pants and the co-accused wearing ordinary dress, it was held that there was no cohabitation, because the man had his quarters in the Philippine General Hospital while the woman had her home at 350 Taft Avenue.

Charging the accused with concubinage, the prosecution proved only that the accused is married and that he is the father of a child born of another woman, his co-accused. Is he guilty of concubinage? No. That the accused is really the father of the child, alone and by itself, is not sufficient to prove the offense charged. (People vs. Benlot, *et al.*, 16 C.A. Rep. 539)

Note: None of the three acts of concubinage is thereby proved.

Adultery is more severely punished than concubinage.

Reason:

Because adultery makes possible the introduction of another man's blood into the family so that the offended husband may have another man's son bearing his (husband's) name and receiving support from him.

Chapter Two

RAPE AND ACTS OF LASCIVIOUSNESS

Note:

Art. 335 has been repealed by Rep. Act. No. 8353, otherwise known as the "Anti-Rape Law of 1997" which took effect on October 22, 1997. See page 523 of this Book II.

Art. 335. ***When and how rape is committed.*** **— Rape is committed by having carnal knowledge of a woman under any of the following circumstances.**

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*.[1]

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.

[1] **See Appendix "A," Table of Penalties, No. 37.**

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

2. When the victim is under the custody of the police or military authorities;

3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity;

4. When the victim is a religious or a child below seven (7) years old;

5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease;

6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency;

7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation. *(As amended by Rep. Act No. 7659)*

Art. 336. *Acts of lasciviousness.* — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional.*[2]

[2]See Appendix "A," Table of Penalties, No. 10.

Elements:

1. That the offender commits any act of lasciviousness of lewdness;
2. That the act of lasciviousness is committed against a person of either sex;
3. That it is done under any of the following circumstances;
   a. By using force or intimidation; or
   b. When the offended party is deprived of reason or otherwise unconscious;
   c. By means of fraudulent machination or grave abuse of authority;
   d. When the offended party is under 12 years of age or is demented.

Lewd, defined.

"Lewd" is defined as obscene, lustful, indecent, lecherous. It signifies the form of immorality which has relation to moral impurity; or that which is carried on a wanton manner. (People vs. Lizada, G.R. Nos. 143468-71, January 24, 2003, citing People vs, Tayag, 329 SCRA 491 [2000])

Compelling a girl to dance naked before men is an act of lasciviousness, even if the dominant motive is revenge, for her failure to pay a debt.

For her failure to pay her debt, the girl, after beating her with a stick, was compelled by the defendant to *take of all her clothes* and *dance* before him and many other persons. It was held that there was a crime of acts of lasciviousness, *even if the dominating* motive of defendant's conduct was to take revenge upon the girl for her failure to pay her debt, for it cannot be believed that there was no admixture of lasciviousness in the thought and purpose of the defendant who could devise such method. (U.S. vs. Bailoses, 2 Phil. 49)

Distinguished from grave coercion.

But where a woman, 60 years old, was taken from her house against her will, slapped and maltreated, *her drawers taken off* and her hands and feet bound by the accused to *compel her to admit* that she stole the shoes of a certain person, the crime was grave coercion. (People vs. Fernando, *et al.*, 8 A.C. Rep. 219)

In this Bailoses case, the compulsion by beating the girl is included in the constructive element of force in the crime of acts of lasciviousness. In

the Fernando case, the compulsion is the very act constituting the offense of grave coercion (compelling the offended party to admit the theft).

Motive of lascivious acts is not important because the essence of lewdness is in the very act itself.

The act of taking the offended party by the waist, of holding her to his breast and hugging her with intention of kissing her and touching her breast and private parts, which appellant did by force and against her will, are by themselves an abuse directed against her chastity. It is not a defense that appellant was motivated not by lewdness but by a desire to avenge the fact that her father committed a criminal attack on appellant's wife during the Japanese occupation. (People vs. Famularcano, C.A., 43 O.G. 1721)

Embracing, kissing and holding girl's breast is act of lasciviousness.

Taking advantage of the fact that Paula Bautista, a young married woman, was alone in her house with no companion but her three-year-old child who was then asleep, the accused, between 3 and 4 o'clock in the afternoon, went to the house of said woman on the pretext of asking for a glass of water, stealthily approached her and, without giving her an opportunity to defend herself, embraced and kissed her and caught hold of her breasts. When Paula recovered from the shock, she defended herself as best as she could and in spite of the fact that the accused threatened to kill her with a dagger if she did not accede to his desire, she bit him on the right side of the chest thereby forcing him to release her instantly. *Held:* The foregoing proven facts constitute the crime of acts of lasciviousness. (People vs. Collado, 60 Phil. 610)

In some cases, touching the breast of a woman is considered unjust vexation only.

In a case where the accused, inside a Catholic church and after the service had begun, approached a girl from behind and forcibly embraced and kissed her on the left cheek and at the same time *fondled her breast,* it was held that the accused was guilty only of unjust vexation. The Court of Appeals said, "considering the *religious atmosphere* and the *presence of many persons,* the conduct of the accused cannot be considered lascivious. He performed the said acts either to spite the girl or to force her to accept him as a lover." (People vs. Anonuevo, C.A., 36 O.G. 2018)

In another case, the accused, in the store of the offended girl, kissed her in public view and *touched her breasts.* It was held that the crime committed was unjust vexation as there were no lewd designs. It appeared

that the accused had been wooing the girl, but she jilted him. (People vs. Arpon, 8 A.C. Rep., 345)

The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. In the instant case, in view of the manner, place and time under which the acts complained of were done, lewd designs can hardly be attributed to the accused. The factual setting, *i.e.,* a schoolroom in the presence of complainant's students and within hearing distance of her co-teachers, rules out a conclusion that the accused was actuated by a lustful design or purpose or that his conduct was lewd or lascivious. It may be that he did embrace the girl and kiss her but, this of itself would not necessarily bring the case within the provision of Article 336 of the Revised Penal Code. (People vs. Balbar, 21 SCRA 1119)

But the rule is different when the act is committed in a theater.

When a man embraces and kisses a woman three times and intentionally fondles her breast at the same time in a theater where the lights were out and the people's attention was naturally concentrated on the picture, he must be considered as having done so with a feeling of lasciviousness, a mental process of emotion that differs in intensity in different situations and different persons. Being a purely mental process discernible only by overt acts, no inflexible rule can be laid down as an accurate measure. This is the reason why at times, it may be extremely difficult to have a clear distinction between the conduct of a lascivious person and the amorous advances of an ardent lover. (U.S. vs. Gomez, 30 Phil. 22) It is true that in some cases the Supreme Court held that the crime committed was only unjust vexation. In those case, however, the accused merely kissed and embraced complainant, either out of passion or other motive, the touching of the breasts being purely incidental. (People vs. Biag, C.A., 65 O.G. 1596, February 17, 1969, citing People vs. Arpon, 45 O.G. [Supp. 5] 25, and People vs. Climaco, 46 O.G. 3186)

Kissing and embracing a woman against her will are acts of lasciviousness when prompted by lust or lewd designs.

Considering that the embracing and kissing of the girl took place in a taxicab while passing along a public thoroughfare and at about noon time, it is difficult to believe that the appellant could have desired more than the ordinary outburst of one in love. While the appellant might have take liberties with the person of the offended party against her strong resistance, it did not appear that the appellant was prompted by lust or lewd designs. (People vs. Buenafe, 99 Phil. 306)

But where the accused took advantage of the situation when the offended woman was alone with her children in her house at night and put

out the light of the lamp, he was *moved by lasciviousness* when he *kissed and embraced* her. (People vs. Mendoza, CA-G.R. No. 14882-R, March 19, 1956)

Lover's embraces and kisses are not acts of lasciviousness.

Although there are indications that while the girl did not want the accused as her accepted lover, she was not unwilling to receive attentions from him.

She testified that the accused forcibly embraced her and kissed her a number of times and took other unwarranted liberties with her person. However, the court believed that the accused only embraced and kissed her.

Held: What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. A lover's embrace and kisses are not lascivious, there being no evidence that the lover was actuated by a lustful design or purpose, or that his conduct was lewd or lascivious. (U.S. vs. Gomez, 30 Phil. 22)

Placing a man's private parts over a girl's genital organ is an act of lasciviousness.

Thus, a man who threw a girl 7 to 10 years old upon the floor, placed his private parts upon or over hers, and remained in that position or made motions of sexual intercourse, is guilty of acts of lasciviousness under Art. 336. (U.S. vs. Tan Teng, 23 Phil. 145; People vs. Domondon, C.A., 34 O.G. 1977)

The act of lasciviousness must be committed under any of the circumstances mentioned in the definition of the crime of rape.

The circumstances are: (1) by using force or intimidation; (2) when the offended party is deprived of reason or otherwise unconscious; (3) by means of fraudulent machination or grave abuse of authority; or (4) when the offended party is under 12 years old or is demented.

Moral compulsion amounting to intimidation is sufficient.

In cases of acts of lasciviousness, it is not necessary that the intimidation or physical force be irresistible, it being sufficient that some violence or moral compulsion, equivalent to intimidation, annuls or subdues the free exercise of the will of the offended party (Cuello Calon, Derecho Penal, Tomo II, pagina 565, edicion 1955). (El Pueblo de Filipinas vs. Pugay, C.A., 60 O.G. 211)

Abuses against chastity distinguished from offenses against chastity.

Abuses against chastity (Art. 246) is committed by a *public officer,* and that a *mere immoral or indecent proposal* made *earnestly* and *persistently* is sufficient; whereas, in crimes against chastity (Art. 336), the offender is, in the majority of cases, a *private individual,* and it is necessary that *some actual* act of lasciviousness should have been executed by the offender.

Distinguished from attempted rape.

The manner of committing the crime is the same, that is, force or intimidation is employed, by means of fraudulent machination or grave abuse of authority, or the offended party is deprived of reason or otherwise unconscious, under 12 years of age or is demented.

The offended party in both crimes is a person of either sex.

The performance of acts of lascivious character is common to both crimes.

The differences are:

(a) If the acts performed by the offender *clearly indicate* that his *purpose was to lie* with the offended woman, it is attempted or frustrated rape.

(b) In the case of attempted rape, the lascivious acts are but the preparatory acts to the commission of rape; whereas, in the other, the lascivious acts are themselves the *final objective* sought by the offender.

It is not attempted rape, when there is no intent to have sexual intercourse.

Where the acts performed by the accused indicate desistance from copulation in the midst of opportunity therefor, the accused having made a push and pull movement without penetrating the reproductive organ of the girl, and having emitted semen thereby, the intent to have sexual intercourse is absent and the accused is liable for acts of lasciviousness, not attempted rape. (People vs. Abarra, C.A., 60 O.G. 7571)

Circumstances indicating intention to lie with the offended party.

The acts of the accused, which consisted of slipping his trousers down and tearing the drawers of the girl, as well as kissing her and fondling her breasts, abundantly show an intention to have intercourse with her by force. (People vs. Calupis, G.R. No. 40506, Dec. 10, 1934)

The accused lifted the dress of the woman and placed himself on top of her. The woman awoke and screamed for help. But the accused *persisted in his purpose,* thereby indicating his intention to ravish her through force and intimidation. (People vs. Tayaba, 62 Phil. 559)

Desistance in the commission of attempted rape may constitute acts of lasciviousness.

If while committing an act amounting to attempted rape, the offender desisted, such desistance does not imply the absolute irresponsibility of the offender with respect to acts already committed. If acts of lasciviousness were already committed, they are within the nature of the consummated crime of acts of lasciviousness, since actual damage was already done to a lawful right. (U.S. vs. Basilio, 9 Phil. 16)

No attempted or frustrated crime of acts of lasciviousness.

In cases of acts of lasciviousness, from the moment the offender performs all the elements necessary for the existence of the felony, *he actually attains his purpose* and, from that moment, *all the essential elements of the offense have been accomplished.* From the standpoint of the law, there can be no frustration of acts of lasciviousness, because no matter how far the offender may have gone towards the realization of his purpose, if his participation amounts to performing all the acts of execution, the felony is necessarily produced as a consequence thereof. (People vs. Falmularcano, C.A., 43 O.G. 1721)

There is no attempted crime of acts of lasciviousness. (2 Cuello Calon 54)

Acts of lasciviousness distinguished from unjust vexation.

When the accused merely kissed and embraced the complainant, either out of passion or other motive, *touching the girl's breast as a mere incident of the embrace,* it is unjust vexation.

But when the accused not only kissed and embraced the complainant, but fondled her breast with the particular design to independently derive vicarious pleasure therefrom, the element of lewd designs exists. (People vs. Panopio, C.A., 48 O.G. 145)

Where the accused touched three times the private parts of the offended woman over her panties, *without employing* any *force* or *intimidation,* he is guilty of unjust vexation, because *it might have been committed merely to satisfy a "silly whim."* (People vs. Bernaldo, CA-G.R. No. 26102-R, Oct. 31, 1959)

But the act of the accused in *forcibly* placing his hand between the legs of a girl over 12 years old, or without force if she be under that age, constitutes the crime of acts of lasciviousness. (U.S. vs. Basilio, 9 Phil. 16)

Chapter Three

SEDUCTION, CORRUPTION OF MINORS, AND WHITE SLAVE TRADE

Meaning of seduction.

Seduction means enticing a woman to unlawful sexual intercourse by promise of marriage or other means of persuasion without use of force (Webster's New International Dictionary).

Two kinds of seduction:

1. **Qualified seduction. (Art. 337)**
2. **Simple seduction. (Art. 338)**

Art. 337. *Qualified seduction.* — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by *prision correccional* in its minimum and medium periods.[1]

The penalty next higher in degree[2] **shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.**

Under the provisions of this Chapter seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

[1] See Appendix "A," Table of Penalties, No. 14.
[2] See Appendix "A," Table of Penalties, No. 17.

Two classes of qualified seduction:

(a) Seduction of a virgin over 12 years and under 18 years of age by certain persons, such as, a person in authority, priest, teacher, etc.; and

(b) Seduction of a *sister* by her brother, or *descendant* by her ascendant, *regardless of her age or reputation.*

Elements of qualified seduction of a virgin:

1. That the offended party is a virgin, which is presumed if she is unmarried and of good reputation.
2. That she must be over 12 and under 18 years of age.
3. That the offender has sexual intercourse with her.
4. That there is abuse of authority, confidence or relationship on the part of the offender.

The offended party must be a virgin, over 12 and under 18 years of age.

She must be a virgin and over 12 but under 18 years of age. Virginity is presumed if the woman is unmarried and of good reputation. It is the accused who must prove otherwise and the proof must be convincing, not just insinuations or conjectures. (People vs. Ramos, C.A., 72 O.G. 8139)

If the woman is married and the offender knows it, having sexual intercourse with her is adultery.

If the victim is less than 12 years of age, the crime is rape. If the victim is over 18 years of age, qualified seduction is not committed. There is no crime at all, if there is no force or intimidation or the woman is not unconscious or otherwise deprived of reason.

Offended party need not be physically virgin.

Meaning of virginity.

The crime of *qualified seduction* requires that the victim must be a virgin. The crime of *consented abduction* (Art. 343) also requires that the offended party must be a virgin. The meaning of virginity, therefore, must be the same for both crimes.

The virginity to which the Penal Code refers is not to be understood in so material a sense as to exclude the idea of abduction of a virtuous woman of good reputation.

The Casten case distinguished from the Suan case.

In the case of *U.S. vs. Casten,* 34 Phil. 808, the defendant claims that he had prior intercourse with the *girl.* The Supreme Court considered her still a "virgin" within the meaning of the law. In the case of *U.S. vs. Suan,* 27 Phil. 12, it was established that the girl had carnal relations *with other men. Her chaste character was then open to question.* In law, she is no longer a virgin. The accused regard her more or less a public woman.

There must be sexual intercourse in qualified seduction.

If there is no sexual intercourse and only acts of lewdness are performed, the crime is act of lasciviousness under Art. 339.

Who could be the offenders in qualified seduction?

1. *Those who abused their authority:*
   a. Person in public authority.
   b. Guardian.
   c. Teacher.
   d. Person who, in any capacity, is entrusted with the education or custody of the woman seduced.
2. *Those who abused confidence reposed in them:*
   a. Priest.
   b. House servant.
   c. Domestic.
3. *Those who abused their relationship:*
   a. Brother who seduced his sister.
   b. Ascendant who seduced his descendant.

What makes the crime of qualified seduction?

The acts would not be punished were it not for the *character of the person committing the same,* on account of the *excess of power* or *abuse of confidence* of which the offender availed himself. (U.S. vs. Arlante, 9 Phil. 595)

Deceit is not an element of qualified seduction.

It is settled that deceit, although an essential element of simple seduction, does not need to be proved in a charge of qualified seduction. It is replaced by abuse of confidence. The seduction of a virgin over twelve and

under eighteen years of age, committed by any of the persons enumerated in Art. 337 "is constitutive of the crime of qualified seduction x x x even though no deceit intervenes or even when such carnal knowledge were voluntary on the part of the virgin, because in such a case, the law takes for granted the existence of the deceit as an integral element of the said crime and punishes it with greater severity than it does the simple seduction x x x taking into account the abuse of confidence on the part of the agent (culprit), an abuse of confidence which implies deceit." (People vs. Fontanilla, 23 SCRA 1227)

The fact that the girl gave consent to the sexual intercourse is no defense.

Lack of consent on the part of the girl to the sexual intercourse is not an element of the offense.

It is sufficient that the offender is a teacher in the same school.

Even if the accused is not the teacher of the offended party, it is sufficient if the accused is a teacher in the same school, because of his moral influence as member of the faculty over the student. (Santos vs. People, 40 O.G., Supp. 6, 23)

A teacher in a public school who was in charge of the education and instruction of a girl had sexual intercourse with her. He was convicted of qualified seduction. (People vs. Cariaso, 50 Phil. 884)

Qualified seduction by the master.

If the master shall have sexual intercourse with a female servant, a virgin over 12 but less than 18 years of age, it is also qualified seduction, covered by the phrase "any person who, *in any* capacity, shall be entrusted with x x x the custody of the woman seduced."

Qualified seduction by head of the family.

A person who had sexual intercourse with the cousin of his wife, then living with them in the house and a virgin under 18 years old but over 12 years, is guilty of qualified seduction.

He took advantage of his authority and abused the confidence and trust reposed in him as head of family and master of the house. (People vs. Lauchengco, C.A., 45 O.G. 3485)

Qualified seduction by a brother-in-law.

If the moral ascendancy of a brother-in-law, instead, were used for immoral purposes, then, certainly, there is more than ample justification for

adherence to the view first announced in the landmark Arlante decision that thereby the offense of qualified seduction was in fact committed. (People vs. Alvarez, 55 SCRA 81)

Qualified seduction committed by a priest.

When the girl went to the church to confess, the priest, upon meeting her, embraced and kissed her. The priest made her lie on a board on the floor and had sexual intercourse with her.

Held: The priest was guilty of qualified seduction. (U.S. vs. Santiago, 41 Phil. 793)

Qualified seduction by house servant.

A servant in the house who had sexual intercourse with the master's daughter, a virgin over 12 but less than 18 years of age, is guilty of qualified seduction.

Meaning of "domestic."

"Domestic" is a person usually living under the same roof, pertaining to the same house.

Example: A man, a distant relation of the family, secured board and lodging in the house of the aunt of a girl of about 14 years old who was also living there. The man, the girl and the aunt and her husband all lived in the same house as one family. The man is considered a domestic. (U.S. vs. Santiago, 26 Phil. 184)

The term "domestic" includes all those persons residing with the family and who are members of the same household, regardless of the fact that their residence may only be *temporary or* that they may be *paying* for their board and lodging.

The son of the owner of the house who seduced a servant girl in that house is guilty of qualified seduction as a domestic. (Decision of Sup. Ct. of Spain, Sept. 29, 1909)

Where the defendant seduced a servant girl working in his brother's home, it appearing that the defendant was residing with his said brother, it was held that the case should be considered as coming within the term "domestic" as used in Art. 337. (See case cited in U.S. vs. Santiago, 26 Phil. 184)

But if a man is merely stopping at a public inn or tavern when he seduced the landlord's daughter, the man is not a domestic. (Dec. Sup. Ct. Spain, Jan. 30, 1891, cited in the case of U.S. vs. Santiago, 26 Phil. 184)

The reason for this decision is that such a man is not tendered or expected to receive those sentimental and confidential manifestations of intimacy exchanged between members of the same household.

Domestic is distinct from house servant.

"La voz domestico se refiere a las personas que habitualmente viven bajo el mismo techo, pertenecen a una misma casa y forman en este concepto parte de ella" (2 Cuello Calon, Codigo Penal, 1967 12th Ed. 560). Domestic is distinct from house servant. (Sentencia de 11 de Noviembre de 1881; 3 Viada, Codigo Penal 136; 2 Hidalgo, Codigo Penal 319) Because of the intimacy and confidence existing among various members of a household, opportunities for committing seduction are more frequent. (People vs. Samillano, 56 SCAD 573)

Distinguished from rape.

If any of the circumstances in the crime of rape is present, the crime is not to be punished under this article.

Thus if the offended woman *was sleeping, or* the offender *used force* or *intimidation,* when he had sexual intercourse with her, the crime would be rape.

Qualified seduction by seducing a sister or descendant.

The penalty is next higher in degree.

The seduction of a sister or descendant is known as incest. *Virginity* of the sister or descendant is *not required* and *she may be over 18 years of age. Relationship must be by consanguinity.* The relationship need not be legitimate.

If the sister or descendant is under 12 years of age, the crime would be rape. If she is married and over 12 years of age, it would be adultery.

Qualified seduction by seducing a daughter is illustrated in the case of *People vs. Fajardo,* C.A., 52 O.G. 6977.

The accused charged with rape cannot be convicted of qualified seduction under the same information.

In two recent decisions, *People vs. Alvarez* and *People vs. Samillano,* while the appellants were acquitted, the commission of the crime of rape not having been shown, this Court found them guilty of qualified seduction. Such a result, regrettably, is not warranted here. The information was quite definite that the accused, "armed with a deadly weapon, a firearm, and by

means of violence and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of a fifteen-year-old girl, one Felicisima Briones Mendoza." (People vs. Ramirez, 69 SCRA 144)

When victim is under 12 years of age.

The penalty provided in Section 10 of Rep. Act 7610 for seduction when the victim is under 12 years of age, *i.e.,* one degree higher than that imposed by law, appears to be erroneous considering that a person who engages in sexual intercourse with a woman below 12 years of age commits rape, and not seduction.

Art. 338. ***Simple seduction.*** — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto* ***mayor.***[3]

Elements:

1. That the offended party is *over* 12 and *under* 18 years of age.
2. That she must be of *good reputation,* single *or widow.*
3. That the offender *has sexual intercourse* with her.
4. That it is committed by *means of deceit.*

Example of simple seduction.

The accused went to the house of his fiancee, her parents then being absent, and availing himself of that opportunity, with a renewal of his promise to make her his wife, he succeeded in having sexual intercourse with her.

Held: The accused is guilty of simple seduction. Deceit, the usual form of which being an unfulfilled promise of marriage, is an important element of the offense. (People vs. Iman, 62 Phil. 92)

The offended girl must be over 12 and under 18 years of age.

If she is under 12 years old, the crime is rape, even if the offender succeeds in having sexual intercourse with her by means of deceit.

[3]See Appendix "A," Table of Penalties, No. 1.

If she is over 18 years of age, there is no force or intimidation or she is not unconscious or otherwise deprived of reason, there is no crime even if the accused has sexual intercourse with her. This is true even if deceit is employed by the accused.

Virginity of offended party is not required.

Art. 338 uses the phrase "a woman who is single or a *widow* of good reputation," apparently meaning that it is the widow who must be of good reputation. But Albert says that the offended party must be in good repute, because if she was a public woman or one of *loose morals,* the act *would not* be penalized by the Code.

It is not essential in simple seduction that the woman seduced be a virgin, as all that is necessary is that she is of good reputation. (2 Cuello Calon, Codigo Penal, 10th ed., pp. 580-581)

A woman who was raped before may be the victim of simple seduction, provided she is a woman of good reputation.

But a woman, who had illicit relations with a number of men prior to accused's sexual intercourse with her, is not of good reputation. (U.S. vs. Suan, 27 Phil. 12)

There must be sexual intercourse.

If there is no sexual intercourse and only acts of lewdness are performed, the crime is acts of lasciviousness under Art. 339.

Deceit generally takes the form of unfulfilled promise of marriage.

Deceit generally takes the form of unfulfilled promise of marriage and this promise need *not* immediately precede the carnal act. (People vs. Iman, 62 Phil. 92)

Promise of marriage must be the inducement and the woman must yield *because* of the promise or other inducement. If she consents merely from carnal lust, and the intercourse is from mutual desire, there is no seduction. (U.S. vs. Sarmiento, 27 Phil. 121)

Deceit is also illustrated in the case of *U.S. vs. Hernandez,* 29 Phil. 109, where the accused endeavored to seduce the girl and failing in the attempt, he procured the performance of a fictitious marriage ceremony and thereafter had sexual intercourse with her.

May the man who is willing and ready to marry the girl seduced by him be held liable for simple seduction?

It is believed that he is liable, because his willingness to marry her may still amount to deceit, not by itself but by the attending circumstances

vitiating such willingness, as when the man knows that the girl cannot legally consent to the marriage, and yet he makes a promise to marry her. The consent of the parents cannot be taken for granted, as in majority of cases, the parents would not consent to the marriage of their young daughter.

Deceit consisting in unfulfilled promise of material things.

If a woman under 18 years old, but over 12, agrees to a sexual intercourse with a man who promised to give her precious jewelry, and the man never fulfills it, there is no seduction, because she proves to be a woman of loose morals. She is a high-class prostitute.

Promise of marriage by a married man is not a deceit.

Thus, a promise of marriage made by a *married* man, whom the woman *knew* to be married when she surrendered herself, could not have induced her to do so; and in such a case, it is clear that there was no reliance on the promise. (U.S. vs. Sarmiento, 27 Phil. 121)

Promise of marriage after sexual intercourse does not constitute deceit.

A promise of marriage *made after* the sexual intercourse had taken place, or *after* the woman had yielded her body to the man's illicit embraces, cannot be held to have induced the woman to surrender her virtue. (U.S. vs. Sarmiento, 27 Phil. 121)

No continuing offense of seduction.

The loss of virginity *during the minority* of the offended party consummated the offense, and the virginity of a woman cannot be lost twice. Hence, the carnal relations had after the complainant was over 18 years does not constitute a continuation of the offense begun when she was under 18 years of age. (People vs. Bautista, 12 O.G. 2405)

Purpose of the law in punishing simple seduction.

The purpose of the statute making seduction a crime is not to punish illicit intercourse, but to punish the seducer who by means of a promise of marriage, destroys the chastity of an unmarried female of previous chaste character, and who thus draws her aside from the path of virtue and rectitude and then fails and refuses to fulfill his promise, a character despicable in the eyes of every decent, honorable man. (People vs. Iman, 62 Phil. 92)

Art. 339. *Acts of lasciviousness with the consent of the offended party.* — The penalty of *arresto mayor*[1] shall be imposed to punish any other acts of lasciviousness committed by the same persons and under the same circumstances as those provided in Articles 337 and 338.

Elements:

1. That the offender commits acts of lasciviousness or lewdness.
2. That the acts are committed upon a woman who is virgin or single or widow of good reputation, under 18 years of age but over 12 years, or a sister or descendant regardless of her reputation or age.
3. That the offender accomplishes the acts by *abuse of authority, confidence, relationship,* or *deceit.*

Male cannot be the offended party in this crime.

Can a *male* be an offended party in this kind of acts of lasciviousness?

Note that Art. 339, unlike Art. 336, does *not* mention "persons of *either sex*" as the offended party.

"Committed by the same persons and under the same circumstances as those provided in Arts. 337 and 338."

A, a girl 16 years of age, and B were lovers. While they were in the theater, B kissed A, touched her breast, including her private parts with the consent of A. Was B guilty of acts of lasciviousness with the consent of the offended party?

No. In order that the crime of acts of lasciviousness with the consent of the offended party may be committed, it is necessary that the crime is committed under circumstances which would make it *qualified* or *simple* seduction had there been sexual intercourse, instead of acts of lewdness only.

In the problem given, B did not accomplish the act by abuse of authority, confidence or relationship. B did not commit the act by means of deceit.

[1] See Appendix "A," Table of Penalties, No. 1.

"With the consent of the offended party."

This phrase is used in the title of Article 339. The offended woman may have consented to the acts of lasciviousness being performed by the offender on her person, but the consent is obtained by abuse of authority, confidence or relationship or by means of deceit.

Art. 336 and Art. 339, compared.

Both Art. 336 and Art. 339 treat of acts of lasciviousness.

Under Art. 336, the acts are committed under circumstances which, had there been carnal knowledge, would amount to rape.

Under Art. 339, the acts of lasciviousness are committed under the circumstances which, had there been carnal knowledge, would amount to either qualified seduction or simple seduction. *There may be consent,* but there is either abuse of *authority, confidence,* or *relationship, or deceit.*

Penalty when victim is under 12 years of age.

The penalty for acts of lasciviousness with the consent of the offended party shall be one (1) degree higher than that imposed by law when the victim is under 12 years of age. (Sec. 10, Rep. Act No. 7610)

Art. 340. *Corruption of Minors.* — Any person who shall promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another, shall be punished by *prision mayor*[5] and if the culprit is a public officer or employee, including those in government-owned or controlled corporations, he shall also suffer the penalty of temporary absolute disqualification.[6] *(As amended by B.P. Blg. 92, approved on Dec. 24, 1980)*

Habituality or abuse of authority or confidence, not necessary.

Before Art. 340 was amended by Batas Pambansa Blg. 92, the essential requisite of the offense is that there must be habituality or abuse of authority or confidence in promoting or facilitating the prostitution or corruption of a minor.

[5]See Appendix "A," Table of Penalties, No. 19.
[6]See Appendix "A," Table of Penalties, No. 40.

As the amended Art. 340 is worded, it is *not* now a requisite of the crime of corruption of minors.

"To satisfy the lust of another."

Note the phrase *"to satisfy the lust of another."* Therefore, one who casts for his *own ends does not incur* the sanction of the law.

Single act without abuse of authority or confidence is now a crime.

The ruling in *U.S. vs. Javier, et al.*, 20 Phil. 337, that a single act of facilitating the corruption of a minor by placing her at another's disposal for immoral purposes does not legally constitute the crime under Art. 340, is no longer authoritative.

It is not necessary that the unchaste acts shall have been done.

What the law punishes *is the act of a pimp who facilitates* the corruption of, and *not* the performance of unchaste acts upon, the minor.

A *mere proposal* will consummate the offense. Thus, a father, who proposes to his daughter that she accompany a man to satisfy the lust of the latter, commits a consummated corruption of minors.

Age of victim.

The term "persons under age" provided in Article 340 of the Revised Penal Code defining and punishing the crime of corruption of minors means a person below 21 years of age. Article 402 of the Civil Code provides that "Majority commences upon the attainment of the age of 21 years." (Alimagno vs. People, 120 SCRA 699)

Reputation of the victim.

She or he must be of good reputation, not a prostitute or corrupted person. (Guevara)

Penalty when victim is under 12 years of age.

The penalty for corruption of minors shall be one (1) degree higher than that imposed by law when the victim is under 12 years of age. (Sec. 10, Rep. Act No. 7610)

Child Prostitution under Rep. Act No. 7610.

Sec. 5. *Child Prostitution and Other Sexual Abuse.* - Children, whether male or female, who for money, profit or other consideration or

due to the coercion or influence of any adult syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal in its medium period* to *reclusion perpetua* shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as a prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute;

(5) Giving monetary consideration, goods or other pecuniary benefit to a child with the intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided,* That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided,* That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal in its medium period;* and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment. (RA 7610, which was approved on June 17, 1992)

Attempt to Commit Child Prostitution under Rep. Act No. 7610.

Sec. 6. *Attempt to Commit Child Prostitution.* — There is attempt to commit child prostitution under Section 5, paragraph (a) thereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other hidden or secluded area under circumstances which lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper cases, under the Revised Penal Code. (Rep. Act No. 7610)

Art. 341. *White slave trade.* — The penalty of *prision correccional in its medium and maximum* **periods**[7] shall be **imposed** upon any person who, in any manner, or under any pretext, shall engage in the business or shall profit by prostitution or shall enlist the services of women for the purpose of prostitution. *(As amended by* ***B.P. Blg.*** *186, March* ***16, 1982)***

Acts penalized as white slave trade.

They are:

1. *Engaging* in the business of prostitution.
2. *Profiting* by prostitution.
3. *Enlisting* the services of women for the purpose of prostitution.

One of those above-mentioned acts is sufficient to constitute the offense.

Once it is proved that the accused enlisted the services of women for the purpose of prostitution, he is criminally liable even if there is no proof that he shared in the profit. (People vs. Nuevas, G.R. No. L-154, March 18, 1946, 76 Phil. 276)

And even if there is no proof that he enlisted the services of women for the purpose of prostitution, he would still be liable criminally if he shared in the income of the prostitutes. (People vs. Nuevas, 76 Phil. 276)

[7]See Appendix "A," Table of Penalties, No. 15.

Habituality not a necessary element of white slave trade.

In a violation of the white slave trade law, habituality is not necessarily an element. It is sufficient that the accused has committed any of the acts enumerated in Article 341 of the Revised Penal Code. (People vs. Bueno, C.A., 62 O.G. 1381)

Offender need not be the owner of the house.

A person engaged in the business of prostitution need not be the owner of the house.

The person responsible under Art. 341 is the person who maintains or engages in the business. It is not a defense that he is only the manager or the man in charge of the house with a fixed salary. (People vs. Gomez, C.A., 40 O.G., Supp. 4, 157)

Maintainer or manager of house of ill-repute need not be present therein at the time of raid or arrest.

The presence of the maintainer or manager of a house of ill-repute at the time of a raid or an arrest or while the illicit traffic is being conducted is not a condition to a criminal prosecution against such maintainer or manager. (People vs. Sta. Maria, G.R. No. 12875-R, June 21, 1957)

"Under any pretext."

One who engaged the services of a woman *ostensibly* as a maid but in reality for purposes of prostitution and who in fact dedicated her to such immoral purposes for profit, is guilty of white slave trade. (People vs. Isidro, C.A., 51 O.G. 215)

Penalty when victim is under 12 years of age.

The penalty for white slave trade shall be one (1) degree higher than that imposed by law when the victim is under 12 years of age. (Sec. 10, Rep. Act No. 7610)

Chapter Four

ABDUCTION

Meaning of abduction.

"By abduction is meant the taking away of a woman from her house or the place where she may be for the purpose of carrying her to another place with intent to marry or to corrupt her." (Viada, cited in People vs. Crisostomo, 46 Phil. 780)

Two kinds of abduction.

1. Forcible abduction. (Art. 342)
2. Consented abduction. (Art. 343)

Art. 342. *Forcible abduction.* — The abduction of any woman against her will and with lewd designs shall be punished by *reclusion temporal.*[1]

The same penalty shall be imposed in every case, if the female abducted be under twelve years of age.

Elements of forcible abduction:

1. That the person abducted is any woman, regardless of her age, civil status, or reputation.
2. That the abduction is against her will.
3. That the abduction is with lewd designs.

The woman abducted may be married.

Art. 342 mentions *"any woman"* as the victim of the crime of forcible abduction. Hence, the forcible taking away of a married woman, the offender

[1]See Appendix "A," Table of Penalties, No. 28.

having lewd designs, is penalized under Art. 342. As in rape, the civil status, the age, and the reputation of the woman are immaterial.

The virginity of the offended woman is not an essential element of the crime of forcible abduction. (People vs. Torres, *et al.*, 62 Phil. 942)

Crimes against chastity where age and reputation of victim are immaterial.

1. Rape;
2. Acts of lasciviousness against the will or without the consent of the offended party;
3. Qualified seduction of sister or descendant;
4. Forcible abduction.

The taking away of the woman must be against her will.

The taking away of the woman is *against her will,* when force or intimidation is used by the offender.

Thus, where the two accused, Castillo and Lugod, forcibly dragged and carried a girl from the store she was tending and took her to a waiting *carretela* while she resisted and cried for help and, once inside the vehicle, ordered the driver to speed away, and in the *carretela,* Castillo forcibly embraced and handled her against her will, the taking away of the girl with lewd designs was against her will. (People vs. Castillo, *et al.*, 76 Phil. 839)

The taking away of the woman may be accomplished by means of deceit first and then by means of violence and intimidation.

Thus, when defendant, who had served as an intermediary between the lovers, told the woman that her lover was awaiting her at a spot near a growth of sugar cane for the purpose of joining her and eloping with her, *which was not true,* and upon arriving at the place referred to, defendant caught her by the hand, gave her a slap, and dragged her into the midst of the sugar cane growing nearby, where, threatening her with a dagger he had in hand, he overcame her resistance and succeeded in lying with her, it was held that defendant was guilty of forcible abduction.

The Supreme Court said: "It is unquestionable that the offended woman who had freely gone to the place where she believed she would find her fiancee, lost her liberty from the moment defendant opposed her returning home, and that consequently, it was against her will that she was taken by defendant into the sugar cane. This was the commencement of the abduction of the young woman, committed by defendant with violence and against her will." (U.S. vs. De Vivar, 29 Phil. 451)

Note: Defendant should have been prosecuted and punished for the complex crime of forcible abduction with rape.

If the female abducted is under 12 years of age, the crime is forcible abduction, even if she voluntarily goes with her abductor.

In case the female abducted be under 12 years of age, it is *not necessary* that she be taken against her will.

The law says: "The same penalty shall be imposed *in every case,* if the female abducted be under 12 years of age." The reason for this provision is that she has no will of her own and, therefore, is incapable of giving consent.

Sexual intercourse is not necessary in forcible abduction.

Actual illicit relations with the female abducted need not be shown. The intent to seduce the girl is sufficient. (See People vs. Ramirez, *et al.*, 39 Phil. 738)

If there was sexual intercourse after the forcible abduction, and the offender used force or intimidation, or when the woman was deprived of reason, is demented or otherwise unconscious, or the victim was under 12 years of age, the offender is liable for the complex crime of forcible abduction with rape under Art. 266-A in relation to Arts. 335 and 342 of the Code.

Lewd designs may be shown by the conduct of the accused.

While inside the car, the accused *kissed* and *embraced* the offended party and often *attempted to take hold of her body,* and knowing that the offended party was to be married to another of her own choice, the accused went on the witness stand and blackened her character and sought to ruin her reputation for chastity. These circumstances constitute a strong evidence that he is a man of lewd and lascivious mind. (People vs. Bustos, *et al.*, 54 Phil. 887; U.S. vs. Ramirez, 39 Phil. 745)

But the act of the accused in *kissing only* the offended party, when he had the opportunity to do further unchaste designs, did not constitute lewd designs. (People vs. Crisostomo, *et al.*, 46 Phil. 775)

Lewd designs present in hurried ceremony of marriage by force.

When the ceremony of the marriage is *merely an artifice* by which the accused sought to escape the criminal consequences of his acts, the intention to contract marriage constitutes lewd designs, as where the *offender knows that the girl cannot give consent legally* to the marriage because of minority.

The intention to marry may sometimes constitute unchaste designs, not by itself but by the attending circumstances vitiating such intention, as when the male knows that the minor female, 15 years of age, cannot legally consent to the marriage, and yet he elopes with her. (People vs. Hatib Tala, *et al.*, C.A., 44 O.G. 117; People vs. Crisostomo, 46 Phil. 775)

Intention to marry does not constitute unchaste designs when both defendant and the woman have the required age for consenting to marriage.

Thus, when not only the woman, but the man as well, had the required age for consenting to marriage, and it does not appear that either of them had any impediment to contracting it, the intention to marry does not constitute unchaste designs. (People vs. Crisostomo, 46 Phil. 780)

Note: The offended party in this case was 30 years of age. The intention to marry on the part of the accused was *not* considered as constitutive of unchaste designs.

When there are several defendants, it is enough that one of them had lewd designs.

For the conviction of various defendants for the crime of abduction, it is enough that there was lewd design by one of them and that the same was known to the others who cooperated in the commission of the felony. (People vs. Deleguiado, *et al.*, C.A., 38 O.G. 3587)

Husband not liable for abduction of his wife, as lewd design is wanting.

The husband cannot be found guilty of the crime of forcible abduction of his wife, the element of unchaste or lewd design being wanting. (People vs. Omar, *et al.*, 8 C.A. Rep. 999)

Nature of the crime of forcible abduction.

In the crime of forcible abduction, the act of the offender is violative of the *individual liberty* of the abducted, *her honor* and *reputation*, and of *public order*. (U.S. vs. De Vivar, 29 Phil. 458)

Forcible abduction distinguished from grave coercion.

In both crimes, there is violence or intimidation used by the offender and the offended party is compelled to do something against her will.

When there is *no lewd design,* it is coercion, provided that there is no deprivation of liberty for an appreciable length of time.

The girl was dragged from the doorway of her house to a waiting vehicle 40 or 50 feet away. This is grave coercion. (U.S. vs. Alexander, 8 Phil. 29)

From the moment that the accused, by means of violence and intimidation, had taken and put the offended party in the truck against her will, they compelled her to do something against her will. Since the accused did not molest or attempt to molest her during the ride and the whole time she stayed with the accused, *the element of lewd* design *was lacking* and, hence, the crime committed was grave coercion under Art. 286. (People vs. Cruz, C.A., 50 O.G. 3720)

Forcible abduction distinguished from corruption of minors.

Where a 13-year-old girl was abducted by the accused *without lewd designs* on his part, but for the *purpose of lending her to illicit intercourse with others,* the crime committed by the accused was held to be *not* abduction but corruption of minors. (U.S. vs. Tagle, 1 Phil. 626)

When there is deprivation of liberty and no lewd designs, it is kidnapping and serious illegal detention (Art. 267).

The accused met a girl and her aunt on the way and dragged the girl along, taking her to a rice field. Meanwhile, the other accused caught hold of the girl's aunt, thus preventing her from helping her niece. The accused were convicted of forcible abduction by the lower court, but the Supreme Court reversed the judgment and convicted them of illegal detention, saying: "We have, therefore, the kidnapping of a woman which was not proven to have been committed with unchaste designs. Abduction, being one of the ways in which illegal detention can be committed, specially qualified by lewd intention, the kidnapping of a woman without unchaste designs must, according to Viada and to our Penal Code, be considered as illegal detention." (People vs. Crisostomo, 46 Phil. 775)

Forcible abduction with rape distinguished from kidnapping.

A, B, C and others grabbed a girl 15 years of age and then dragged her to a nearby forest. There she was brutally ravished, first by A and afterwards by B.

Are they guilty of kidnapping with rape?

***Held:* The crime is not kidnapping with rape, but forcible abduction with rape. When the violent taking of a woman is motivated by lewd designs**

— as in this case — forcible abduction under Art. 342 of the Revised Penal Code is the offense. When it is not so motivated, such taking constitutes kidnapping under Art. 267 as amended. (People vs. Crisostomo, 46 Phil. 775; People vs. Undiana, 50 Phil. 641) One offense is against chastity, the other against personal liberty. (People vs. Quitain, *et al.*, 99 Phil. 226)

Forcible abduction with several acts of rape.

There can only be one complex crime of forcible abduction with rape. The crime of forcible abduction was only necessary for the first rape. Thus, the subsequent acts of rape can no longer be considered as separate complex crimes of forcible abduction with rape. They should be detached from and considered independently of the forcible abduction. Therefore, accused should be convicted of one complex crime of forcible abduction with rape and three separate acts of rape. (People vs. Garcia, *et al.*, G.R. No. 141125, Feb. 28, 2002)

Is there a complex crime of forcible abduction with attempted rape?

The act of appellant in grabbing the victim while she was walking towards barrio San Agustin, and dragging her into the cornfields, some 40 meters away from the footpath, where by means of force he tried to have sexual intercourse with her but did not perform all the acts necessary to consummate such purpose, only constitutes abduction and not abduction complexed with attempted rape, because said appellant took away the victim for the purpose of corrupting her. In other words, the attempt to rape her is absorbed by the abduction, being the element of lewd design of the latter. (People vs. Magtabog, *et al.*, 4 C.A. Rep. 802, citing U.S. vs. De Vibar, 29 Phil. 451)

Commission of other crimes during confinement of victim is immaterial to charge of kidnapping with serious illegal detention.

The accused assails the decision finding him guilty of kidnapping defined and penalized by Art. 267 of the Revised Penal Code. It is being claimed that considering the testimony of complainant that she was raped by the accused while in the house of the latter's compadre in Caloocan, and again while in the house of his uncle in Bulacan, he (the accused) should have been adjudged guilty of abduction with rape instead.

There is no merit in the allegation. The accused stood trial for kidnapping with serious illegal detention, and the deprivation of complainant's liberty, which is the essential element of the offense (People vs. Suarez, 82 Phil. 484), was duly proved. That there may have been other crimes committed in the course of the victim's confinement is immaterial

to this case. The kidnapping became consummated when the victim was actually restrained or deprived of her freedom, and that makes proper the prosecution of the herein accused under Article 267 of the Revised Penal Code. The surrounding circumstances make it clear that *the main purpose of Annabelle's detention was to coerce her into withdrawing her previous charges against appellant Ablaza,* thus obstructing the administration of justice. The acts of rape *were incidental* and *used as a means to break the girl's spirit* and *induce her to dismiss the criminal charge.* (People vs. Ablaza, L-27352, Oct. 31, 1969, 30 SCRA 173, 177-178)

Forcible abduction only, or rape only.

If there was an abduction but the *resistance of* the woman to the alleged rape was *not tenacious,* the accused would be guilty only of abduction. (People vs. Lopez, C.A., 41 O.G. 1310)

Rape may absorb forcible abduction if the *main objective was to rape* the victim. (People vs. Toledo, 83 Phil. 777)

Attempted forcible abduction.

The accused, who previously made an attempt upon the chastity of the offended girl, tried to take her away in a carriage, while she was standing at the door of her house. The accused did not succeed in taking away the girl, because of the girl's resistance and because of the intervention of a policeman. The offense was attempted abduction. The lewd designs were indicated by the holding of the girl around her waist and by the attempt of the accused upon the chastity of the girl on previous night. (U.S. vs. Luna, 4 Phil. 269)

Conviction of acts of lasciviousness, not a bar to conviction of forcible abduction.

To prove lewd designs in forcible abduction, actual illicit relations with the woman abducted need not be shown. Intent to seduce is sufficient. Lustful designs may be inferred from acts or may be shown by conduct. (People vs. Ramirez, *et al.,* 39 Phil. 738; People vs. Bustos, *et al.*, 54 Phil. 887) So even though an accused did not actually commit any acts of lasciviousness, libidinous designs may exist. On the other hand, in the crime of acts of lasciviousness, the lecherous acts must have actually been committed. Moreover, in the crime of abduction, the person abducted must be a woman, while in the crime of acts of lasciviousness, the lustful acts may be committed upon persons of either sex. Accordingly, one of these two crimes involves some important act which is not an essential element of the other, so that the conviction of one of them is not obstacle to that of the

other. There was, therefore, no double jeopardy. (People vs. Franco, C.A., 53 O.G. 410)

Art. 343. ***Consented abduction.*** **— The abduction of a virgin over twelve and under eighteen years of age, carried out with her consent and with lewd designs, shall be punished by the penalty of** ***prision correccional*** **in its minimum and medium periods.**[2]

Elements.

1. That the offended party must be a *virgin.*
2. That she must be *over* 12 and *under* 18 years of age.
3. That the *taking away* of the offended party must be *with her consent,* after solicitation or cajolery from the offender.
4. That the taking away of the offended party must be *with lewd designs.*

Meaning of virginity.

The virginity referred to in Art. 343 is not to be understood in so material a sense as to exclude the idea of abduction of a virtuous woman of good reputation.

Thus, even if the accused had sexual intercourse with the girl before they eloped, there is still a case of abduction with consent. (U.S. vs. Casten, 34 Phil. 808)

But when the offended party had carnal knowledge with other men, the chaste character of the girl is open to question. (U.S. vs. Suan, 27 Phil. 12)

If virgin is under 12 years old, it is forcible abduction.

If the offended party is under 12 years of age, the crime committed is forcible abduction, even if the girl agrees to the elopement.

[2]See Appendix "A," Table of Penalties, No. 14.

Must the taking of the virgin have the character of permanency?

In the case of *U.S. vs. Garcia,* 30 Phil. 74, it was held that the taking must have the character of permanency; and in the case of *People vs. De la Cruz,* 48 Phil. 533, it was held that the taking of the girl must be for an appreciable period of time. The ruling in the Garcia case is based on the decisions of the Supreme Court of Spain of May 19, 1888, September 22, 1882 and December 14, 1901.

The rule laid down in the case of *U.S. vs. Garcia, supra,* is no longer controlling, because in the majority of *later decisions* of the same Supreme Court of Spain, to wit: those of January 18, 1904, February 16, 1912, May 8, 1926 and June 25, 1928, it was uniformly held that the taking away of the girl in consented abduction need not be with some character of permanence.

The crime exists where the offended girl was kept in the house of the accused from 10:00 p.m. to 3:00 a.m., the latter with lewd designs. "No matter how short is the taking away the crime exists." (People vs. Ingayo, C.A., G.R. No. 3423, Dec. 10, 1949)

Offended party need not be taken from her house.

The girl, through cajolery, left her mother's house, by prearrangement with the defendant and at his bidding, inasmuch as he awaited her on the road and they came to the city where they hid themselves and lodged together. (U.S. vs. Reyes, 20 Phil. 510)

The abductor need not actually and personally have taken the abducted female from her parent's home, or induced her to abandon it. It *is sufficient* that *he was instrumental in her escape.* The shock, the anxiety, the shame, and all the concomitant evils suffered by the family of the girl are not greater when the starting point of the abduction is the home where she lives than when it has its beginning somewhere else. (People vs. Moreno, C.A., G.R. No. 7424, Oct., 1941)

The offended girl, 15 years old, was on her way to her aunt's house to spend a few days there. Through cunning, and possibly by deceit and cajolery, the accused succeeded in persuading the girl to go with him to a place in order to enjoy her and satisfy his carnal lust. (People vs. Ignacio, C.A., 44 O.G. 2291)

Consent of the minor to being taken away may be due to honeyed promises of marriage by the offender.

Thus, where the defendant, by *means of honeyed promises of marriage,* induces a minor to leave her house and deflowers her, and *immediately after which she returns to her dwelling,* he is guilty of the offense of consented

abduction. (People vs. Cabrera, C.A., G.R. No. 229, Sept. 18, 1937; 37 O.G. 2029)

When there was no solicitation or cajolery and no deceit and the girl voluntarily went with the man, there is no crime committed even if they had sexual intercourse.

A girl, 16 years old, went to the house of a man, whom she loved, early one morning. When the man woke up, he was surprised to find the girl beside him on the bed. As they were in love with each other, they had sexual intercourse without the man promising anything to the girl. What crime was committed by the man? No crime was committed. It cannot be consented abduction, because the girl went to the house of the man voluntarily without solicitation or cajolery. It cannot be seduction, because no deceit was employed by the man before having sexual intercourse with her.

Article 343 of the Revised Penal Code contemplates that the accused be an active physical agency instrumental in causing the female to leave or abandon her house. Where the female voluntarily leaves her home and subsequently is taken by the accused to a particular place for a prohibited purpose, or where the female on her own volition goes to the home of the accused, who may be under moral duty to send her away, he does not come within the prescription of law by permitting her to stay. The female must be removed from the custody of her parents by means of promises made to, or cajolery or enticement exerted upon her by her abductor. Where the meeting of the complainant and the accused was merely accidental and lasted for only two minutes, and the only topics of conversation was the former's well-nigh all-consuming mortal terror inspired by her mother's ire, it is difficult to conceive that the latter could have entertained the thought of ultimately having sexual intercourse with the complainant, as the principal and primary motive, during the chance meeting. (People vs. Palisoc, 6 C.A. Rep. 65)

The taking away must be with lewd designs.

Like in forcible abduction, the element of lewd designs is important in consented abduction. Actual sexual intercourse with the abducted girl is not necessary. Kissing and holding the body of the girl while being abducted with her consent is indicative of lewd designs. The intention to marry may show lewd designs, as when the offender knows or should know that a minor cannot legally consent to the marriage, and that he cannot possibly marry her because of lack of a marriage license and parental consent. His intentions then, instead of being good and noble, are unchaste and lewd. (See People vs. Ignacio, C.A., 44 O.G. 2291, and People vs. Crisostomo, 46 Phil. 775)

Purpose of the law in punishing the crime of consented abduction.

The purpose of the law is not to punish the wrong done to the girl, because she consents thereto, but to prescribe punishment for the disgrace to *her family* and the *alarm caused therein* by the disappearance of the one who is, by her age and sex, susceptible to cajolery and deceit. (U.S. vs. Reyes, 20 Phil. 510)

Consented abduction with rape.

Where a 15-year-old girl was induced to leave her home and later forcibly violated by the four accused, they are guilty of consented abduction with rape. (People vs. Amante, 49 Phil. 679)

Chapter Five

PROVISIONS RELATIVE TO THE PRECEDING CHAPTERS OF TITLE ELEVEN

Art. 344. ***Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness.*** **— The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.**

The offended party cannot institute criminal prosecution without including both the guilty parties if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape, or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness, and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices, and accessories after the fact of the above-mentioned crimes.

Prosecution of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness.

1. **Adultery and concubinage must be prosecuted upon complaint signed by the offended spouse.**
2. **Seduction, abduction, rape or acts of lasciviousness must be prosecuted upon complaint signed by —**

a. offended party,

b. her parents,

c. grandparents, or

d. guardians in the order in which they are named above.

The court *motu proprio* can dismiss the case for failure of the aggrieved party to file the proper complaint, though the accused never raised the question on appeal, thereby showing the necessity of strict compliance with the legal requirement even at the cost of nullifying all the proceedings already had in the lower court. (People vs. Santos, *et al.*, 101 Phil. 798)

Underlying principle or reason why crimes against chastity cannot be prosecuted de *oficio.*

Art. 344 was enacted "out of consideration for the offended woman and her family who might prefer to suffer the outrage in silence rather than go through with the scandal of a public trial." (Samilin vs. Court of First Instance, 57 Phil. 298)

In some instances, the virginity of the girl may be questioned. This would involve the examination of the girl's past life and the conduct of her family, which may cause painful mortifications to the modesty and honor of the girl and cause discredit to her family. (U.S. vs. Bautista, 40 Phil. 735)

Rape may be prosecuted *de oficio.*

Pursuant to R.A. No. 8353, the Anti-Rape Law of 1997, rape is now a crime against persons which may be prosecuted *de oficio.*

Prosecution of adultery and concubinage.

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders. (Sec. 5, Rule 110, Rules of Court; Art. 344, R.P.C.)

Prosecution of the crime of prostitution.

To call a married woman a prostitute is not merely to proclaim her an adulteress, a violator of her maternal vows; it is to charge her of having committed an offense against public morals, or moral degeneracy far exceeding that involved in the maintenance of adulterous relations. The imputation of a crime of prostitution against a woman can be prosecuted *de oficio.* (People vs. Judge Orcullo, 111 SCRA 609)

Only the offended spouse can file the complaint.

The parent or grandparent, or any other person in behalf of the offended party, is not authorized by law in any case to sign and file complaint for adultery or concubinage.

Even in the case where the offended spouse is underage, his or her parents cannot file the complaint for adultery or concubinage, as the case may be, against the offenders. Or, if because of disease the offended spouse becomes incapacitated to file the complaint, nobody else can file it for him or her.

The dismissal by the justice of the peace of a husband's complaint for adultery after the preliminary investigation is a termination of the case. It can be reopened only upon a new complaint of the offended husband. (Quilatan and Santiago vs. Caruncho, 21 Phil. 399)

Both the guilty parties, it both alive, must be included in the complaint for adultery or concubinage.

In adultery and concubinage, *both* the guilty parties, when they are both *alive,* must be included in the complaint. (Art. 344, par. 2; Rule 110, Sec. 5, Rules of Court)

In adultery, the complaint must be instituted against *both the wife and her paramour.* The husband is expressly prohibited from filing the complaint against one of the parties without including therein the other. (U.S. vs. Asuncion, 22 Phil. 358)

Both parties must be included in the complaint even if one of them is not guilty.

The reason for this ruling is that it is not for the husband to determine the question of the guilt or innocence of the paramour of the crime of adultery; the question must be left to the court. (U.S. vs. Asuncion, 22 Phil. 358)

Prosecution of seduction, abduction, rape or acts of lasciviousness.

The offenses of seduction, abduction, rape or acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the abovenamed persons, as the case may be.

The offended party, even if she were a minor, has the right to institute the prosecution for the above offenses, independently of her parents,

grandparents or guardian, unless she is incompetent or incapable of doing so upon grounds other than her minority. Where the offended party who is a minor fails to file the complaint, her parents, grandparents or guardian, may file the same. The right to file the action granted to the parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided. (Sec. 5, Rule 110, Rules of Court; Art. 344, R.P.C.)

The fact that she is a minor (being only 12 years old) is not an impediment for her to sign the complaint. (People vs. Medina, C.A., 45 O.G. 338)

But if the offended party is insane or physically disabled, the father can sign the complaint. If the father is dead, the mother can do it. If both are dead, then the grandfather should sign the complaint, etc. (U.S. vs. Bautista, 40 Phil. 735)

It is exclusive, because if the parent of the girl for instance, refuses to file the complaint, the grandparent cannot file the complaint.

Prosecution of rape may be made upon complaint by any person.

Rape has been reclassified by Republic Act No. 8353 as a crime against persons and, thus, may be prosecuted even without a complaint filed by the offended party. It can now be instituted by any person.

When the offended party is a minor, her parents may file the complaint.

When the offended party is a minor and she does not file the complaint, this may be done by her parents, grandparents or guardian, in the order named. (Benga-Oras vs. Evangelista, *et al.*, 97 Phil. 612)

When the offended party is of age and is in complete possession of her mental and physical faculties, she alone can file the complaint.

When the offended party is already of age and is *in complete possession of her mental and physical faculties,* no one would dispute her paramount right to avenge the wrong done to the *exclusion of her parents and other relatives mentioned in the law.* (Benga-Oras vs. Evangelista, *et al.,* 97 Phil. 612)

If the offended woman is of age, she should be the one to file the complaint. The other persons named in Art. 344 cannot file the complaint. (People vs. Mandia, 60 Phil. 372)

A woman is of age when she has reached her 21 years at which majority begins. (De la Costa vs. Tolentino, 66 Phil. 101)

Is the father, if living, preferred to the mother in the filing of the complaint for seduction?

The Supreme Court has answered this question in the negative in the case of *U.S. vs. Gariboso.* (25 Phil. 171)

There is no indication in said article that the complaint must be presented by the father, if living, and if not, then by the mother. If we take, for instance, the case of the grandparents, there might be four persons living who are included in the law who might present the complaint. There is no indication that one of the grandparents is preferred over another. It would seem to be clear, under the provisions of said article, that any one of the grandparents, in the absence of the parents, might present the complaint for the crime mentioned in said section. This would also seem to be true as to the parents.

Note: In this case, the father of the offended girl left his home upon knowing the commission of the offense. During his absence, the mother of the girl presented the complaint.

But this ruling should be applied only when the mother instituted the action *without contradiction from the father.* (Concurring opinion of Justice Carson, citing Viada, vol. 7, p. 313)

The guardian is one legally appointed by the court.

The term "guardian" means *legal, not natural guardian;* that is, guardian legally appointed in accordance with the provision of the law. (People vs. De la Cruz, 59 Phil. 531)

Art. 344 prescribes no special form of establishing the relation between the complainant and the minor who is the victim of any of the offenses therein enumerated nor does it require that such relation, in the case of a guardian and ward, be necessarily proved by means of a judicial decree or order.

It is sufficient that a person affirms under oath that he is the guardian of a minor. (People vs. Formento, *et al.*, 60 Phil. 434)

Note: But if it is denied, he has to prove it by means of judicial order.

The complaint, which must be signed by the offended party, must be filed in court, not with the fiscal.

Thus, even if the offended party had complained to the fiscal, if the complaint was not subscribed by the offended party and filed with the court

as the basis of the prosecution, the court acquires no jurisdiction to proceed with the case.

However, while a mere sworn narration of how a private crime was committed is not a sufficient basis for filing an information, a similar sworn narration which not only narrated the facts and circumstances constituting the crime of adultery but also explicitly and categorically charged private respondents with said offense is a valid complaint, sufficient to clothe the court with jurisdiction. (People vs. Ilarde, 125 SCRA 11)

Rape complexed with another crime need not be signed by the offended woman.

In case of complex crimes, where one of the component offenses is a public crime, the criminal prosecution may be instituted by the fiscal. The reason is that since one of the component offenses is a public crime, the latter should prevail, because public interest is always paramount to private interest. (People vs. Yu, 110 Phil. 793)

When the evidence fails to prove a complex crime of rape with other crime, and there is no complaint signed by the offended woman, the accused cannot be convicted of rape.

The prosecution was able to establish the commission of rape and murder. There is evidence that after the carnal assault, the victim lost consciousness and was in this condition when she was placed inside the duffel bag. So it was not a complex crime, but two separate crimes were committed for which the appellant could be convicted. Being separate crimes, and the complaint for rape not having been signed by the parents, grandparents or guardian of the deceased, the trial court could not have acquired jurisdiction to take cognizance of the rape case. (Art. 344, Rev. Penal Code) Appellant, therefore, cannot be convicted of the crime of rape but only of the crime of murder, with the aggravating circumstances of *en despoblado* and abuse of superior strength. The penalty for murder should be imposed in its maximum period which is death. The case of rape is dismissed. (People vs. Obaldo, 59 O.G. 1219)

Silence or acquiescence of the accused does not cure fatal defect.

True that no objection was interposed in the trial court or no error was assigned in this appeal, questioning the jurisdiction of the lower court, but such failure does not cure a fatal defect, as mere silence or acquiescence of the appellants cannot confer jurisdiction on the court to hear and determine the charge of rape in an information not signed by the offended party. (People vs. Engreso, *et al.*, C.A., 49 O.G. 1505)

Pardon in crimes against chastity.

Pardon of the offenders by the offended party is a bar to prosecution for *adultery* or *concubinage.* (Art. 344, par. 2) The pardon may be express or implied.

Pardon in adultery and concubinage must come *before* the institution of the criminal action and *both* offenders must be pardoned by the offended party if said pardon is to be effective. (People vs. Infante, 57 Phil. 138) The Spanish text of the Code speaks of *pardon of the adulterous act itself,* which in effect is a pardon that extends to both defendants. So, where the offended husband had pardoned the adulterous act of his wife, such pardon precluded him from prosecuting for adultery, not only his wife but also her paramour. (People vs. Mendez, *et al.,* C.A., 51 O.G. 1909)

Express pardon of the *offender by the offended party* or *other persons named in the law,* as the case may be, is a bar to prosecution for *seduction, abduction, rape* or *acts of lasciviousness.* (Art. 344, par. 3)

Pardon in seduction must also come *before* the institution of criminal action. (People vs. Miranda, 51 Phil. 274)

Can the parent of the offended party in adultery or concubinage validly pardon the offenders?

The law is clear on this point. It says: "nor x x x if he *(the offended party) shall* have pardoned the offenders." Hence, the parent of the offended party cannot validly pardon the offenders in adultery or concubinage.

Agreement to live separately, as evidence of consent.

Where the spouses signed an agreement stipulating "that both of us are free to get any mate and live with as husband and wife without any interference by any of us, nor either of us can prosecute the other for adultery or concubinage," said stipulation is an unbridled license for the commission of concubinage or adultery. It constitutes consent. (Matubis vs. Praxedes, G.R. No. L-11766, Oct. 25, 1960)

But a document which states, that the parties "will cease our relationship for the good of all of us," does not prove the condonation envisaged by Art. 344. (People vs. Solsona, C.A., 47 O.G. 1926)

Meaning of "shall have consented" which bars the institution of criminal action for adultery and concubinage.

In the case of *People vs. Schneckenburger, et al,* 73 Phil. 413, the Supreme Court stated: "We said before (in the case of People vs. Guinucud, 58 Phil. 621) that the consent which bars the offended party from instituting a

criminal prosecution in cases of adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness is that which has been given expressly or impliedly after the crime has been committed. We are now convinced that this is a narrow view in no way warranted by the language, as well as the manifest policy, of the law. The term "pardon" refers to the offense *after* its commission. "Consent" refers to the offense *prior* to its commission. No logical difference can be perceived between prior and *subsequent* consent, for in both instances as the offended party has chosen to compromise with his/her dishonor, he/she becomes unworthy to come to court and invoke its aid in the vindication of the wrong. For instance, a husband who delivers his wife to another man for adultery, is an unworthy, if not more, as where, upon acquiring knowledge of the adultery after its commission, he says or does nothing. We, therefore, hold that *prior* consent is as effective as *subsequent consent* to bar the offended party from prosecuting the offense."

Example of pardon:

F was aware that his wife was having carnal relations with *M*. With this knowledge, *F* and his wife executed a separation agreement. After this agreement was signed by them, *F* visited his wife and *M* in their residence. Later, *F* filed a complaint for adultery against his wife and *M*. His complaint for adultery was dismissed, because *F* had pardoned the adulterous acts of his wife. (People vs. Mendez and Del Pilar, C.A., 51 O.G. 1909)

Affidavit showing consent, basis for new trial.

Where during the pendency of the appeal from a judgment convicting the husband of concubinage, the wife executed an affidavit stating that she consented to the concubinage, the case was remanded to the trial court for new trial. (People vs. Camara, 100 Phil. 1098)

Condonation is not pardon in concubinage or adultery.

As condonation is forgiveness based upon the presumption and belief that the guilty party has repented, any *subsequent acts* of the offender showing that there was *no repentance* will not bar the prosecution of the offense. Any act of infidelity to the vows of marriage *subsequent to in the condonation* constitutes a new offense that is subject to criminal prosecution. (People vs. Engle and Price, 8 C.A., Rep. 495)

Note: When the complaint for adultery or concubinage is based *on acts already pardoned* by the offended spouse, the complaint will be dismissed.

Implied pardon or consent in adultery.

Where the offended husband, who had filed a complaint for adultery the second day after he had surprised her in criminal intercourse with her

co-accused, permitted his wife to continue living in the conjugal home until her arrest, in order to take care of their children, such sufferance does not amount to implied pardon so as to bar criminal prosecution. (People vs. Boca, *et al.*, C.A., 34 O.G. 2248)

If it was the wife who abandoned the husband, his failure to look for her would not amount to consent to her adulterous acts committed during the period of separation. (Ocampo vs. Florenciano, G.R. No. L-13553, Feb. 23, 1960)

Delay in the filing of complaint, if satisfactorily explained, does not indicate pardon.

Appellants contended that complainant had consented to their illicit acts or had pardoned them in view of the length of time that she allowed to lapse before filing her complaint. Complainant explained that she delayed the institution of the case because she was after sufficient evidence to insure the conviction of appellants. She knew that her husband was clever and resourceful. The birth of the child to his concubine was the event she was waiting for, and soon thereafter she filed her complaint.

Held: That the lapse of time had a plausible explanation. There was no inexcusable delay. There was no proof of consent or pardon. (People vs. Llagas and Neri, C.A., 40 O.G. 990)

Where the offended husband discovered the illicit relations of his wife with her co-accused in 1954, and filed his complaint for adultery in January, 1956, because during the interim he spied on the accused and waited for evidence, and his wife gave birth to a child in May, 1955, during the time the accused were cohabiting together, there was no tolerance or acquiescence on the part of the husband. (People vs. Acopiado, *et al.*,2 C.A. Rep. 725)

The pardon must be express in seduction, abduction, rape, or acts of lasciviousness.

Where after the consented abduction was consummated and after the girl was already dishonored and her parents were subjected to the consequent alarm, the girl's father allowed her to stay with the accused on the faith of his assurance that he would marry her, such consent cannot be construed as a pardon extinguishing the criminal liability of the accused. (People vs. Garcia, C.A., 40 O.G. 4479)

Pardon by parent, grandparent or guardian.

Art. 344 provides that the offenses of seduction, abduction, rape, or acts of lasciviousness shall not be prosecuted in any case, if the offender has

been expressly pardoned by the offended party or her parents, grandparents, or guardian, as the case may be.

Can the parent validly grant pardon to the offender without the express pardon by the offended girl?

The mother of the offended girl, 11 years of age, cannot validly grant pardon, because the pardon must be granted directly by the offended *party,* and it is only when she is dead or otherwise incapacitated to grant it, that her parents, grandparents or guardian may do so for her. (People vs. Arguelles, C.A., G.R. No. 612, March 31, 1937) Pardon by the parent must be accompanied by the express pardon of the girl herself. (U.S. vs. Luna, 1 Phil. 360)

Pardon by the offended party who is a minor must have the concurrence of parents.

The reason for the rule that the parents and the minor girl concur in giving the pardon, is that the minor girl, "in her tender age and lack of sufficient knowledge, would hardly know the full impact and consequences of her acts. In her indifference and inexperience, the parents are given the right and power to protect her." (People vs. Lacson, Jr., C.A., 56 O.G. 9460)

Exception.

When the offended girl has no *parents who* could concur in the pardon, she can *validly extend a pardon* even if she is a *minor,* as when the offender is her father and her mother is already dead. (People vs. Inciong, C.A.. 1 O.G. 904, Oct. 26, 1942)

Marriage of the offender with the offended party benefits the co-principals, accomplices and accessories.

Marriage of the offender with the offended party in seduction, abduction, acts of lasciviousness and rape, extinguishes criminal action or remits the penalty already imposed.

Even if the accused *as accomplice is already* serving sentence, the marriage of the principal with the offended party must benefit him. (Laceste vs. Santos, 56 Phil. 472)

This rule applies also to the accessory after the fact.

But the marriage must be entered into in *good faith* and with the intent of fulfilling the marital duties and obligations. (People vs. Santiago, 51 Phil. 68)

Note: The co-principals referred to in Art. 344 are those by inducement and by indispensable cooperation in *one single crime of rape.* If there are *two or more crimes of rape* committed by several persons as principals by *direct*

participation, the rule is not applicable because each carnal access amounts to a separate and independent crime of rape. (People vs. Bernardo, C.A., 38 O.G. 3479)

In rape, marriage extinguishes the criminal action or the penalty imposed only as to the principal.

In crimes against chastity, marriage between the offender and the offended party benefits not only the principals but also the accomplices and accessories. However, since rape has ceased to be a crime against chastity, but is now a crime against persons, it now appears that marriage extinguishes the penal action and the penalty only as to the principal (i.e., husband) and not as to the accomplices and accessories.

Actual marriage, not desire to marry, extinguishes criminal liability.

As the appellant incurred criminal liability for qualified seduction, his alleged desire to marry the offended party could not extinguish such liability. Only actual marriage could extinguish such liability. (People vs. Paulino, 7 C.A. Rep. 553)

Marriage of the offender with the offended party in other crimes does not extinguish criminal liability of the offender.

A and *B* (a woman) had amorous relations. Because of certain differences, their relationship was terminated. *A* committed *libel* and *slander* by *deed* against *B. A* was convicted of both crimes. Two months after said conviction, A contracted marriage with the offended party.

Held: Art. 344 is not applicable, because the crimes of which *A* was convicted are not among those enumerated therein. (People vs. Orzame, C.A., 39 O.G. 1168)

Marriage of parties guilty of adultery or concubinage, not included.

Note that the last paragraph of Art. 344 specifically mentions the crimes, and adultery and concubinage are not included.

A and B were prosecuted for adultery and, after trial, were convicted. While serving sentence for a few days, the offended husband died. A and B want to marry to be relieved of criminal responsibility. Is this legally possible? No, because the marriage of the parties guilty of adultery and concubinage is not included in this provision, as a means to extinguish the criminal action or to remit the penalty already imposed.

The reason for this is that both parties are offenders.

In a prosecution for concubinage, the marriage between the erring husband and his concubine, before or after the institution of the case is not available as a defense. (People vs. Baglan, *et al.*, 10 CA. Rep. 1108)

Art. 345. ***Civil liability of persons guilty of crimes against chastity.*** — Persons guilty of rape, seduction, or abduction, shall also be sentenced:

1. To indemnify the offended woman;

2. To acknowledge the offspring, unless the law should prevent him from so doing;

3. In every case to support the offspring.

The adulterer and the concubine in the case provided for in Articles 333 and 334 may also be sentenced, in the same proceeding or in a separate civil proceeding, to indemnify for damages caused to the offended spouse.

Civil liability of persons guilty of rape, seduction or abduction:

1. To indemnify the offended woman.
2. To acknowledge the offspring, *unless the law should prevent him from doing so.*
3. In every case to support the offspring.

Civil liability of the adulterer and the concubine.

The *adulterer* and the *concubine* can be sentenced only to indemnify for *damages caused* to the *offended spouse.*

The last paragraph of Article 345 authorizes the imposition of indemnity in cases of concubinage against the concubine only, *but not against the guilty husband.* (People vs. Ramirez, *et al.*, 63 O.G. 7939) The *guilty wife* in adultery *cannot also be sentenced* to indemnify for damages caused to the offended husband. The law speaks of *adulterer,* not adulteress.

Under the Revised Penal Code, there is no civil liability for acts of lasciviousness.

Note that Art. 345 mentions only person guilty of *rape, seduction,* or *abduction,* and the *adulterer* and *concubine.* The person guilty of acts of lasciviousness is not mentioned.

Reasons why only indemnity is possible in adultery and concubinage.

Acknowledgment of the offspring is not legally possible, because only children born of parents who could marry at the time of conception may be acknowledged. Support of the offspring is not included, because the person who gives birth, if at all, is *one* of the *offenders* and not the offended party.

Moral damages in crimes against chastity.

Art. 2219 of the Civil Code provides that moral damages may be recovered in *seduction, abduction, rape,* or other *lascivious acts,* as well as in *adultery* and *concubinage.* The parents of the female seduced, abducted, raped or abused may also recover moral damages.

Moral damages may be recovered both by the offended party and by her parents.

The loss of her virginity at the hands of the appellant, together with the attendant shame and scandal, entitles her, in the view of this Court, to the sum of P2,500 in moral damages. Her future as a woman is definitely impaired, and the resultant prejudice against her engendered in the male population of the barrio where she resides cannot be blinked away. The second error of the lower court is in making the award payable to the offended party *or* to her parents, which award is, by the very wording of the judgment, in the alternative. Article 2219 of the new Civil Code provides that moral damages are recoverable by the offended party in the cases of *"seduction,* abduction, rape, or other lascivious acts" and that the "parents of the female *seduced,* abducted, raped, or abused x x x may also recover moral damages." (Italics supplied) The conviction of the accused suffices as a basis to adjudge him, in the same action, liable for an award of moral damages, without independent proof thereof, to the victim *and* her parents, because the law presumes that not only the woman who was seduced, abducted, raped or abused, but as well her parents, naturally suffer besmirched reputation, social humiliation, mental anguish, and wounded feelings. In the case at bar, moral damages must be awarded to the offended woman and her parents, not to either of them, as ordered by the court *a quo.* (People vs. Fontanilla, G.R. No. L-25354, June 28, 1968)

Civil liability of the offenders in multiple rape.

All the accused must support the offspring. As any one of them may be the father and that each and every one of them is directly responsible that an unwilling mother may gave birth to an undesired offspring, each and every one of them contributed to, and cooperated in, the giving birth to the child. (People vs. Velo, *et al.*, 80 Phil. 438)

Judgment to recognize offspring, when proper; Art. 283, Civil Code, applied.

The phrase "when the period of the offense coincides more or less with that of the conception" in Art. 283, No. (1), Civil Code, means, in clearer language, that there is pregnancy within the period of conception, which is within 120 days from the commission of the offense. Hence, for the application of Art. 283, No. (1), Civil Code, in a criminal action for rape, there must be evidence that the offended woman became pregnant within 120 days from the date of the commission of the crimes. In the absence of such evidence, it is not proper for the judgment to indulge in speculation by sentencing the accused "to recognize the offspring, *if any.*" (People vs. Rivera C.A., 58 O.G. 68)

Prohibition against acknowledgment of offspring when offender is married, not applicable under the Family Code.

While under Article 283 of the Civil Code, the father is obliged to recognize the child as his natural child in cases of rape, abduction and seduction when the period of the offense coincides, more or less, with the period of conception, it has been held, however, that acknowledgment is disallowed if the offender is a married man, with only support for the offspring as part of the sentence. With the passage of the Family Code, however, the classifications of acknowledged natural children and natural children by legal fiction have been eliminated. *At present, children are classified as only either legitimate or illegitimate, with no further positive act required of the parent as the law itself provides the child's status. As* such, natural children under the Civil Code fall within the classification of illegitimate children under the Family Code.

Article 176 of the Family Code confers parental authority over illegitimate children on the mother, and likewise provides for their entitlement to support in conformity with the Family Code. *As such, there is no further need for the prohibition against acknowledgment of the offspring by the offender who is married which would vest parental authority in him.* Therefore, under Article 345 of the Revised Penal Code, the offender in a rape case who is married can only be sentenced to indemnify the victim and support the offspring, if there be any. However, in light of Article 201 of the Family Code, the amount and terms of support should be determined by the trial court only after due notice and hearing. (People vs. Bayani, 262 SCRA 688)

Recognition of offspring in multiple rape.

When three persons, one after another, raped a woman, *not* one may be required to recognize the offspring of the offended woman, it being

impossible to determine the paternity thereof. (People vs. Pedro de Leon, *et al,* G.R. No. L-2094, April 1950)

Civil liability in rape of married woman.

Only indemnity is allowed in rape of a married woman. (People vs. Sanico, C.A., 46 O.G. 98)

In *People vs. Bulaybulay* G.R. No. 104275, September 28, 1995 and *People vs. Acabo,* G.R. No. 106977, July 17, 1997, the *indemnity* for rape was fixed at P50,000.00.

Defendant cannot be sentenced to acknowledge the offspring, because the character of the origin prevents it, for the woman is married. (People vs. Manaba, 58 Phil. 665)

Defendant cannot be sentenced to support the offspring.

The same reason which prevents the offender from acknowledging the offspring should also prohibit him from entering periodically the home of the woman raped, in order to comply with the duty of supporting the spurious offspring. If this is allowed, it will be the source of great disturbance to the family rights of the parents who should live in peace and enjoy the attributes of their legitimate authority over their children. (U.S. vs. Yambao, 4 Phil. 204)

Art. 346. ***Liability of ascendants, guardians, teachers, or other persons entrusted with the custody of the offended party.*** — The ascendants, guardians, curators, teachers, and any person who, by abuse of authority or confidential relationship, shall cooperate as accomplices in the perpetration of the crimes embraced in chapters second, third and fourth of this title, shall be punished as principals.

Teachers or other persons in any other capacity entrusted with the education and guidance of youth, shall also suffer the penalty of temporary special disqualification in its maximum period to perpetual special disqualification.[1]

Any person falling within the terms of this article, and any other person guilty of corruption of minors for the benefit

[1]Appendix "A," Table of Penalties, No. 43.

of another, shall be punished by special disqualification from filling the office of guardian.

Persons who cooperate as accomplices but are punished as principals in rape, seduction, abduction, etc.

They are:

(1) Ascendants,

(2) Guardians,

(3) Curators,

(4) Teachers, and

(5) Any other person, who cooperates as accomplice with *abuse of authority or confidential relationship.*

Actually, these persons participate as accomplices in the commission of any of the crimes mentioned, but they are held liable as principals.

There is another crime where the accomplice is punished as principal, and that is the crime of slight illegal detention. (Art. 268, par. 2)

"Crimes embraced in chapters second, third and fourth of this title."

The crimes referred to are:

1. Rape.
2. Acts of lasciviousness.
3. Qualified seduction.
4. Simple seduction.
5. Acts of lasciviousness with the consent of the offended party.
6. Corruption of minors.
7. White slave trade.
8. Forcible abduction.
9. Consented abduction.

Title Twelve

CRIMES AGAINST THE CIVIL STATUS OF PERSONS

What are the crimes against the civil status of persons?

They are:

(1) Simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child. (Art. 347)

(2) Usurpation of civil status. (Art. 348)

(3) Bigamy. (Art. 349)

(4) Marriage contracted against provisions of law. (Art. 350)

(5) Premature marriages. (Art. 351)

(6) Performance of illegal marriage ceremony. (Art. 352)

Chapter One

SIMULATION OF BIRTHS AND USURPATION OF CIVIL STATUS

Art. 347. ***Simulation of births, substitution of one child for another, and concealment or abandonment of a legitimate child.*** — The simulation of births and the substitution of one child for another shall be punished by *prision mayor*[1] and a fine of not exceeding 1,000 pesos.

The same penalties shall be imposed upon any person who shall conceal or abandon any legitimate child with intent to cause such child to lose its civil status.

Any physician or surgeon or public officer who, in violation of the duties of a profession or office, shall cooperate in the execution of any of the crimes mentioned in the two next preceding paragraphs, shall suffer the penalties therein prescribed and also the penalty of temporary special disqualification.[2]

Acts punished under Art. 347.

1. Simulation of births.
2. *Substitution* of one child for another.
3. *Concealing or abandoning any* legitimate child *with intent to cause such child to lose its civil status.*

[1]See Appendix "A," Table of Penalties, No. 19.
[2]See Appendix "A," Table of Penalties, No. 40.

The object of the crime under Art. 347 is the creation of false, or the causing of the loss of, civil status.

The commission of any of the acts defined in Art. 347, must have for its object, the creation of a false civil status. The purpose is to cause the loss of any trace as to the filiation of the child.

The child, whose birth the woman feigns, loses its civil status in the family of the woman who has really given its birth and acquires, through fraud, another status to which it has no right.

The same may be said with reference to the substitution of one child for another.

Simulation of birth.

The simulation of birth takes place when the woman pretends to be pregnant when in fact she is not, and on the day of the supposed delivery, takes the child of another as her own.

In this case, the woman introduces a stranger in the family and defrauds the legitimate heirs.

The woman who *simulates* birth and the one who *furnishes* the child are both responsible as principals. (Guevara)

The simulation which is a crime is that which alters the civil status of a person.

A woman who pretends to be pregnant and simulates a birth, with no other purpose than to belie the reputation that she is sterile but introduces no *strange* child in the family, and causes no child to lose his civil status, and in fact occasions no damage, whether immediate or remote, does not incur any criminal liability. (Albert)

The fact that the child will be benefited by the simulation of its birth is not a defense.

Although the status acquired by the child through the simulation of its birth may be better than its first legal status, the law, more than the simulation of the civil status, punishes the offense as it creates a false status to the detriment of the members of the family into which the child is deceitfully introduced. (Viada, 3 Cod. Pen., 270-271)

Substituting one child for another.

This is committed when, for instance, *X* is born of A and *B; Y* is born of *C* and *D;* and the offender, with intent to cause the loss of any trace of

their filiation, exchanges *X* and *Y* without the knowledge of their respective parents.

The substitution may be effected by placing a live child of a woman in place of a dead one of another woman.

Concealing or abandoning any legitimate child.

In the third way of committing the crime, three requisites must be present, namely:

(1) The child *must be legitimate;*

(2) The offender *conceals* or *abandons* such child; and

(3) The offender has the *intent to cause* such child *to lose its civil status.*

The child must be *legitimate* and a *fully developed* and *living being,* as the child born not capable of living has no status, nor can he transmit any rights whatsoever. (U.S. vs. Capillo, *et al.*, 30 Phil. 355, citing Viada)

The unlawful sale of a child by its father, is not a crime under this article.

Thus, a father who sold his child to a Chinese couple for money consideration and agreed never to claim the child again is not liable under this article. (U.S. vs. Capillo, *et al.*, 30 Phil. 349)

Note: The reason for this ruling is that there was *no abandonment of* a child in the sense it should be understood in Art. 347, that is, leaving the child at a public place where other people may find it, and causing the child to lose its civil status.

Meaning of "abandon" as used in Art. 347.

The practice of abandoning new-born infants and very young children at the door of hospitals, churches and other religious institutions was formerly so well known in Spain. It is in this sense that the word *"abandon"* is used in Art. 347.

Concealing a legitimate child must be for the purpose of causing it to lose its civil status

This is another way of committing the crime in the second paragraph of Art. 347. But the concealing of the *legitimate* child must be with the intent to cause such child to lose its civil status.

He who places at the door of a charitable person a new-born child which is in a condition to stand the first inclemencies of the weather is supposed to

do it in order that it may be taken up and protected and, therefore, the legal presumption must be that he does not act with any other purpose than to cause the loss of any trace as to the filiation of the child. (U.S. vs. Capillo, *et al.*, 30 Phil. 354-355, citing Groizard)

When is the abandonment of a minor a crime against security and when is it a crime against the civil status of person?

The third form of committing this offense is by abandoning a child. Under Art. 276, a child is also abandoned.

But while in Art. 276, the offender must be one who has the custody of the child; in this article, the offender is any person.

As to the purpose of the offender, in Art. 347, the purpose is to cause the child to lose its civil status. In Art. 276, the offender has no such purpose. The purpose of the offender in Art. 276 is to avoid the obligation of rearing and caring for the child.

Problems:

1. A woman who has given birth to a child, abandons the child in a certain place, to free herself of the obligation and duty of rearing and caring for the child. What crime is committed by the woman? The crime is abandoning a minor under Art. 276.

2. Suppose that the purpose of that woman in abandoning the child is to preserve the inheritance of her child by a former marriage, what then is the crime? Evidently, the purpose of the woman is to cause the child to lose its civil status so that it may not be able to share in the inheritance; hence, the crime would fall under the second paragraph of Art. 347.

3. Suppose a child, one day after its birth, was taken to, and left in, the midst of a lonely forest, and it was found by a hunter who took it home, what crime was committed by the person who left it in the forest? It is attempted infanticide, as the act of the offender is an attempt against its life. (See U.S. vs. Capillo, *et al.*, 30 Phil. 349, citing Groizard)

Liability of physician or surgeon.

A physician or surgeon or public officer, who cooperates in the execution of any of these crimes, is also liable if he acts in violation of the duties of his profession or office (Art. 347, par. 3)

Art. 348. *Usurpation of civil status.* — The penalty of *prision mayor*[3] shall be imposed upon any person who shall usurp the civil status of another, should he do so for the purpose of defrauding the offended party or his heirs; otherwise, the penalty of *prision correccional* in its medium and maximum periods[4] shall be imposed.

Usurping the civil status of another is committed by assuming the filiation, or the parental or conjugal rights of another.

This crime is committed when a person represents himself to be another and assumes the *filiation* or the *parental* or *conjugal rights of such another person.*

Thus, where A impersonates himself to be C, the son of another, and assumes the rights of C, the offender commits a violation of this article.

Usurpation of profession may be punished under Art. 348.

The term "civil status" includes one's *public station,* or the rights, duties, capacities and incapacities which determine a person to a given class. (Black's Law Dictionary, p. 1580) It seems that the term "civil status" includes one's profession.

Thus, a person who, in the name of another, petitioned for the issuance of a duplicate of the latter's license as a professional, assuming the latter's person and profession, may be held liable for usurpation of civil status.

There must be intent to enjoy the rights arising from the civil status of another.

It is absolutely necessary, however, in order to constitute this crime that the *intent* of the offender is to *enjoy* the rights arising from the civil status of the person impersonated.

Otherwise, the case will be considered only as a violation of Art. 178 for assuming or using fictitious name, or as estafa under Art. 315. (Guevara)

[3]See Appendix "A," Table of Penalties, No. 19.
[4]See Appendix "A," Table of Penalties, No. 15.

The purpose of defrauding the offended party or his heirs qualifies the crime.

The penalty is heavier when the purpose of the impersonation is to defraud the offended party or his heirs.

Chapter Two

ILLEGAL MARRIAGES

Art. 349. *Bigamy. — The penalty of* ***prisionmayor***[1] **shall** be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

Elements:

1. That the offender has been *legally married.*
2. That the marriage has *not been legally dissolved* or, in case his or her spouse is absent, the *absent spouse could not yet be presumed dead* according to the Civil Code.
3. That he contracts a *second* or *subsequent* marriage.
4. That the second or subsequent marriage has all the *essential requisites for validity.*

The first marriage must be valid.

M and A married on August 5, 1936. During the subsistence of said marriage, *M* married *L* on May 14, 1941. A died on February 2, 1948. *M* married P on August 19, 1949. This last marriage gave rise to the prosecution of *M* for bigamy. The basis of the bigamy charge is the marriage of M with *L*, because when *M* married *P*, *A* was already dead.

Held: The provisions of Sec. 29 of Act No. 3613, the marriage law in force in 1941, plainly make a subsequent marriage contracted by any person during the lifetime of his first spouse illegal and void from its performance, and no judicial decree is necessary to establish its invalidity, as distinguished from mere annullable marriages.

[1]See Appendix "A," Table of Penalties, No. 40.

The marriage of *M* with *L*, which is to be considered the first marriage for the purpose of the bigamy charge, is null and void and, therefore, non-existent.

M was acquitted. (People vs. Mendoza, 95 Phil. 845; People vs. Aragon, 100 Phil. 1033)

Note: Had *M* been prosecuted for bigamy for having contracted the second marriage with *L*, *M* would have been liable.

Under the Family Code of the Philippines, the parties cannot presume their marriage to be void. A judicial declaration of nullity of the second marriage is still required. In the absence of said declaration, the second marriage contracted by M and L is considered valid for purpose of prosecuting M for bigamy. Thus, had M been prosecuted for bigamy after the Family Code took effect, M would have been found guilty.

Nullity of marriage, not a defense in bigamy charge.

It is now settled that the fact that the first marriage is void from the beginning is not a defense in a bigamy charge. As with a voidable marriage, there must be a judicial declaration of the nullity of a marriage before contracting the second marriage. Article 40 of the Family Code of the Philippines states that "The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void." The Code Commission believes that the parties to a marriage should not be allowed to assume that their marriage is void, even if such is the fact, but must first secure a judicial declaration of nullity of their marriage before they should be allowed to marry again. Thus, in *Wiegel vs. Sempio-Diy,* 143 SCRA 499, the Supreme Court held that there is need of a judicial declaration of the fact that the marriage of a person is void before that person can marry again; otherwise, the second marriage will be void.

The subsequent judicial declaration of the nullity of the first marriage was immaterial because prior to the declaration of nullity, the crime had already been consummated. Moreover, petitioner's assertion would only delay the prosecution of bigamy cases considering that an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that. (Mercado vs. Tan. G.R. No. 137110, 1 August 2000, 337 SCRA 122, 133)

Void marriages.

The following marriages are void *ab initio:* (1) those contracted by any party below eighteen years of age even with the consent of parents or guardians;(2) those solemnized by any person not legally authorized to

perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so; (3) those solemnized without a license, except those of exceptional character; (4) bigamous or polygamous marriages, not falling under Article 41; (5) those contracted through mistake of one contracting party as to the identity of the other; (6) those subsequent marriages that are void under Article 53; (7) those contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage; (8) those between ascendants and descendants of any degree; (9) those between brothers and sisters, whether of the full or half blood; (10) those between collateral blood relatives, whether legitimate or illegitimate, up to the fourth civil decree; (11) those between stepparents and stepchildren; (12) those between parents-in-law and children-in-law; (13) those between the adopting parent and the adopted child; (14) those between the surviving spouse of the adopting parent and the adopted child; (15) those between the surviving spouse of the adopted child and the adopter; (16) those between an adopted child and a legitimate child of the adopter; those between adopted children of the same adopter; and (17) those between parties where one, with the intention to marry the other, killed the other's spouse or his or her own spouse. (Articles 35, 36, 37, and 38, Family Code of the Philippines)

Liability for bigamy, among legal consequences arising from a void marriage.

Although the judicial declaration of the nullity of a marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the *vinculum* between the spouses is concerned, it is significant to note that said marriage is not without legal effects. Among these effects is that children conceived or born before the judgment of absolute nullity of the marriage shall be considered legitimate. There is therefore a recognition *written into the law itself* that such a marriage, although void *ab initio,* may still produce legal consequences. Among these legal consequences is incurring criminal liability for bigamy. To hold otherwise would render the State's penal laws on bigamy completely nugatory, and allow individuals to deliberately ensure that each marital contract be flawed in some manner, and to thus escape the consequences of contracting multiple marriages, while beguiling throngs of hapless women with the promise of futurity and commitment. (Tenebro vs. CA, GR No. 150758, February 18, 2004)

Voidable marriages.

A marriage *may be annulled for any of* the following causes: (1) that the party in whose behalf it is sought to have the marriage annulled was

eighteen years of age or over but below twenty-one, and the marriage was solemnized without the consent of the parents, guardian, or person having substitute parental authority over the party, in that order, unless after attaining the age of twenty-one, such party freely cohabited with the other and both lived together as husband and wife; (2) that either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband and wife; (3) that the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife; (4) that the consent of either party was obtained by force, intimidation, or undue influence, unless the same having disappeared or ceased, such party thereafter freely cohabited with the other as husband and wife; (5) that either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable; (6) that either party was afflicted with a sexually-transmissible disease found to be serious, and appears to be incurable; and (7) that contracted by a person whose spouse has been absent for four consecutive years, said person having a well-founded belief that the absent spouse was already dead and after the latter is declared presumptively dead in a summary proceeding. (Articles 41 and 45, Family Code of the Philippines)

"Before the former marriage has been legally dissolved."

Note that what Art. 349 punishes is the act of contracting a second or subsequent marriage *before the former marriage* had been *dissolved.*

The first marriage is, at its worst, merely voidable and not void. (Arts. 85 and 86, New Civil Code) It is valid for all purposes until set aside by a competent court. Even if the accused, as plaintiff in the civil case, prevails therein and his first marriage is annulled, such pronouncement has no retroactive effect as to exculpate said accused in the bigamy case where the two marriages have been celebrated previous to the filing of the complaint for annulment. "Parties to a marriage should not be permitted to judge its nullity, only competent courts having such authority. Prior to such declaration of nullity, the validity of the first marriage is beyond question. A party who contracts a second marriage then assumes the risk of being prosecuted for bigamy." (Landicho vs. Relova, 22 SCRA 731, 735) The civil case for annulment of the first marriage, therefore, does not pose a prejudicial question as to warrant the suspension of the trial and proceedings in the criminal case for bigamy. (Roco, *et al.* vs. Cinco, *et al.*,68 O.G. 2952, citing People vs. Aragon, 94 Phil. 357, 369)

The outcome of the civil case for annulment of petitioner's marriage to Narcisa had no bearing upon the determination of petitioner's innocence or guilt in the criminal case for bigamy, because all that is required for the charge of bigamy to prosper is that the first marriage be subsisting at the

time the second marriage is contracted. (Te vs. Court of Appeals, G.R. No. 126746, 29 November 2000, 346 SCRA 327, 335; Abunado vs. People, G.R. No. 159218, March 30, 2004)

Causes which may produce the legal dissolution of the first marriage:

1. Death of one of the contracting parties;
2. Judicial declaration annulling a void marriage; and
3. Judicial decree annulling a voidable marriage.

The death of the first spouse during the *pendency* of the bigamy case does not extinguish the crime, because when the accused married the second spouse, the first marriage was still subsisting. (People vs. Reyes, C.A., 52 O.G. 1525)

Effects of divorce granted by foreign courts.

If a spouse leaves the family domicile and goes to another state for the sole purpose of obtaining a divorce, and with no intention of remaining, his residence there is not sufficient to confer jurisdiction on the court of that state. This is especially true where the cause of divorce is one not recognized by the laws of the state of his own domicile. (Ramirez vs. Gmur, 42 Phil. 855)

This rule is applicable to those domiciled in the Philippines, although they contracted marriage elsewhere. (Gorayeb vs. Hashim, 50 Phil. 22)

If the accused, in contracting the second marriage, acting on the honest belief that he was lawfully divorced from his first wife, he is liable for bigamy through reckless imprudence. (People vs. Schneckenburger, C.A., G.R. No. 2457, August 31, 1938)

Note: In the case of People vs. Bitdu, 58 Phil. 817, it was held to be intentional bigamy. The reason for this ruling is that the legal effect of divorce is a matter of law and everyone is presumed to know the law.

Effect of divorce obtained abroad by alien spouse.

When a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law. (Article 26, par. 2, Family Code)

Thus, a Filipino who marries a foreigner who subsequently divorces him or her cannot be prosecuted for bigamy if he or she enters into a second marriage.

Divorce by a Moro datu according to their customs and usages, not recognized.

A divorce cannot be had except in that court upon which the State has conferred jurisdiction and then only for those causes and with those formalities, which the State has by statute prescribed. (People vs. Bitdu, 68 Phil. 817)

Defense has the burden of proof of dissolution of first marriage.

Once the prosecution has established that the defendant was *already married* at the time he *contracted the second marriage,* the burden of proof to show the *dissolution of the first marriage is* upon the defense.

Hence, it is the defense who must prove that the first wife had died or that the marriage had been dissolved by lawful process before the second marriage was contracted. (People vs. Dungao, G.R. No. 34330, Oct. 26, 1931)

When a person marries twice, the second marriage is presumed valid and the former one is presumed to have been dissolved by death or divorce. (Son Cui vs. Guepangco, 22 Phil. 216; Sy Joc Lieng, etc. vs. Sy Quia, *et al.,* 16 Phil. 137) But the presumption as to the dissolution of the first marriage may yield to circumstances. In *Rustia vs. Ramos,* 48 Phil. 292, in which the wife and her first husband were present in court, when the case brought against her for the annulment of her second marriage was being tried, and she, while testifying in her behalf, did not claim that her first marriage had been dissolved by divorce, the Supreme Court declined to apply the presumption of dissolution to the first marriage and declared it to be existing at the time of the second marriage. (Moran, Rules of Court, 1952 Ed., p. 502)

"Before the absent spouse has been declared presumptively dead."

Under Article 41 of the Family Code, a summary proceeding for the declaration of presumptive death of the absent spouse is required before the surviving spouse can remarry.

One who contracted a subsequent marriage before the declaration of presumptive death of the absent spouse is guilty of bigamy.

According to the accused, his wife whom he married in November, 1944, disappeared and he did not know her whereabouts; that earlier in 1951, someone informed him that his wife had died; and that in September of the same year, he married Eugenia Velarde. *Held:* The accused committed the crime of bigamy. (People vs. Reyes, CA-G.R. No. 12107-R, June 30, 1955)

Note: For the present spouse to contract a subsequent marriage, an absent spouse is presumed dead if he has been absent for four consecutive years and the spouse present had a well-founded belief that he is already dead. In case of disappearance where there is danger of death, an absence of only two years will be sufficient. However, a declaration of presumptive death should first be obtained from the courts. (See Family Code of the Philippines)

The second marriage must have all the essential requisites for validity.

The second marriage, having all the essential requisites, would be valid were it not for the subsistence of the first marriage. Art. 3 of the Family Code enumerates the three formal requisites for valid marriage. A marriage license issued *before or at the time* of marriage is one of them.

Thus, when the second marriage took place one day before the issuance of the marriage license, such marriage is void *ab initio* under Art. 80(3) of the Civil Code [now Art. 4 of the Family Code]. If the second marriage is void, there is no bigamy. (People vs. De Lara, C.A., 51 O.G. 4079)

If the second marriage of the accused is null and void according to Mohammedan rites, because the father of the girl did not give consent thereto, the accused is not liable for bigamy. (People vs. Dumpo, 62 Phil. 246)

Validity of second marriage is a prejudicial question to liability for bigamy.

In order that petitioner may be held guilty of the crime of bigamy, the marriage which he contracted for the second time with Elizabeth Caesar must first be declared valid. But its validity had been questioned in the civil action. This civil action must be decided before the prosecution for bigamy can proceed. (Merced vs. Hon. Diez, *et al.*, 109 Phil. 155)

Judgment of annulment precludes verdict of guilt in charge of bigamy.

Petitioner was charged with bigamy, but she filed an action to annul her second marriage on the ground of duress. After a finding that there was no collusion, the second marriage was annulled by a judgment that became final. The trial court denied her motion to dismiss the bigamy case, on the ground that the parties and the issues in the two cases are not the same. On *certiorari* and prohibition, the fiscal contended that the annulment decision should only be a defense at the trial. *Held:* The judgment of annulment is determinative of petitioner's innocence and precludes a verdict that she

committed bigamy. To try the criminal case in the face of such judgment would be unwarranted. Even if the judgment is erroneous, it is not a void judgment. (De la Cruz vs. Ejercito, 61 SCRA 1)

The second spouse is not necessarily liable for bigamy.

Appellant's contention that the crime of bigamy entails the joint liability of two persons who marry each other, while the previous marriage of one is valid and subsisting, is completely devoid of merit. Even a cursory scrutiny of Art. 349 of the Revised Penal Code will disclose that the crime of bigamy can be committed by one person who contracts a subsequent marriage while the former marriage is valid and subsisting. x x x Whether or not the second spouse should be included in the information is a question of fact that was determined by the fiscal who conducted the preliminary investigation in this case. (People vs. Nepomuceno, Jr., 64 SCRA 518)

The second husband or wife who knew of first marriage is an accomplice.

A person, whether man or woman, who knowingly consents or agrees to be married to another already bound in lawful wedlock is guilty as an accomplice in the crime of bigamy. (Viada, 3 Cod. Pen. 274)

The witness who falsely vouched for the capacity of either of the contracting parties is also an accomplice.

If the witness vouched for the capacity of either of the contracting parties, knowing that one of the parties was already married, he is liable as accomplice. (Viada, 3 Cod. Pen. 274)

But if the witness merely attested to the marriage ceremony and did not vouch nor assert anything as to the personal condition of the contracting parties, he is not liable. (U.S. vs. Gaoiran, 17 Phil. 404)

Bigamy is not a private crime.

In the crime of bigamy, it is immaterial whether it is the first or the second wife who initiates the action, for *it is a public offense* which can be denounced not only by the person affected thereby but even by a civic spirited citizen who may come to know the same. (People vs. Belen, C.A., 45 O.G., Supp. 5, 88)

And the fact that the second wife was aware of the defendant's first marriage when the second marriage was solemnized, will not afford defendant relief. This is an offense against the State, not against the second wife. (People vs. Concepcion, C.A., 40 O.G. 2878)

A person convicted of bigamy may still be prosecuted for concubinage.

They are two distinct offenses in law and in fact, as well as in the mode of their prosecution. The *first* is an offense against *civil status* which may be prosecuted at the instance of the State; the *second*, an offense against *chastity* and may be prosecuted only at the instance of the offended party. The celebration of the second marriage, with the first still existing, characterizes the crime of bigamy; on the other hand, the mere cohabitation by the husband with a woman who is not his wife characterizes the crime of concubinage.

Art. 350. ***Marriage contracted against provisions of laws.*** — The penalty of *prision correccional* in its medium and maximum **periods**[2] shall be imposed upon any person who, without being included in the provisions of the next preceding article, shall contract marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment.

If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation, or fraud, he shall be punished by the maximum period of the penalty provided in **the** next preceding paragraph.

Elements:

1. That the offender contracted marriage.
2. That he knew *at the time that* —
   a. the requirements of the law were not complied with; or
   b. the marriage was in disregard of a legal impediment.

Circumstance qualifying the offense.

If either of the contracting parties obtains the consent of the other by means of violence, intimidation or fraud. (Art. 350, par. 2)

When consent is obtained by means of violence, intimidation, or fraud, the requirement of the law as to consent is not complied with and the

[2]See Appendix "A," Table of Penalties, No. 15.

marriage is not only illegal but is classified as a qualified illegal marriage under Article 350 of the Code. (Asuncion vs. Pepa, *et al.*, C.A., 58 O.G. 3873)

"Without being included in the provisions of the next preceding article."

Under this article, the offender must not be guilty of bigamy.

Illustration:

A, who was already married to *C*, obtained a blank form for marriage contract and, having secured the signature of *B* on it without the blanks being filled, falsified the same by filling the blanks and making it complete with the signatures of the justice of the peace and of the local civil registrar. *B* insisted on a church marriage. A and *B* went to a priest, who, relying on the falsified marriage contract, solemnized the marriage.

Held: This case does not involve a violation of Art. 349, because the second marriage, being void for lack of marriage license, cannot give rise to bigamy.

But A is guilty under Art. 350, because he contracted marriage knowing that the requirements of the law have not been complied with, to wit: he did not have marriage license when he contracted the marriage. (People vs. Peralta, CA-G.R. No. 13130-R, June 30, 1955)

Requirements of the law for valid marriage.

The requisites of a valid marriage are:

(a) legal capacity of the contracting parties who must be a male and a female;

(b) consent freely given in the presence of the solemnizing officer;

(c) authority of the solemnizing officer;

(d) a valid marriage license, except in marriages of exceptional character; and

(e) a marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age. (Articles 2 and 3, Family Code)

Legal impediment.

Thus, uncles and nieces, for instance, cannot marry because their relationship is a legal impediment.

The undissolved first marriage is a legal impediment to a second marriage. (People vs. Peralta, CA-G.R. No. 13130-R, June 30, 1955)

Marriage contracted by minors who had legal capacity is valid.

Minors contracted marriage without the consent of their parents as required by the Marriage Law. But they had legal capacity, being then above the ages of 14 and 12 (now 18 for both male and female, as provided in Art. 35, Family Code) *Held:* The marriage is valid without prejudice to their criminal prosecution. (Aguilar vs. Lazaro, 4 Phil. 735)

Conviction of a violation of Art. 350 involves moral turpitude.

Conviction of violation of Art. 350 of the Revised Penal Code involves moral turpitude. The respondent is disqualified from being admitted to the bar. (Villasanta vs. Peralta, 101 Phil. 313)

Art. 351. ***Premature marriages.*** **— Any widow who shall marry within three hundred and one days from the date of the death of her husband, or before having delivered if she shall have been pregnant at the time of his death, shall be punished by** *arresto* ***mayor***[1] **and a fine not exceeding 500 pesos.**

The same penalties shall be imposed upon any woman whose marriage shall have been annulled or dissolved, if she shall marry before her delivery or before the expiration of the period of three hundred and one days after the legal separation.

Persons liable for premature marriages:

1. A *widow* who married within 301 days *from the date of the death* of her husband, or before having delivered if she is pregnant *at the time of* his death.
2. A woman who, her *marriage* having been *annulled* or *dissolved,* married before her delivery or before the expiration of the period of 301 days *after the date of the legal separation.*

[1]See Appendix "A," Table of Penalties, No. 1.

Reason for fixing 301 days.

If the ordinary duration of the pregnancy of the woman is nine months and some days, a tardy birth is not an impossibility.

The law in fixing the said 301 days (10 months), admits the possibility that a woman may be in pregnancy for more than nine months. (U.S. vs. Dulay, 10 Phil. 305)

Reason for requirement.

This provision is intended to prevent confusion in connection with filiation and paternity, inasmuch as the widow might have conceived and become pregnant by her late husband. (U.S. vs. Dulay, 10 Phil. 305)

Art. 84 of the New Civil Code provides that no marriage license shall be issued to a widow till after 300 days following the death of her husband, unless in the meantime she has given birth to a child.

Note: The provisions of Art. 84 of the Civil Code has already been deleted under the Family Code.

Purpose of the law in punishing premature marriages.

The purpose of the law is to prevent doubtful paternity. (People vs. Rosal, 49 Phil. 509)

The period of 301 days may be disregarded if the first husband was impotent or sterile.

C had cohabited with her first husband *I* for 18 years without even conceiving. The family physician found *I* impotent or sterile. With the belief that her husband was permanently impotent or sterile and because five months after his death, *C* felt that she was not pregnant, C contracted a second marriage. Is *C* criminally liable? No, because there was *lacking* on her part the element of malice, indispensable to all intentional felonies. (People vs. Masinsin, C.A., 49 O.G. 3908)

The period of 301 days is important only for cases where the woman is not pregnant.

The period of 301 days, or 10 months, is only for cases where the woman is not, or does not know yet that she is, pregnant at the time she becomes a widow.

If she is pregnant at the time she becomes a widow, the prohibition is good only up to her delivery.

Art. 352. ***Performance of illegal marriage ceremony.*** **— Priests or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any illegal marriage ceremony shall be punished in accordance with the provisions of the Marriage Law.**

The offender under Art. 352 must be authorized to solemnize marriages.

Art. 352 presupposes that the priest or minister or civil authority is authorized to solemnize marriages. If the accused is *not authorized* to solemnize marriage and he performs an illegal marriage ceremony, he is liable under Art. 177.

The offender is punished under the Marriage Law.

The penalty is imprisonment for not less than one month nor more than two years, or a fine not less than P200 nor more than P2,000. (Sec. 39, Act No. 3613, Marriage Law)

A clergyman who performed a marriage ceremony, not knowing that one of the contracting parties is a minor, is not liable.

Appeal from a judgment convicting the accused of performing a marriage ceremony where one of the contracting parties was under the age of consent. It having been held in the case of *U.S. vs. Peñalosa*, 1 Phil. 109, that neither of the spouses can be convicted for a violation of Article 475 of the old Penal Code (corresponding to Article 350 of the Revised Penal Code), if he or she acted in good faith and without the knowledge that the other was under the age of consent, the question arises whether the person solemnizing the marriage may plead similar good faith in defense to an action brought against them. *Held:* If a man, desiring to marry a woman, may be excused from criminal prosecution upon the ground that he has been deceived and mistaken as to her age, it would seem that the clergyman, who knows neither of the parties and who must of necessity depend upon an independent investigation in order to determine the ages of the parties, would be in a far better position to invoke the protection of the principle than would the husband. (U.S. vs. San Juan, 25 Phil. 513)

Title Thirteen

CRIMES AGAINST HONOR

What are the crimes against honor?

They are:

(1) Libel by means of writings or similar means. (Art. 355)

(2) Threatening to publish and offer to prevent such publication for a compensation. (Art. 356)

(3) Prohibited publication of acts referred to in the course of official proceedings. (Art. 357)

(4) Slander. (Art. 358)

(5) Slander by deed. (Art. 359)

(6) Incriminating innocent person. (Art. 363)

(7) Intriguing against honor. (Art. 364)

Chapter One

LIBEL

Section One. — Definition, forms, and punishment of the crime

Art. 353. ***Definition of libel.*** **— A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.**

Defamation.

Defamation, which includes libel and slander, means the offense of injuring a person's character, fame or reputation through false and malicious statements. It is that which tends to injure reputation or to diminish the esteem, respect, good will or confidence in the plaintiff or to excite derogatory feelings or opinions about the plaintiff. It is the publication of anything which is injurious to the good name or reputation of another or tends to bring him into disrepute. Defamation is an invasion of a *relational interest* since it involves the opinion which others in the community may have, or tend to have, of the plaintiff. (MVRS Pub. Inc. vs. Islamic Da'wah Council of the Phils., Inc., G.R. No. 135306, 444 Phil. 230, 241 [2003])

Defamation is the proper term for libel as used in Art. 353.

The Spanish text used the term "defamacion" which is translated as "libel" in the English text.

"Libel" is a defamation committed by means of writing, printing, lithography, engraving, radio, phonograph, painting or theatrical or cinematographic exhibition, or any similar means (Art. 335). Oral defamation is called slander.

No distinction between calumny, insult and libel.

The Revised Penal Code punishes all kinds of *attack against honor* and *reputation,* thereby eliminating once and for all the idle distinction between calumny and insult, under the old Penal Code, and libel under Act No. 227. (People vs. Del Rosario, *et al.*, 86 Phil. 163)

Seditious libel is punished, not in this Chapter, but in Art. 142.

Thus, a person who, feigning suicide, writes a supposed suicide note *calling the government* as *one of crooks* and *dishonest persons* infested *with Nazis* and *Fascists,* commits *seditious* libel. (Espuelas vs. People. G.R. No. L-2290, Dec. 17, 1952)

Reason why defamation is punished.

The enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty or property. It is one of those rights necessary to human society that underlie the whole scheme of civilization. The law recognizes the value of such reputation and imposes upon him who attacks it, by slanderous words or libelous publications, the liability to make full compensation for the damages done. (Worcester vs. Ocampo, 22 Phil. 42)

If prosecuted for and found guilty of the crime of libel, he may suffer imprisonment or be required to pay a fine, or both.

Elements of defamation:

1. That there must be an *imputation* of a *crime,* or of a *vice* or *defect, real* or imaginary, or any *act, omission, status* or *circumstance.*
2. That the *imputation* must be *made publicly.*
3. That it must be *malicious.*
4. That the imputation must be *directed* to a natural or juridical *person,* or *one* who is *dead.*
5. That the imputation must *tend to cause* the dishonor, discredit or contempt of the person defamed.

There must be a defamatory imputation.

The imputation may cover:

a. Crime allegedly committed by the offended party;

b. Vice or defect, real or imaginary of the offended party; or

c. Any act, omission, condition, status of, or circumstance relating to the offended party.

Test of defamatory character of the words used.

In determining whether a statement is defamatory, the words used are construed in their entirety and taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense. (Novicio vs. Aggabao, 463 Phil. 510, 516 [2003].

Words calculated to induce suspicion are sometimes more effective to destroy reputation that false charges directly made. Ironical and metaphorical language is a favored vehicle for slander. A charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person against whom they were uttered was guilty of certain offenses, or are sufficient to impeach the honesty, virtue or reputation, or to hold him up to public ridicule. (U.S. vs. O'Connell, 37 Phil. 767)

The meaning of the writer is immaterial.

It is not the intention of the writer or speaker, or the understanding of the plaintiff or of any hearer or reader by which the actionable quality of the words is to be determined, but the meaning that the words in fact conveyed on the minds of persons of reasonable understanding, discretion and candor, taking into consideration the surrounding circumstances which were known to the hearer or reader. The alleged defamatory statement should be construed not only as to the expression used but also with respect to the whole scope and apparent object of the writer or speaker. (People vs. Encarnacion, C.A., 48 O.G. 1817)

The alleged libelous article must be construed as a whole. (Jimenez vs. Reyes, 27 Phil. 52; U.S. vs. O'Connell, 37 Phil. 767; U.S. vs. Sotto, 38 Phil. 666) In other words, the article must be construed in its entirety including the headline, as they may enlarge, explain, or restrict, or be enlarged, explained or strengthened or restricted by the context. Whether or not it is libelous depends upon the scope, spirit, and motive of the publication taken in its entirety. (Imperial, *et al.* vs. The Manila Publishing Co., Inc., *et al.*, 13 C.A. Rep. 990, citing Wiley vs. Oklahoma Press Pub. Co., 106 Okla. 52; 233 PW. 244; 40 ALR 573; Wing vs. Wing, 66 Mo. 62, 22 Am. Rep. 481; Dorr vs. Lopez, 51 O.G. 1326)

In applying these rules to the language of an alleged libel, the court will disregard any subtle or ingenious explanation offered by the publisher on being called to account. The whole question being the effect the publication held upon the minds of the readers, and they not having been assisted by

the offered explanation in reading the article, it comes too later to have the effect of removing the sting, if any there be, from the word used in the publication. (U.S. vs. Sotto, 38 Phil. 666)

Where the comments are insincere and intended to ridicule rather than praise the plaintiff, the publication is libelous. Praise undeserved is slander in disguise. (Jimenez vs. Reyes, 27 Phil. 52)

Publication, even if intended for humor, may be libelous when the language used passed from the bounds of playful jest and intensive criticism into the region of scurrilous calumniation and intemperate personalities. (Oliver, *et al.* vs. "La Vanguardia, Inc.", 48 Phil. 429)

FIRST ELEMENT: THERE MUST BE AN IMPUTATION OF A CRIME, OR OF A VICE OR DEFECT, OR ANY ACT, OMISSION, CONDITION, STATUS OR CIRCUMSTANCE

(a) IMPUTATION OF A CRIMINAL ACT

An article which portrays the offended party as a swindler who, prior to his election as municipal president, collected money from several inhabitants of the town through fraud and deceit and constructed a house worth P40,000 with the money so collected, imputes the commission of the crime of estafa to the offended party. (People vs. Bailo, *et al.*, C.A., 37 O.G. 2373)

Branding somebody as having murdered his brother-in-law, enriching himself at the expense of others who trusted him, calling one a bigamist and becoming rich overnight through questionable transactions and influence peddling, winning in an election through mass fraud and rampant vote-buying because of the influence of brother-in-law are obviously libelous and slanderous for they are malicious imputations of criminal acts tending to cause dishonor, discredit and contempt of the complainant, punishable under the provisions of Article 353 of the Revised Penal Code. (People vs. Dianalan, 13 C.A. Rep. 34)

Imputation of a crime may be implied from the acts and statements of the accused.

The belief of petitioner is patently unmeritorious. While it is true that she did not directly call LT a thief, the implication of her acts and statements are clearly to that effect. She confronted the complainant regarding the loss of her money, telling LT that she was the only one who approached her table and that as soon as the complainant left, the money had disappeared. She even remarked, "who knows?" when complainant vehemently denied having taken the money. Furthermore, she intimated that complainant should allow

herself to be searched. All these statements were made in a loud voice in the presence of many persons subjecting offended party to embarrassment and ridicule before other bank employees. These acts likewise unravel the existence of malice in fact. Otherwise, the inquiry should have been done discreetly and not in the form of imputations within the hearing of other employees. (De Guzman vs. People and Court of Appeals, G.R. No. L-19075, November 23, 1966)

Imputation of criminal intention not libelous.

Such imputation is not libelous, because intent to commit a crime is not a violation of the law. This is more so, when it is a mere assertion or expression of opinion as to what will be the future conduct of another. (People vs. Baja, C.A., 40 O.G., Supp. 5, 206)

An expression of opinion by one affected by the act of another and based on actual fact is not libelous.

An expression of opinion, such as, that a person is unfair or partial in the distribution of her property, where it appears that the *wife* of the defendant has been deprived of her share, is not libelous. (People vs. Baja, C.A., 40 O.G., Supp. 5, 206)

But in order to escape criminal responsibility for libel or slander, it is not enough for the party who writes a defamatory communication to another to say that he (the writer) expresses therein no more than his opinion or belief. The communication must be made in the performance of a "legal, moral, or social duty". Defendant had no such "legal, moral, or social duty" to convey his *opinion* or *belief* about, complainant's moral fiber, to the Director of Printing or the Secretary of General Services. (Orfanel vs. People, 30 SCRA 819-820)

(b) IMPUTATION OF A VICE OR DEECT

When a person, in an article, imputes upon the persons mentioned therein, *lascivious* and *immoral* habits, that article is of a libelous nature as it tends to discredit the person libeled in the minds of those reading the said article. (People vs. Suarez, G.R. No. 35396, April 11, 1932)

(c) IMPUTATION OF AN ACT OR OMISSION

An article signed by the accused and published in the *Philippine Herald* says that the offended party used to borrow money without intention to pay; that he had ordered the fixing of his teeth without paying the fees for the services rendered by the dentist; etc. contains an imputation of an act and omission which is defamatory. (People vs. Tolentino, C.A., 370.G. 1763)

(d) IMPUTATION OF CONDITION, STATUS OR CIRCUMSTANCE

Calling a person a bastard or leper within the hearing of other persons is defamatory, because there is an imputation of a condition or status which tends to cause dishonor or contempt of the offender party.

Thus the accused was declared guilty of the crime of libel for writing and publishing an article containing the words *"coward, vile soul, dirtysucker, savage, hog who always looks toward the ground"* which refer to the offended party, thereby exposing the latter to public contempt and ridicule. (U.S. vs. Ortiz, *et al.*, 8 Phil. 752)

A letter addressed to a lawyer was found libelous for using words such as "lousy," "inutile," "carabao English," "stupidity," and "satan." It casts aspersion on the character, integrity and reputation of respondent as a lawyer and exposed him to public ridicule. (Buatis, Jr. vs. People, G.R. No. 142509, 24 March 2006)

The word *"mangkukulam"* is undoubtedly an epithet of opprobrium. To say that complainant is a witch and sorceress is to impute to her a *vice, condition or status* that is dishonorable and contemptible, since it accuses her of having employed the black art; of possessing supernatural power by reason of a covenant *with evil spirits;* and of *having trafficked* with the devil. The attribution to her of the death of three persons is an imputation of a crime. (People vs. Carmen Sario, G.R. No. L-20754 and G.R. No. L-20753, June 30, 1966)

SECOND ELEMENT: THE IMPUTATION MUST BE MADE PUBLICLY

Meaning of publication.

Publication is the communication of the defamatory matter to some third person or persons. (People vs. Atencio, CA-G.R. Nos. 11351-R to 11353-R, Dec. 14, 1954)

Publication of the defamatory imputation.

One of the typesetters of the paper testified that the defendant handed to him, to be set in type, the article in question, and that the manuscript thus delivered was in the handwriting of the defendant.

Held: **Delivering the article to the typesetter is *sufficient* publication. (U.S. vs. Crame, 10 Phil. 135)**

Sending to the wife, a letter defamatory of her husband, is sufficient publication. (U.S. vs. Ubnana, 1 Phil. 471) Writing a letter to another person other than the person defamed is sufficient to constitute publication, for the person to whom the letter is addressed is a third person in relation to its

writer and the person defamed therein. (Orfanel vs. People, 30 SCRA 819) Afore: The person defamed is the husband, and the wife is the third person to whom publication is made.

Sending a letter in a *sealed* envelope through a messenger, is *not* publication. (Lopez vs. Delgado, 8 Phil. 26)

There is publication of defamatory letter not shown to be sealed when sent to the addressee.

The accused signed and sent a letter to the offended party charging the latter with having illicit relations with her husband. There being *no evidence that the letter was sealed,* there is publication.

If sending a letter "not shown to be sealed" is publication, sending of an "unsealed letter" should *a fortiori* be held to be publication. (U.S. vs. Grino, 36 Phil. 738; People vs. Silvela, 103 Phil. 773)

There is no crime if the defamatory imputation is not published.

The law permits us to think as badly as we please of our neighbors so long as we keep our uncharitable thoughts to ourselves. So, *merely composing a libel is not actionable unless it be published.* The communication of libelous matter to the person defamed alone does not amount to publication, for that cannot injure his reputation. A man's reputation is the estimate in which others hold him; not the good opinion which he has of himself. (People vs. Atencio, *supra)*

THIRD ELEMENT: THE PUBLICATION MUST BE MALICIOUS

There must be malice.

The malice or ill-will must be proved — *malice in fact;* or may be taken for granted in view of the grossness of the imputation — *malice in law.* (People vs. Andrada, C.A., 37 O.G. 1783)

Malice is a term used to indicate the fact that the offender is prompted by personal ill-will or spite and speaks not in response to duty, but merely to injure the reputation of the person defamed. (U.S. vs. Canete, 38 Phil. 253)

Malice in fact - may be shown by *proof* of ill-will, hatred or purpose to injure. Thus, a republication of defamatory matter subsequent to the commencement of an action based thereon is inadmissible to establish malice in fact. (U.S. vs. Montalvo, 29 Phil. 595)

There is express malice or "malice in fact", because it clearly appears that the accused Topacio was actuated by a desire to impeach the reputation, integrity and honesty of Secretary Perez as a government official and to

force him to resign because of the alleged misfeasance and malfeasance in office. (People vs. Topacio, *et al.*, 59 Phil. 356)

Malice in law - is presumed from a defamatory imputation. Proof of malice is not required, because it is presumed to exist from the defamatory imputation. (Art. 354, 1st paragraph)

But where the communication is *privileged,* malice is not presumed from the defamatory words. The presumption of malice does not arise in the two cases of privileged communication mentioned in paragraph Nos. 1 and 2 of Art. 354. The plaintiff or the prosecution *must prove* malice in fact, whenever the defamatory imputation appears in a privileged communication. (U.S. vs. Bustos, 37 Phil. 731)

Malice in law is not necessarily inconsistent with an honest or even laudable purpose. For that reason, even if the publication is injurious, the presumption of malice disappears upon proof of good intention and justifiable motive.

But where the malice in fact is present, justifiable motive can not exist, and the imputations become actionable. (People vs. Pelegrino, 11 C.A. Rep. 803, citing U.S. vs. Bustos, 13 Phil. 600; Liu Ching Shing, *et al.* vs. Lu Tiong Ciu, 76 Phil. 609)

There is no libel in interchange of captions of pictures made by mistake, because malice is absent.

The group picture of six well-dressed men including the plaintiff appeared in a three-column photo published in The Manila Times carrying a caption on the arrest by Customs authorities of six persons for alleged "illegal salvaging" of sunken bombs and other missiles; so also was the picture of the arrested persons bearing the caption intended for the photo which included plaintiff. These pictures and the captions were interchanged.

The error was discovered only after copies of the first edition of The Manila Times had already been printed and shipped to the defendants' agents. Correction, however, was immediately made on the subsequent copies of the issue of the same date and of subsequent issues of the paper of different dates. *Held:* The interchange of captions was all mistake, an honest mistake, and there was neither intent nor malice on the part of the defendants to ridicule or put the plaintiff in public contempt. (Solidum vs. Roces, *et al.*, 18 C.A. Rep. 465)

But in *Lopez vs. Court of Appeals,* 34 SCRA 116, where the photograph of the person who was given the appellation of "Hoax of the Year" and the photograph of plaintiff in the civil case for damages were inadvertently switched, the publisher and the editor of This Week Magazine were held liable for damages.

Dissenting: There is need to prove that the publication was made with actual malice - that is, with knowledge of its falsity or with reckless disregard of whether it was false or not.

FOURTH ELEMENT: THE IMPUTATION MUST BE DIRECTED AT A NATURAL OR JURIDICAL PERSON, OR ONE WHO IS DEAD

Identification of the offended party is required.

It is not sufficient that the offended party recognized himself as the person attacked or defamed; it must be shown that at least a *third person* could identify him as the object of the libelous publication. (Kunkle vs. Cablenews-American, 42 Phil. 757)

When the obnoxious writing does not mention the libeled party by name, the prosecution is permitted to prove by evidence that the vague imputation refers to the complainant. (People vs. Silvela, 103 Phil. 773)

In order to maintain a libel suit, it is essential that the victim be identifiable, although it is not necessary that he be named. It is enough if by intrinsic reference, the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the plaintiff was intended, or if he is pointed out by extraneous circumstances so that person knowing him could and did understand that he was the person referred to. (Corpus vs. Cuaderno, Sr., 16 SCRA 807)

Where the article is *impersonal* on its face and interpretation of its language *does not single out* individuals, the fourth essential requisite of the offense of libel does not exist. (People vs. Andrada, CA, 37 O.G. 92; Uy Tioco, *et al.* vs. Yang Shu Wen, *et al.*, 32 Phil. 624)

Illustration:

An article in the Cablenews-American described a Chinese society, whose aim was to induce a boycott by the Chinese of Japanese goods, as having offered P10,000.00 in a secret meeting for the life of the Chinese consul-general. The two plaintiffs were president and treasurer, respectively, of a Chinese society organized for the purpose of promoting a boycott of Japanese goods. The plaintiffs claimed that they were libeled by the writer of the article.

Held: Defamatory imputations directed at a *class or group* of persons in *general language* are *not actionable* by individuals composing the class or group unless the statements are sweeping; and it is very probable that even then, no action would lie where the body is composed of *so large a number of persons* that there is room for persons connected with the body to pursue

an upright and law-abiding course. (Uy Tioco, *et al.* vs. Yang Shu Wen, *et al., supra)*

But the publication need not refer by name to the offended party. It is sufficient if it is shown that the offended party is the person meant or alluded to therein. (Causin vs. Jakosalem, 5 Phil. 155)

Defamatory remarks directed at a group of persons is not actionable unless the statements are all-embracing or sufficiently specific for the victim to be identifiable.

Where the defamation is alleged to have been directed at a group or class, it is essential that the statement must be so sweeping or all-embracing as to apply to every individual in that group or class, or sufficiently specific so that each individual in that class or group can prove that the defamatory statement specifically pointed to him, so that he can bring the action separately, if need be. (Newsweek, Inc. vs. Intermediate Appellate Court, 142 SCRA 171)

Libel published in different parts may be taken together to establish the identification of the offended party.

The first publication mentions no names. It employs, however, certain words and phrases which are defamatory. The second publication consists of a cartoon in which the persons referred to in the first publication are caricatured by name and to each one of them is attached one of the defamatory words or phrases.

Held: The two publications were considered together to establish the identity of the offended party. (U.S. vs. Sotto, 36 Phil. 389)

Innuendo.

It is a clause in the indictment or other pleading containing an averment which is explanatory of some preceding word or statement. It is the office of an *innuendo* to define the defamatory meaning which the plaintiff set on the words, to show how they came to have that meaning, and also to show how they relate to the plaintiff. (Bouvier's, Vol. I, 1048)

Purpose must be to injure the reputation of the offended party.

In the prosecution for libel, it is essential that the intention of the offender in publishing the libelous matter was to discredit or dishonor the person allegedly libeled.

"Lo que hace el delito no es solamente la materia sino la actitud del agente."

If the matter charged as libelous is only an incident in *an act which has another objective,* the crime is not libel. (People vs. Velasco, G.R. No 43186, C.A., Feb. 19, 1937)

Thus, if the chief of police in *good faith* filed a complaint against X for illegal possession of paraphernalia for falsification and after trial X was acquitted, the chief of police is not liable for libel, because the imputation of a crime was merely an incident in the making of the complaint intended to cause the punishment of a violation of the law.

FIFTH ELEMENT: THE IMPUTATION MUST TEND TO CAUSE DISHONOR, DISCREDIT OR CONTEMPT OF THE OFFENDED PARTY

Any imputation will be sufficient if it *tends to cause* —

(1) the dishonor,

(2) discredit, or

(3) contempt of a natural or juridical person, or

(4) to blacken the memory of one who is dead.

Meaning of:

1. *Dishonor* — disgrace, shame or ignominy
2. *Discredit* — loss of credit or reputation; disesteem
3. *Contempt* — state of being despised

If the utterance is made but once against a family of lawyers, designated by their common surname, not separately mentioned, there is only one offense.

People vs. Aquino
(35 O.G. 8844)

Facts: Corazon Aquino was accused before the Court of Fist Instance of Pangasinan, of the crime of grave oral defamation for having allegedly uttered in public words to this effect: "You, Merrera lawyers, are stealers *** shameless *** impolite.

Held: At common law, "a libel on two or more persons contained in one writing and published by a single act constitutes but one offense so as to warrant a single indictment therefor" (State vs. Hoskins, 60 Minn. 168), this for the reason that "the law makes the publication of libel punishable as a crime, not because of injury to the reputation but because the publication

of such articles tends to affect injuriously the peace and good order of society."

The Solicitor General, however, cites the case of *People vs. Del Rosario, et al.* (G.R. No. L-2254, promulgated April 20, 1950), where this Court upheld the theory that a "libelous publication affecting more than one person constitutes one crime or more." That decision, it is to be noted, was predicated on the ruling laid down in the case of *People vs. Luz Jose,* G.R. No. L-50, promulgated April 20, 1946, to the effect that libel or defamation — of the nature of that committed in the present cases — cannot be prosecuted *de oficio* but only at the instance of the offended party or parties, from which this Court deduced the conclusion that in libel or defamation of that kind, the policy of the law is to redress the injury to the individual rather than the injury to the peace and good order of society. But that conclusion is now without basis, for the said case of *People vs. Luz Jose* has already been overruled by the more recent cases of *People vs. Juan B. Santos, et al.* (G.R. Nos. L-7316 and L-7317, promulgated December 19, 1955).

In line with this later decision, we have to hold that the utterance of the defamatory statement complained of in the present case should be regarded as only one offense and made the subject of only one information, the utterance having been made but once and referring apparently to a family of lawyers designated by their common surname but *not separately* mentioned.

Decision in People vs. Del Rosario is controlling.

Where the alleged slanderous utterances were committed on the same date and at the same place, but against two different persons, the situation has given rise to two separate and individual causes for prosecution, with respect to each of the persons defamed and as such, it was error for the trial court to dismiss one of the information pertaining to one of the persons defamed and to treat the offenses charged in one information to avoid, in the opinion of the lower court, multiplicity of prosecutions.

We agree with the prosecution that our decision in *People vs. Del Rosario* (86 Phil. 163) for libel is controlling. As in said case, there are in the case before us, as many offenses as there were persons defamed. (People vs. Gil, *et al.*,G.R. No. L-20398, October 31, 1968)

Art. 354. ***Requirement for publicity.*** — Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

1. A private communication made by any person to another in the performance of any legal, moral, or social duty; and

2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

Malice in law is presumed from every defamatory imputation.

The opening sentence of Art. 354 states the presumption of malice in defamation. It is known as *malice in law.*

When the imputation is *defamatory,* the prosecution or the plaintiff need not prove malice on the part of the defendant. The law presumes that the defendant's imputation is malicious.

Even if the defamatory imputation is *true,* the presumption of malice *still exists,* if no good intention and justifiable motive for making it is shown.

Illustration:

If A tells C that B is a thief, and the fact is that B is really a thief, because he was previously convicted of theft, can it be presumed that the imputation made by A is malicious? Yes, because Art. 354 says that "every defamatory imputation is presumed to be malicious even if be true."

But the presumption of malice is rebutted, if A can show: (1) *good intention, and* (2) *justifiable motive* for making the imputation.

Thus, if B, in the illustration, is applying for the position of security guard in the hardware store of C, brother of A, and the purpose of the latter is to protect C from undesirable person who may be employed by him, there being a good intention on the part of A and a justifiable motive for informing C of B's criminal record, malice cannot be presumed.

The presumption of malice is rebutted, if it is shown by the accused that —

(a) the defamatory imputation is *true,* in case the law allows proof of the truth of the imputation;

(b) it is published with *good intention;* and

(c) there is *justifiable motive* for making it.

Malice is not presumed in the following:

1. A private communication made by any person to another *in the performance* of any *legal, moral* or *social* duty (Art. 354, No. 1);

2. A *fair and true report,* made in *good faith, without* any *comments* or *remarks,* of any judicial, legislative, or other official proceedings which are *not of confidential nature,* or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers *in the exercise* their functions. (Art. 354, No. 2)

They are the so-called privileged communications.

The prosecution must prove *malice in fact* to convict the accused on a charge of libel involving a privileged communication. (Lu Chu Sing, *et al.* vs. Lu Tiong Gui, 76 Phil. 669)

Two kinds of privileged communications.

The two kinds of privileged communications are: (1) the absolute, and (2) the conditional or qualified.

A privileged communication may be either absolutely privileged or conditionally privileged. A communication is said to be absolutely privileged when it is not actionable, even if its author has acted in bad faith. This class includes statements made by members of Congress in the discharge of their functions as such, official communications made by public officers in the performance of their duties, and allegations or statements made by the parties or their counsel in their pleadings or motions or during the hearing of judicial proceedings, as well as the answers given by witnesses in reply to questions propounded to them, in the course of said proceedings, provided that said allegations or statements are relevant to the issues, and the answers are responsive or pertinent to the questions propounded to said witnesses. Upon the other hand, conditionally or qualifiedly privileged communications are those which, although containing defamatory imputations, would not be actionable unless made with malice or bad faith. It has, moreover, been held that there is malice when the defamer has been prompted by ill-will or spite and speaks not in response to duty, but merely to injure the reputation of the person defamed. (Orfanel vs. People, L-26877, Dec. 26, 1969, 30 SCRA 819-820)

The class of absolutely privileged communications is narrow and is practically limited to *legislative* and *judicial* proceedings and *other acts of state,* including, it is said, *communications made in the discharge of a duty under express authority of law, by or to heads of executive departments* of the state, and matters involving military affairs. The privilege is not intended so much for the protection of those engaged in the public service and in the enactment and administration of law, as for the promotion of the

public welfare, the purpose being that members of the legislature, judges of courts, jurors, lawyers, and witnesses may speak their minds freely and exercise their respective functions without incurring the risk of a criminal prosecution or an action for the recovery of damages. (Sison vs. David, *supra,* citing 33 Am. Jur., 123-124)

For reasons of public policy which looks to the free and unfettered administration of justice, it appears to be *the prevailing rule* in the United States that statement made in a pleading in a civil action are *absolutely privileged* and no *action* for libel may be founded thereon *when pertinent and relevant to* the subject under inquiry, however false and malicious such statement may be. (Sison vs. David, *supra,* citing Hayslip vs. Wellford, 195 Tenn. 621, 263 SW 2d 136, 42 ALR 2d 820)

The rule then is well-settled in the United States that parties, counsel, and witnesses are exempted from liability in libel or slander for words otherwise defamatory, published in the course of judicial proceedings provided the statements are pertinent or relevant to the case. (Santiago vs. Calvo, 48 Phil. 919)

If the case is not covered by absolute privilege, it may be tested in the light of the qualified privilege extended to a private communication made by any person to another in the performance of any legal, moral or social duty.

Qualified privilege is lost by proof of malice. (U.S. vs. Bustos, *et al.,* 37 Phil. 731)

Art. 354 does not cover an absolutely privileged communication, because the privilege character of the communication mentioned therein is lost upon proof of malice (in fact).

Par. No. 1, Art. 354.

Private communication made by any person to another in the performance of any legal, moral, or social duty.

The person making the communication containing defamatory imputation may not be guilty of libel. This exemption from liability is predicated upon the fact that it is the duty and right of a citizen to make a complaint of any misconduct on the part of public officials to those charged with supervision over them, even though the charges contained therein are not substantiated upon investigation, *unless* it appears that the charges were made *maliciously and without any reasonable ground for believing* them to be true. (U.S. vs. Galeza, 31 Phil. 365)

Accusation aired in a public meeting not a private communication.

The charges or accusations must be made *in private communication.* Thus, in a case where the accused, instead of making the accusations

against an employee of the office of the municipal treasurer to the proper authorities, aired them in *a public meeting,* it was held that the statements made in that public meeting were not privileged. (People vs. Jaring, C.A., 40 O.G. 3683)

The communication need not be in private document.

The privileged communication referred to in paragraph No.1 of Art. 354, does not necessarily have to be in a private document as it may also be in a public document, like an affidavit. (People vs. Cantos, C.A., 51 O.G. 2995)

Note: The privileged communication covers also complaints against individuals who are not public officers, like the priests. (U.S. vs. Canete, *et al.*,38 Phil. 253.)

Requisites of privileged communication under par. No. 1 of Art. 354.

A private communication made by any person to another is a privileged communication, when the following requisites are present:

1. That the person who made the communication had a *legal, moral or social duty* to make the communication, or, at least, he had an interest to be upheld;
2. That the communication is addressed to an officer or a board, or superior, having some interest or duty in the matter;
3. That the statements in the communication are made in good faith without malice (in fact). (U.S. vs. Bustos, 37 Phil. 743; U.S. vs. Canete, *et al.,* 38 Phil. 253)

Private communication in the performance of a legal duty.

Legal duty presupposes a provision of law conferring upon the accused the duty to communicate. If there is no provision of law to that effect, the accused has no duty to make the report or communication to another. The report or communication is not privileged. (People vs. Hogan, C.A., 55 O.G. 1597)

A communication sent by an official to his immediate superior in the performance of a legal duty, as an explanation of a matter contained in an indorsement sent to him by his superior officer, although employed in a language somewhat harsh and uncalled for, is excusable in the interest of public policy, and is considered a privileged communication, for which the writer is not liable for damages. (Deaño vs. Godinez, 12 SCRA 483)

The defendant, as administratrix of the estate of a deceased person, filed a written objection with the commissioners to a certain claim presented

by the plaintiff, in which written objection the defendant made certain statements which reflected upon the virtue, honor and reputation of the plaintiff.

Held: The commissioners have a right to hear evidence and decide upon the validity and legality of the claim presented against the estate.

The administrator of the estate and those directly interested in the estate have a right to present whatever arguments they have in opposition to the allowance of such claims.

The written objection filed by the administratrix, being pertinent or relevant, is a privileged communication. (Zurbito vs. Bayot, 20 Phil. 219)

Private communication in the performance of a moral duty.

The existence of a moral duty depends upon the relationship between the giver and receiver of the communication and whether said communication is voluntarily given or not.

Thus, when the accused admitted that he had not been connected with Caltex in any capacity and that the libelous letter was voluntarily written by him and not *in answer to any inquiry,* the accused had no conceivable interest in the subject matter of the communication, which was the pilferage of kerosene from Caltex. (People vs. Hogan, *supra)*

Complaint made in good faith against a priest to his ecclesiastical superior allegedly for drunkenness, taking indecent liberties of women, illicit relations with a woman, and general immoral and indecent behaviour, is *privileged,* even if the proof fails to establish the truth of the charges. The members of a religious organization have a moral duty to bring to the attention of the church authorities the misbehavior of their spiritual leaders or of fellow members. (U.S. vs. Canete, *et al.*, 38 Phil. 253)

Private communication in the performance of a social duty.

The complaint against a teacher addressed to the principal, notwithstanding the fact that, for unknown reasons, it never reached the hands of said principal, *does not lose its character* of a privileged communication as far as the complainant is concerned. (People vs. Fabia, 40 O.G., Supp. 12, 18)

The existence of social duty depends upon the relationship between the sender and recipient of the communication. (People vs. Hogan, C.A., *supra)* If the communication was made by a person having no social duty to perform, it is not privileged. (People vs. Adamos, 1 C.A. Rep. 504)

The communication must be addressed to an officer or superior having some interest or duty in the matter.

We cannot accept as true that defendant was actuated by a sense of duty, moral, legal, or social, to communicate the matter to Councilor Clapano. He himself was a member of the City Council. If he was carried by that sense of duty as he claims, it was not necessary for him to give his information to Clapano who was not his superior nor the party to whom the information should be given. He could have made the revelation himself either in open session or by taking the necessary steps to have the matter investigated. As a co-member of the City Council, defendant owes no legal or moral duty to Clapano. (People vs. Pelayo, Jr., C.A., 64 O.G. 1992-1993)

Applying to the wrong person due to honest mistake does not take the case out of the privilege.

As regards privileged communication, the rule is that if a party *applies* to the wrong *person* through some natural and honest mistake as to the respective functions of various officials, such unintentional error will not take the case out of the privilege. (U.S vs. Bustos, 37 Phil. 731)

Unnecessary publicity destroys good faith.

When a copy of a privileged communication is sent to a newspaper publication, the *privilege is destroyed* by the conduct of the accused. (People vs. Cruz, 40 O.G., Supp. 11, 15)

People vs. De la Vega-Cayetano
(C.A., 52 O.G. 240)

Facts: G was a Justice of the Peace and as such was authorized, as representative of the Judge Advocate General's Office, to receive and deliver checks to the heirs of deceased personnel of the Armed Forces of the Philippines or of the United States.

On October 31, 1950, G received a check for delivery to the defendant, a widow of a deceased employee of the United States Army. For failure of the defendant to present the required form, JAGO Form B, she was not able to secure the check. Up to November 27, 1950, the defendant did not receive her check from G, who was also responsible for the stopping of the former's pension at one time.

The defendant referred to the Judge Advocate General's Office and executed an affidavit, the pertinent portions of which read, as follows:

> "That I have been asked by said Justice of the Peace (G) to give her a share in my check in order to facilitate delivery, which, according to other people she has victimized, should be at least P300 xxx.

The defendant retained copies of her said affidavit. She showed a copy of said affidavit to B who read its contents in the presence of C, while they were in the jeep bound for Laoag. In the house of D, the contents of said affidavit were made known by the husband of the defendant before a group of persons gathered there.

Held: (1) The contents of the affidavit were unduly published. (2) The contents of the affidavit are libelous *per se.* The defendant admitted that she had not personally seen G having received from somebody any money or other consideration for the delivery of checks to pensioners. Her very witnesses, who were pensioners like her, disclaimed that they were victimized by G.

Thus, the Supreme Court has said —

"Having arrogated unto himself the authority to cast upon complainants the stigma of guilt, without giving them an opportunity to be heard in their defense, he can escape the consequences of his officious assumption of power by nothing short of positive proof that his accusation was warranted by the facts, and that in making it public he was not actuated by personal spite against the complainant, or a mere delight in the propagation of scandal, but by a good motive and a desire to accomplish a justifiable object. The proof of the truth of the accusation cannot be made to rest upon mere hearsay, rumors or suspicion. It must rest upon positive, direct evidence, upon which a definite finding may be made by the court." (U.S. vs. Sotto, 38 Phil. 673)

Reason for the doctrine of privileged communication.

It is based upon the recognition of the fact that the right of the individual to enjoy immunity from the publication of untruthful charges derogatory to his character is not absolute and must at times yield to the superior necessity of subjecting to investigation the conduct of persons charged with wrongdoing. In order to accomplish this purpose and to permit private persons having, or in good faith, believing themselves to have knowledge of such wrongdoing, to perform the legal, moral, or social duty, without restraining them by the fear that an error may subject them to punishment for defamation, the doctrine of qualified privilege has been evolved. (U.S. vs. Bustos, *et al.,* 37 Phil. 731; U.S. vs. Cañete, *et al.*, 38 Phil. 253)

The privileged character simply does away with the presumption of malice.

The fact that a communication is privileged *does not mean that it is not actionable;* the privileged character simply does away with the presumption of malice, which the plaintiff has to prove in such a case. (Lu Chu Sing, *et al.* vs. Lu Tiong Gui, 76 Phil. 669)

The rule is that a communication loses its privileged character and is actionable on proof of actual malice.

Thus, if the writer of a letter was a good friend and a staunch loyal political follower of the late President Quirino, the person allegedly libeled, and had had no misunderstanding with him, and it appearing that the statements (contained in the letter) charged as libelous were not communicated by the writer to any outsider prior to their publication, with which said writer had nothing to do, it was held that those facts should *disprove* any malice. The letter which was written and sent in the usual course of business for the purpose of *upholding the writer's interest* was held to be *prima facie* a privileged communication. There being no proof of actual malice on the part of the writer, the charge of libel was dismissed. (People vs. Rojas, G.R. L-8266, June 2, 1959)

That the statement is a privileged communication is a matter of defense.

A privileged communication is a matter of defense and, like all other matters of defense, must be established by the accused.

Exception:

The Provincial Fiscal filed with the Court of First Instance an information for libel against the defendant which, in part, alleges:

> "x x x, the accused, being one of the attorneys of record for the plaintiffs in Civil Case No. 591, x x x, tried and decided by the herein complainant, filed in said case a motion for reconsideration of the decision, with the following libelous words and phrases, to wit:
>
> > 'x x x, said presiding judge wilfully and maliciously violated the law to suit the whims, caprices and abuses of the defendants in a manner that the defendants in this case had bragged to the people x x x, in no case said defendants shall be beaten in any litigation before said presiding judge, x x x.
> >
> > 'A careful scrutiny of the behaviour and manner of the actuations of this then presiding judge in this instant case, (will show) so glaring an example of prejudiced abuse of power that the plaintiffs could not be given a bit of justice before him.
> >
> > 'Just to show the partiality of the presiding judge and the lack of delicacy on his part, said presiding judge used to board in the house of the defendants and to use the car of a son of one of the defendants for his personal convenience all the time, before and even during the time that this case was pending in his sala.

> **Could the poor plaintiffs in this case expect justice from said presiding judge? It is respectfully submitted that his orders be carefully studied to show the abuse of power he has committed in this case."**

The trial court dismissed the case.

The prosecution claims that the trial court erred in dismissing the case on a mere motion to quash, contending that the trial judge's conclusion on the face of the information that defendant-appellee was prompted only by good motives assumes a fact to be proved, and that the alleged privileged nature of defendant-appellee's publication is a matter of defense and is not a proper ground for dismissal of the complaint for libel. (Lu Chu Sing, *et al.* vs. Lu Tiong Gui, 76 Phil. 669)

When in the information itself it appears that the communication alleged to be libelous is contained in an appropriate pleading in a court proceeding, the privilege becomes at once apparent and defendant need not wait until the trial and produce evidence before he can raise the question of privilege. And if, added to this, the questioned imputations appear to be really pertinent and relevant to defendant's plea for reconsideration based on complainant's supposed partiality and abuse of power from which defendant has a right to seek relief in vindication of his client's interest as a litigant in complainant's court, it would become evident that the facts thus alleged in the information would not constitute an offense of libel.

As has already been said by this Court: "As to the degree of relevancy or pertinency necessary to make alleged defamatory matter privileged, the courts are inclined to be liberal. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety." (Smith, Bell & Co. vs. Ellis, 48 Phil. 475; also cited in Malit vs. People, 114 SCRA 348) Having this in mind, it can not be said that the trial court committed a reversible error in this case in finding that the allegations in the information itself present a case of an absolute privileged communication justifying the dismissal of the case. (People vs. Andres, 107 Phil. 1046)

How to overcome the defense of privileged communication under paragraph No. 1 of Art. 354.

The defense of privileged communication will be rejected, if it is shown by the prosecution or the plaintiff that (1) the defendant acted with *malice in fact,* or (2) there is *no reasonable ground* for believing the charge to be true.

Malice in fact — how proved.

The existence of malice in fact may be shown by extrinsic evidence that the defendant bore a grudge against the offended party, or that there was *rivalry* **or** *ill-feeling* **between them which existed at the date of the publication of the defamatory imputation, or that the defendant had an** *intention to injure the reputation of the offended party* **as shown by the words used and the circumstances attending the publication of the defamatory imputation.**

The accused admitted that he was motivated by *hate* **and** *revenge* **because the offended party instigated the filing of criminal cases against him, without which he would not have sent the communication at all. Malice in fact being present in this case, justifiable motives cannot exist, and the communication becomes actionable. (People vs. Hogan,** *supra)*

No reasonable ground for believing the charge to be true.

When the defendant admitted that *he had personally made no investigation* **with reference to the truth of many of the statements made in the communication to the Secretary of Justice, especially with reference to the statements based on the rumors that a judge and a fiscal received a bribe for dismissing a murder case, he had no reasonable ground for believing the charge made by him to be true. (U.S. vs. Bustos, 13 Phil. 690)**

But probable cause for belief in the truth of the matter charged is sufficient.

Even when the statements are found to be false, if there is *probable cause for belief* **in their** *truthfulness* **and the charge is** *made in good faith,* **the mantle of privilege may still cover the mistake of the individual. But the statement must be made under an** *honest sense of duty; a self-seeking motive* **is destructive. (U.S. vs. Bustos,** *et al.,***37 Phil. 731)**

In a signed petition to the Executive Secretary, 34 citizens charged a justice of the peace with malfeasance in office and asked for his removal. The matter was referred for investigation to a judge, who, after hearing, acquitted the justice of the peace. The justice of the peace filed a libel case based on the petition.

Held: **This is not a simple case of direct and vicious accusations published in the press, but of charges predicated on affidavits made to the proper official and thus qualifiedly privileged. No undue publicity was given to the petition. No evidence of malice in fact. The accused are not liable for libel. (U.S. vs. Bustos,** *et al,* **37 Phil. 731)**

Par. No. 2, Art. 354.

Fair and true report of official proceedings.

The official proceedings refer to the proceedings of the three Departments of the Government, namely: (1) Judicial, (2) Legislative, and (3) Executive.

In order that the publication of a report of an official proceeding may be considered privileged, the following conditions must exist:

(a) That it is a *fair* and *true* report of a judicial, legislative, or other official *proceedings* which are *not* of confidential nature, or of a *statement, report* or *speech* delivered in said proceedings, or of any other *act* performed by a public officer *in the exercise* of his functions;

(b) That it is made in *good faith;* and

(c) That it is *without* any comments or remarks.

If all these conditions are present, the person who makes the report of the official proceedings is not *guilty* of libel, even if the report contains defamatory and injurious matters affecting another person.

The report must be fair and true.

When a publisher publishes a fair and true report of a proceeding, he is only narrating what had taken place. In such a case, even if what had been reported is libelous, and even if some errors had been committed in the process of the publication, the presumption of malice is overcome by the privilege. (People vs. Roble, C.A., 70 O.G. 10070)

The report of the complaint is not fair and true when, contrary to the complaint, the report stated that the complaint charged the plaintiff with removing the money from the vaults of Aldecoa & Co., or with making wrong entry of the amounts in the books of the company. (Macleod vs. Phil. Pub. Co., 12 Phil. 427)

A report with comments or remarks is not privileged.

The complainant was administratively charged for mauling the commentator of a radio station. President Magsaysay commissioned a fiscal to investigate the charge. The investigator found the complainant guilty and recommended his suspension as public official for two months. The accused published in a newspaper an article which in part stated, "the people will know because to his dying day Ganzon will not live down this incident where while the nation mourned the death of Magsaysay, he, Ganzon, rejoiced in the same way that buzzards and coyotes rejoice over the same thing.

Even if the report of the jubilation of the complainant was true, the accused should have stopped at reciting the facts only. He should not have made any comments or remarks. (People vs. Rico, 3 C.A. Rep. 225)

Judicial proceedings.

1. **True report of judicial proceedings is *privileged. Malice must be shown* by the prosecution, as it is the very gist of the offense involving the publication of a true report of a judicial proceeding. (U.S. vs. Perfecto, 42 Phil. 113)**

2. **Allegations and averments in *pleadings* are *absolutely privileged* only insofar as they are *relevant* or *pertinent* to the issues.**

   An affidavit to support a motion for new trial in an action by a widow to recover for the death of her husband, containing libelous charge that the widow had been sustaining illicit relations with one of her material witnesses, was absolutely privileged, the allegations being relevant. (Tupas vs. Parreno, Sr., *et al.*, 105 Phil. 1304)

   But where the defendant who instituted an action for the recovery of professional fees, alleged in his (defendant's) complaint that the offended party frequently evaded his obligations and that his creditors were disgusted because they could not collect what was due them, it was held that the allegations were impertinent and unnecessary. (Montenegro vs. Medina, 73 Phil. 602)

3. **An action for libel on a defamatory matter uttered in the course of a judicial proceeding might be *instituted even if the defamatory matter had not yet been stricken out of the record.* An action for libel accrues from the date of publication. (Montenegro vs. Medina, *supra)***

   The correct rule with respect to the publication of judicial proceedings should be that fair and true report of the complaint filed in court without remarks nor comments even before an answer is filed or a decision promulgated should be covered by the privilege.

   The reason for the rule that pleading in judicial proceedings are considered privileged is not only because said pleading have become part of public record open to the public to scrutinize, but also due to the undeniable fact that said pleadings are presumed to contain allegations and assertions lawful and legal in nature, appropriate to the disposition of issues ventilated before the courts for the proper administration of justice and, therefore, of general public concern. Moreover, pleadings are presumed to contain allegations in good faith, the contents of which would be under the scrutiny of courts and, therefore, subject to be purged of all improprieties and illegal statements contained therein. (Cuenco vs. Cuenco, 72 O.G. 5560)

4. Parties, counsels, and witnesses are exempted from liability in libel or slander for words otherwise defamatory published in the course of judicial proceedings, provided the statement are *pertinent* or *relevant to the case.* (Santiago vs. Calvo, 48 Phil. 919; Malit vs. People, 114 SCRA 348)

"Parties, counsel and witnesses are exempted from liability in libel or slander for words otherwise defamatory published in the course of judicial proceedings *provided the statements are pertinent or relevant to the case."* The same doctrine was applied in *Smith, Bell & Co. vs. Ellis.* (48 Phil. 475) It is the generally accepted rule that in order to be protected by the mantle of privilege, the defamatory words must be pertinent and relevant to the subject under inquiry.

The reason for such requirement is that the protection given to individuals in the interest of an efficient administration of justice may not be abused as a cloak from beneath which private malice may be gratified. (Montenegro vs. Medina, 73 Phil. 602)

The communication must be pertinent and material to the subject matter.

The statement uttered by an attorney while cross-examining an adverse witness in an administrative case: "I doubt how did you become a doctor" is not libelous or vexatious. In this case, the attorney was prompted to say — "I doubt how did you become a doctor" when the adverse witness who was a doctor would not answer the question as to who prepared the document presented to her, and when the witness repeatedly evaded the question by saying that she did not understand the word "made." (Malit vs. People, *supra)*

To be privileged, the communication must be pertinent and material to the subject matter in which the author claims an interest to uphold. The protection of the privilege may be lost by the manner of its exercise. It does not protect any unnecessary defamation. The party making the communication must not go farther than his interests or his duties require. Irrelevant libel or the form in which the defamatory words are used in connection with the subject may show express malice. (People vs. Fernandez, C.A., 64 O.G. 343, citing 33 Am. Jur. 115-116, 176-177, 247-249; 36 C.J.S. 1241-1242, 1248)

Defaming client through his lawyer.

Where the accused, to whom a claim is presented by an attorney in behalf of the latter's client, sends to the attorney a libelous communication *concerning the client,* there is sufficient publication. There being no relationship of principal and agent between the accused and the lawyer,

the rule that the absolute privilege accorded a publication may be extended to the client who defames a third person in a communication made by the client to his lawyer preliminary to a judicial proceedings does not apply. (People vs. Fernandez, *id.)*

Legislative proceedings.

These include proceedings of the committees of the Congress of the Philippines. A reporter, for instance, can publish the records of those proceedings, provided he does not give any comment or remark thereon, and provided further that they are not of confidential nature.

Other official proceedings.

These proceedings refer to the official proceedings by other public officers in the exercise of their functions.

Only matters "which are not of confidential nature" may be published.

Thus, when the court, in any special case, has forbidden the publication of certain records in the interest of morality or decency (Sec. 2, Rule 135, Rules of Court), the same should not be published.

Proceedings for disbarment of attorneys are private and confidential, except the final order of the court which may be made public. (Sec. 10, Rule 139, Rules of Court)

What public record may be published.

The privilege has been strictly limited to cases in which *the right of access is* secured by law, and in which the purpose and object of the law is *to give publicity to the contents* of the record or document in the interest, or for the protection, of the public generally. (U.S. vs. Santos, 33 Phil. 533)

If the contents of the record or document, involved in any judicial legislative or other official proceedings, are of *confidential nature,* they should not be published. Hence, the publication of confidential records containing libelous matter is not privileged.

Enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communication.

In the case of *Borjal vs. Court of Appeals,* 301 SCRA 1, 22 [1999], the Supreme Court recognized that the enumeration stated in Article 354 of the Revised Penal Code is not exclusive but is rendered more expansive by the constitutional guarantee of freedom of the press, thus:

. . . To be sure, the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. The rule on privileged communications had its genesis not in the nation's penal code but in the Bill of Rights of the Constitution guaranteeing freedom of speech and of the press. As early as 1918, in *United States v. Cañete* [38 Phil. 253], this Court ruled that publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech. This constitutional right cannot be abolished by the mere failure of the legislature to give it express recognition in the statute punishing libels. (*Rodolfo R. Vasquez vs. Court of Appeals, et al.*, G.R. No. 118971, 15 September 1999, 314 SCRA 460)

Remarks and comments on the conduct or acts of public officers.

Defamatory remarks and comments on the conduct or acts of public officers which are *related to the discharge of their official duties* will not constitute libel is the defendant proves the *truth* of the imputation.

But any attack upon the *private* character of the public officer on *matters which are not related to the discharge of their official functions* may constitute libel. (People vs. Del Fierro and Padilla, C.A., G.R. No. 3599-R, July 27, 1950)

The conduct or acts of public officers which are related to the discharge of their official duties are matters of public interest. It is a defense in an action for libel or slander that the words complained are *fair comment* on a *matter of public interest.*

In defamation, where the acts imputed concern the private life of the individual, criminal intent is presumed to arise from the publication of defamatory matters because no one has a right to invade another's privacy; but where the imputation is based upon a matter of public interest, the presumption of criminal intent does not arise from the mere publication of defamatory matter. A matter of public interest is a common property; hence, anybody may express an opinion on it. The public conduct of every public man is a matter of public concern. Libelous remarks or comments connected for one thing, with any speech or acts performed by officers in the exercise of their functions are not actionable, unless malice is proved. If it is shown that the imputation is either a false allegation of fact, or the expression of an opinion based upon mere conjecture, malicious intent is established. In order that a discreditable imputation to a public official may be actionable, it must be either a false allegation of fact or a comment based upon a false supposition. If the comment is an expression of an opinion, based upon proven facts, then it is no matter that the opinion happens to be mistaken so long as it might be reasonably inferred from the facts. Comment may

be fair, although wrong. So that the discreditable imputation may not be actionable, the fact upon which the comment is reasonably based should be actual facts; and not mere suppositions. (People vs. Velasco, C.A., 40 O.G. 3694)

Doctrine of Fair Comment.

Fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts. (Borjal vs. Court of Appeals, 301 SCRA 1, 22 [1999]).

Fair comments on qualifications of candidates.

Public acts of public men may lawfully be made the subjects of comment and criticism. If made in *good faith,* such criticism is privileged.

The *mental, moral and physical* fitness of candidates for public office may be the object of comment and criticism. But if it appears that it was actuated by *actual or express malice,* and is *defamatory in its nature,* the comment or criticism constitutes a criminal libel. (U.S. vs. Sedano, 14 Phil. 338)

Criticism and defamation distinguished.

Criticism deals only with such things as shall invite *public attention* or call *for public comment. It* does *not* follow a public man into his *private life* nor pry into his *domestic concerns.*

They may attack and seek to destroy, *by fair means* or *foul,* the whole fabric of his statesmanship, but the law *does not* permit them to attack the man himself. They may falsely charge that his policies are bad, but they may not falsely charge that he is bad. (U.S. vs. Contreras, *et al.,* 23 Phil. 513)

Hence, if the criticism follows a public officer into his *private life* which has *no connection* with the performance of his public duties, and *falsely* charges him with evil motives, clearly designed to destroy his reputation or besmirch his name, there is defamation.

The policy of a public official may be attacked rightly or wrongly.

The policy of a public official may be attacked, rightly or wrongly, with every argument which ability can find or ingenuity invent. On the other hand, a public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. The public officer may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. (U.S. vs. Bustos, *et al.*, 37 Phil. 731)

Statements made in self defense or in mutual controversy are often privileged.

In an honest endeavor to vindicate himself and his own interests, a person is often privileged to make statements which would otherwise be regarded as defamatory. Thus, if one's good name is assailed in the newspaper, he may reply *defending himself,* and if his reply is made in *good faith, without malice* and is not *unnecessarily* defamatory of his assailant, it is privileged. (People vs. Baja, CA, 40 O.G. Supp. 5, 206)

But the publication of a libel by the plaintiff (or offended party) is no legal justification of another libel by the defendant. (Pellicena vs. Gonzales, 6 Phil. 50)

The person libeled is justified to hit back with another libel.

The offended party previously caused to be published in the Manila Chronicle an article entitled "Doubtful Citizenship," in which it was made to appear that the accused, in his petition for naturalization, obtained a decision based on questionable proofs. After the publication of said article the accused published a libelous statement to the effect that the offended party instigated investigations in different government agencies against the accused, because of his persecution mania and in the spirit of revenge; and that the offended party was the mastermind behind the threatening letter of B.S. sent to the accused. This alleged scurrilous imputations are not merely an outgrowth of a capricious imagination of the accused. The statement was intended to counteract the impression left in the mind of the public by that article entitled "Doubtful Citizenship."

Held: Self-defense is man's inborn right. In a physical assault, retaliation becomes unlawful after the attack has ceased, because there would be no further harm to repel.

But that is not the case when it is aimed at a person's good name. Once the aspersion is cast, its sting clings and the one thus defamed may avail himself of all necessary means to shake it off. He may hit back with another libel which, if adequate, will be justified. (People vs. Chua Hiong, C.A., 51 O.G. 1932)

But retaliation or vindictiveness cannot be a basis of self-defense in defamation.

A, after alighting from a rig, went in front of the home of B, C, and D, the three defendants, and in the heat of anger, shouted at them the following words: "You pimp, women of ill repute, thieves, paramours of my husband." To which B answered back, saying: "You are a woman of the street, you smell bad, and your money was stolen from the PCAU." The other defendant C retorted: "You are shameless, blackmailer, murderer." And the third defendant D replied: "You have a thick face, you are not legally married, you are the paramour of Father Baluyut."

Held: Not because a person has called another a shameless, good-for nothing animal, that the person insulted would have the right to return the insult by calling him murderer, criminal, gangster, prostitute, etc., under the mantle of self-defense.

The defendants let loose a barrage of insults upon A, imputing immorality, unchastity, dishonesty and criminality which were not fair answers to A's lambasts and were *absolutely unrelated to her imputations* upon them.

It may be true that "once the aspersion is cast its sting clings", but will another libel shake off such sting? Will the hitting back undo what was done? We take it that if a person insulted hits back, he wants to retaliate or take revenge; and retaliation or vindictiveness can hardly be a basis of self-defense. The answering of libel may be justified, if it is adequate; and it is inadequate when the answer is unnecessarily scurrilous. (People vs. Rayo, *et al.*,C.A., 53 O.G. 8618)

To repel the attack, the defendant may make an explanation of the imputation, and it is only where, if by explaining, he must of necessity have to use scurrilous and slanderous remarks, that he may legally be allowed to do so without placing himself under criminal prosecution. (People vs. Pelayo, Jr., C.A., 64 O.G. 1994)

RULE: The defamatory statements made by the accused must be a *fair answer* to the libel made by the supposed offended party and *must be related to the imputation* made. The answer should *not* be *unnecessarily* libelous.

Publishing that a restaurant had attempted to sell a putrid fowl to its patrons is not an actionable wrong.

Cases might arise wherein the advertisement of one's shortcomings, faults, and sins, would not result in penal or even civil liability for under the inherent right based on necessity and self-defense, it also is the law that he who publishes what is true, in good faith and for justifiable ends,

incurs no responsibility, Art. 361, Revised Penal Code; in the present case, it having been shown that a restaurant had attempted to sell a putrid fowl to its patrons, such was a matter which the public had the undeniable right to know and the publication thereof in appellant's newspaper was not an actionable wrong. (Lo Bok, etc. vs. Magno, *et al.*, 9 C.A. Rep. 699)

Republic Act No. 4200
THE ANTI-WIRE TAPPING ACT
(June 19, 1965)

Acts penalized.

It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word:

(1) to tap any wire or cable, or

(2) by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detecta-phone or walkie-talkie or tape-recorder, or however otherwise described.

It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence:

(1) to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or

(2) to replay the same for any other person or persons; or

(3) to communicate the contents thereof, either verbally or in writing; or

(4) to furnish transcriptions thereof, whether complete or partial, to any other person.

Provided, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in section 3 hereof, shall not be covered by this prohibition. (Section 1)

Penalty.

Any person who wilfully or knowingly does or who shall aid, permit, or cause to be done any of the acts declared to be unlawful in the preceding section or who violates the provisions of the following section or of any order issued thereunder, or aids, permits, or cause such violation shall, upon

conviction thereof, be punishment by imprisonment for not less than six months or more than six years and with the accessory penalty of perpetual absolute disqualification from public office if the offender be a public official at the time of the commission of the offense, and, if the offender is an alien he shall be subject to deportation proceedings. (Section 2)

Performance of prohibited act upon court order.

Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding section in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas rebellion, conspiracy and proposal to commit rebellion, inciting rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security; *Provided,* That such written order shall only be issued or granted upon written application and examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is about to be committed: *Provided, however,* That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or act of sedition, as the case may be, have actually been or are being committed; (2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any such crimes and (3) that there are no other means readily available for obtaining such evidence.

The order granted or issued shall specify: (1) the identity of the person or persons whose communications, conversations, discussions, or spoken words are to be overheard, intercepted, or recorded and, in the case of telegraphic or telephonic communications, the telegraph line or the telephone number involved and its location; (2) the identity of the peace officer authorized to overhear intercept, or record the communications, conversations, discussions) or spoken words; (3) the offense or offenses committed or sought to be prevented; and (4) the period of the authorization. The authorization shall be effective for the period specified in the order which shall not exceed sixty (60) days from the date of issuance of the order, unless extended or renewed by the court upon being satisfied that such extension or renewal is in the public interest.

All recordings made under court authorization shall, within forty-eight hours after the expiration of the period fixed in the order, be deposited with

the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the peace officer granted such authority stating the number of recordings made, the dates and times covered by each recording, the number of tapes, discs, or records included in the deposit and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

The court referred to in this section shall be understood to mean the Court of First Instance within whose territorial jurisdiction the acts for which authority is applied for are to be executed. (Section 3)

Inadmissibility in evidence.

Any communication or spoken word, or the existence, contents, substance, purport, effect or meaning of the same or any part thereof, or any information therein contained obtained or secured by any person in violation of the preceding sections of this Act shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation. (Section 4)

The phrase "any other device or arrangement" in Republic Act 4200 does not cover an extension line.

The law refers to a "tap" of a wire or cable or the use of a "device or arrangement" for the purpose of secretly overhearing, intercepting or recording the communication. There must be either a physical interruption through a wire tap or the deliberate installation of a device or arrangement in order to overhear, intercept, or record the spoken words.

An extension telephone cannot be placed in the same category as a dictaphone, dictagraph or the other devices enumerated in Section 1 of Republic Act No. 4200 as the use thereof cannot be considered as "tapping" the wire or cable of a telephone line. (Ganaan vs. Intermediate Appellate Court, 145 SCRA 112)

Framers of Republic Act No. 4200 were more concerned with penalizing the act of recording a telephone conversation than merely listening thereto.

A perusal of the Senate Congressional Records will show that not only did our lawmakers not contemplate the inclusion of an extension telephone

as a prohibited "device or arrangement," but of greater importance, they were more concerned with penalizing the act of recording than the act of merely listening to a telephone conversation. (Ganaan vs. Intermediate Appellate Court, *supra)*

Art. 355. ***Libel by means of writings or similar means.*** **— A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by *prision correccional* in its minimum and medium periods[1] or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party.**

A libel may be committed by means of:

1. Writing,
2. Printing,
3. Lithography,
4. Engraving,
5. Radio,
6. Phonograph,
7. Painting,
8. Theatrical exhibition,
9. Cinematographic exhibition,
10. Or any similar means.

Defamation through amplifier is not libel, but oral defamation.

The prosecution maintains that the medium of an amplifier system, through which the defamatory statements imputed to the accused were allegedly made, falls within the purview of Art. 355, in the sense that an "amplifier system" is a means similar to "radio." This pretense is untenable. The word "radio" used in said Art. 355, should be considered in relation to the terms with which it is associated — writing, printing, engraving, phonograph, etc. — all of which have a common characteristic, namely, their permanent nature as a means of publication, and this explains the graver penalty for libel than that prescribed for oral defamation. In short, the present case constitutes the crime of oral defamation punished in Art. 358 of the Revised Penal Code which prescribed six months after its commission. (People vs. Santiago, 5 SCRA 231)

[1]See Appendix "A," Table of Penalties, No. 14.

But defamation made in the television program is libel.

The information alleges that the utterances of the defamatory words complained of had been made in the television program. Libel was committed by a means similar to those mentioned in Article 355, among which, are "radio, phonograph" theatrical exhibition, cinematographic exhibition, or any similar means." While the medium of television is not expressly mentioned among the means specified in the law, it easily qualifies under the general provision "or any similar means." (People vs. Casten, *et al.*, CA-G.R. No. 07924-CR, promulgated December 13, 1974)

Art. 355 provides for the penalty for libel.

Note that while Arts. 353 and 354 merely define defamation and privileged communications, respectively, Art. 355 prescribes the penalty for libel.

It is evident from Art. 355 that the court is given the discretion to impose the penalty of imprisonment or fine or both for the crime of libel. (People vs. Subido, 66 SCRA 545)

"In addition to the civil action which may be brought by the offended party."

Notwithstanding this clause in Art. 355, a civil action for damages may be filed *simultaneously* or *separately* with the criminal action. (Art. 360, par. 3.)

Threats and libel committed on the same occasion and contained in the same letter.

That portion of the letter sent by the accused to a barrio lieutenant, which is quoted in the information, may be translated, thus:

> "* * * They must not be stubborn about Mr. Luciano Sta. Catalinas fooling the people * * *.
>
> * * * And if there is nobody who will care among the authorities in the government in this request of my being belittled and the belittling of others and if Sta. Catalina will not pay what I paid and others paid for the donation, you can be sure that I will do, life for a life; against those people who have been fooling with our barrio and to the authorities in the government, I hope they will not withhold all what I said (asked) in this respect."

We have carefully read the letter containing the alleged libelous remarks, and we find that the letter is more threatening than libelous,

and the intent to threaten is the principal aim and object of the letter. The libelous remarks contained in the letter, if so they be considered, are merely preparatory remarks culminating in the final threat. In other words, the libelous remarks express the heat of passion which engulfs the writer of the letter, which heat of passion in the latter part of the letter culminates into a threat. This is the more important and serious offense committed by the accused. Under these circumstances, the offense committed is clearly and principally that of threats and that the statements derogatory to a person named do not constitute an independent crime of libel. It is considered as part of the more important offense of threats. (People vs. Yebra, 60 O.G. 2652)

Art. 356. ***Threatening to publish and offer to prevent such publication for a compensation.*** — The penalty of ***arrestomayor***[2] or a fine of from 200 to 2,000 pesos, or both shall be imposed upon any person who threatens another to publish a libel concerning him or the parents, spouse, child, or other members of the family of the latter, or upon anyone who shall offer to prevent the publication of such libel for a compensation or money consideration.

Acts punished under Art. 356:

1. By *threatening* another to *publish* a libel concerning him, or his parents, spouse, child, or other members of his family.
2. By *offering to prevent* the publication of such libel for compensation, or money consideration.

Illustration:

The accused threatened to publish in a weekly periodical, certain letters, amorous in nature, written by a married woman and addressed by her to a man, not her husband, unless she paid P4,000 to them. (U.S. vs. Eguia, *et al.*, 38 Phil. 857)

Note: This is known as *blackmail.*

[2]See Appendix "A," Table of Penalties, No. 1.

Blackmail, defined.

Blackmail, in its metaphorical sense, may be defined as any unlawful extortion of money by threats of accusation or exposure. Two words are expressive of the crime — hush money. (U.S. vs. Eguia, *et al.*, 38 Phil. 857)

In what felonies is blackmail possible?

In the following:

1. Light threats. (Art. 283)
2. Threatening to publish, or offering to prevent the publication of, a libel for compensation. (Art. 356)

Art. 357. *Prohibited publication of acts referred to in the course of official proceedings.* — The penalty of *arrestomayor*[3] or a fine of from 200 to 2,000 pesos, or both, shall be imposed upon any reporter, editor, or manager of a newspaper, daily or magazine, who shall publish facts connected with the private life of another and offensive to the honor, virtue, and reputation of said person, even though said publication be made in connection with or under the pretext that it is necessary in the narration of any judicial or administrative proceedings wherein such facts have been mentioned.

Elements:

1. That the offender is a *reporter, editor* or *manager* of a newspaper daily or magazine.
2. That he publishes facts connected with the *private life* of another.
3. That such facts are *offensive to* the *honor, virtue* and *reputation* of said person.

Prohibition applies even if the facts are involved in official proceedings.

The prohibition applies even though said publication be made *in connection with* or *under the pretext that it is necessary* in the narration of

[3] See Appendix "A," Table of Penalties, No. 1.

any judicial or administrative proceedings wherein such facts have been mentioned.

Extent of the application of the "Gag Law."

The provisions of Art. 357 constitute the so-called "Gag Law." Newspaper reports on cases pertaining to adultery, divorce, issues about the legitimacy of children, etc., will necessarily be barred from publication.

This article requires two *things* to constitute a violation of the prohibition:

(a) That the article published contains *facts connected with the private life* of an individual; and

(b) That such facts are *offensive* to the *honor, virtue* and *reputation* of said person.

These two requisites must concur. If one of them is not present, there is no violation of Art. 357.

Illustration of the meaning of the provision.

Thus, a suit for *alimony* refers to the private life of a person, but it is not *offensive to the honor* of such person.

Again, a news item contains the testimony of a prosecuting witness regarding the commission of, say *theft* or *homicide* by the complainant. It is *offensive* to the honor, virtue and reputation of the accused (now complainant), but it is *not connected with his private life.*

Facts that are intimately related to one's family and home, such as conjugal troubles and quarrels, adultery or divorce based on the infidelity of the husband or the wife and attempts against the honor and virtue of the woman, do not at all interest or please the intelligent and educated class of newspaper readers. (Guevara)

Example of a violation of Art. 357:

A uttered defamatory remarks calling a priest a savage, a carabao, that he had a concubine, and that he collected alms for himself, not for the town.

While the case was pending trial, the local weekly edited by the accused Diño published the complaint verbatim including the defamatory expressions used by A.

Held: The matter contained in the complaint filed by the priest against A is libelous *per se* and affects the private life of the offended party.

Had the offended party been *a person holding a public office* and the acts imputed had relation to the discharge of his official duties, the situation would be different. (People vs. Diño, CA-G.R. No. 8822, Sept. 24, 1942)

Source of news report may not be revealed.

Without prejudice to his liability under the civil and criminal laws, the publisher, editor, columnist or duly accredited reporter of any newspaper, magazine or periodical of general circulation cannot be compelled to reveal the source of any news report or information appearing in said publication which was related in confidence to such publisher, editor or reporter unless the court or a House or committee of Congress finds that such revelation is demanded by the security of the State. (Rep. Act No. 1477, amending Rep. Act No. 53)

The phrase "interest of the State" in Rep. Act No. 53 is changed to "security of the State" in Rep. Act No. 1477.

Under Rep. Act No. 1477, a newspaper reporter cannot be compelled to reveal the source of the news report he made, unless the court or a House or committee of Congress finds that such revelation is demanded by the *security of the State.*

While the news story about the alleged leakage of bar examination questions affects the interest of the State, it does not involve the security of the State. (see Parazo case, 82 Phil. 230)

Art. 358. ***Slander.*** — Oral defamation shall be punished by *arresto mayor* in its maximum period to *prisioncorreccional* in its minimum period[4] if it is of a serious and insulting nature; otherwise the penalty shall be *arresto menor* or a fine not exceeding 200 pesos.

What is slander?

Slander is *oral* defamation.

Slander is libel committed by oral (spoken) means, instead of in writing. The term oral defamation or slander as now understood, has been defined as

[4]See Appendix "A," Table of Penalties, No. 8.

the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood. (Villanueva vs. People: G.R. No. 160351, April 10, 2006, 487 SCRA 42)

Two kinds of oral defamation:

1. Simple slander.
2. Grave slander, when it is of a *serious and insulting* nature.

Factors that determine the gravity of oral defamation.

The gravity of the oral defamation depends not only (1) upon the *expressions* used, but also (2) on the *personal relations of the accused* and the *offended party,* and (3) the *circumstances surrounding the case.* (People vs. Jaring, C.A., 40 O.G. 3683)

The *social standing* and the *position of the offended party* are also taken into account. Thus, it was held that the slander was grave, because the offended party had held previously the office of Congressman, Governor, and Senator and was then a candidate for Vice-President. (People vs. Boiser, C.A., 53 O.G. 2202)

The more we ponder over the fact that the complainant was a respectable young lady, a public school teacher to whom her students were to look up for exemplariness of character; the more we think of the circumstances under which the unpleasant remarks were said, in the presence of students and co-teachers of the complainant, the more we are convinced that the crime committed by the accused is indeed grave. (People vs. Formanes, C.A., 54 O.G. 6616)

Illustrations of grave slander:

Grave slander is committed by a woman of violent temper, who hurled at the complainant, a *respectable* married lady with young daughters, offensive and scurrilous epithets, including words imputing unchastity to the mother and tending to injure the character of the daughters. (U.S. vs. Tolosa, 37 Phil. 166)

The complaint recites that the scurrilous words impute to the offended party the crime of estafa. The language of the indictment strikes deep into the character of the victim: He "has sold the union"; "he has swindled the money of the members"; he "received bribe money in the amount of P10,000.00 * * * and another P6,000.00"; he "is engaged in racketeering and enriching himself with the capitalists"; he "has spent the funds of the union for his own personal use."

No amount of sophistry will take these statements out of the compass of grave oral defamation.

Defamatory words constitute either grave or light slander depending not only upon their sense and grammatical meaning, judging them separately, but also upon the special circumstances of the case, antecedents or relationship between the offended party and the offender, which might tend to prove the intention of the offender at the time. (Balite vs. People, 18 SCRA 280, citing 5 Viada, Codigo Penal, Quinta edicion, Pag. 494, citing the decision of the Supreme Court of Spain of December 3, 1894)

Examples of simple slander:

1. An accusation that the offended party has been living successively and with several men uttered before several persons, when intended *to correct an improper conduct* of the offended party, a kin of the accused, is only a simple slander. (People vs. Clarin, 37 O.G. 1106)

   Note: In the Tolosa case, the same imputation was made. But in the Clarin case, the purpose was to correct an improper conduct.

2. Calling a person a gangster is simple slander. (Arcand vs. People, 68 Phil. 601)

3. Uttering defamatory words in the *heat of anger, with some provocation on the part* of the offended party constitutes only a light felony. (People vs. De Modesto, 40 O.G., Supp. 11, 128)

   Words uttered in *the heat of anger* or when passions are running high, and *not taken seriously* by the offended party, although they are clearly serious oral defamation under ordinary circumstances, constitute only slight oral defamation. (People vs. Doronila, C.A., 40 O.G., Supp. 11, 231)

4. *Defamation uttered in political meeting,* considering that it was committed on the eve of the elections when everyone was excited and when feelings were running high, is *only simple slander.* (People vs. Laroga, 40 O.G., Supp. 11, 123)

The word *"puta"* does not impute that the complainant is a prostitute.

The word *"puta"* alleged to have been uttered by the defendant in referring to the offended party does not necessarily connote the crime of prostitution, as defined in Art. 202 of the Revised Penal Code. (People vs. Atienza, G.R. No. L-19857, October 26, 1968)

The words, *"Agustin, putang ina mo"* is a common expression in the dialect that is often employed not really to slander but rather to express

anger or displeasure. It is seldom, if ever, taken in its literal sense by the hearer, that is, as a reflection on the virtue of a mother. In the instant case, it should be viewed as part of the threats voiced by appellant against the complainant evidently to make the same more emphatic. (Reyes vs. People, 27 SCRA 686)

The slander need not be heard by the offended party.

There is oral defamation, even if other persons and not the offended party heard the slanderous words, because a man's reputation is the estimate in which others hold him, not the good opinion which he has of himself. (People vs. Clarin, CA, 37 O.G. 1106; People vs. Atencio, CA-G.R. Nos. 11351-R to 11353-R, Dec. 14, 1954)

Art. 359. ***Slander by deed.*** **— The penalty of** ***arresto mayor*** **in its maximum period to** ***prisioncorreccional*** **in its minimum period[5] or a fine ranging from 200 to 1,000 pesos shall be imposed upon any person who shall perform any act not included and punished in this title, which shall cast dishonor, discredit, or contempt upon another person. If said act is not of a serious nature, the penalty shall be** ***arresto menor*** **or a fine not exceeding 200 pesos.**

What is slander by deed?

Slander by deed is a crime against honor which is committed by *performing any act* which casts dishonor, discredit, or contempt upon another person.

Elements:

1. That the offender performs *any act not included in any* other crime against honor.
2. That such act is performed in the presence of other person or persons.
3. That such act casts dishonor, discredit or contempt upon the offended party.

[5]See Appendix "A," Table of Penalties, No. 8.

Slander by deed is of two kinds:

(a) Simple slander by deed, and

(b) Grave slander by deed, that is, which is of a serious nature.

Whether a certain slanderous act constitutes slander by deed of a *serious nature* or not, depends on the *social standing* of the offended party, the *circumstances under* which the *act was committed, the occasion, etc.*

Slander by deed refers to performance of an act, not use of words.

Note that this crime involves an *act,* while libel or slander involves *words* written or uttered.

Slapping the face of another is slander by deed if the intention of the accused is to cause shame and humiliation.

The evidence is clear that Renato Delfin did not merely push Chuana aside, as he claims, but slapped her in order to ridicule and shame her before other people. Said acts constitute the felony of slander by deed, defined and penalized under Article 359 of the Revised Penal Code. (People vs. Delfin, *et al.,*112 Phil. 807)

The act of slapping a Catholic priest before a large congregation while officiating at a solemn religious ceremony invested with sacerdotal dignity, constitutes slander by deed. (People vs. Nosce, 60 Phil. 895)

The act of slapping the teacher constitutes a violation of Article 369, considering the shame and humiliation she must have suffered at being slapped during a dance where many people were present. (People vs. Roque, C.A., 40 O.G. 1710)

Fighting the offended party with intention to insult him is slander by deed.

A street fight may give rise to slander by deed, if the intention of the defendant in engaging the complainant to a fight is to insult and to bring his opponent into contempt in the eyes of the public. (U.S. vs. Kanleon, 6 Phil. 489)

Pointing a dirty finger constitutes simple slander by deed.

Pointing a dirty finger ordinarily connotes the phrase "*Fuck You,*" which is similar to the expression "*Puta*" or "*PutangIna mo,*" in local parlance. Such expression was not held to be libelous in *Reyes vs. People,* 137 Phil. 112, 120 (1969), where the Court said that: "This is a common enough expression in the dialect that is often employed, not really to slander but rather to

express anger or displeasure. It is seldom, if ever, taken in its literal sense by the hearer, that is, as a reflection on the virtues of a mother." Following *Reyes*, and in light of the fact that there was a perceived provocation coming from complainant, petitioner's act of pointing a dirty finger at complainant constitutes simple slander by deed, it appearing from the factual milieu of the case that the act complained of was employed by petitioner "to express anger or displeasure" at complainant for procrastinating the approval of his leave monetization. While it may have cast dishonor, discredit or contempt upon complainant, said act is not of a serious nature. (Villanueva vs. People, G.R. No. 160351, April 10, 2006)

Determination of seriousness of slander by deed.

There is no fixed standard in determining whether a slander is serious or not; hence, the courts have sufficient discretion to determine the same, basing the finding on the attendant circumstances and matters relevant thereto. (People vs. Motita, C.A., 59 O.G. 3020)

When the appellant saw the complainant making motions of spitting, she felt so insulted and was incensed beyond endurance that she spat on the face of the complainant. It is clear, therefore, that the accused acted in the heat of passion and without thinking of the highly offensive character of what she would do. Such act was not intended to be taken in its natural result; if the spitting was deliberately done, it would constitute the crime of grave slander by deed. Under the circumstances of the case, the appellant was declared guilty of the crime of slight slander by deed. (People vs. Valmoria, C.A., 64 OG. 10991)

As a public official, petitioner, who was holding the position of Councilor at that time, is hidebound to be an exemplar to society against the use of intemperate language particularly because the offended party was a Vice-Mayor. However, we cannot keep a blind eye to the fact that scathing words were uttered by petitioner in the heat of anger triggered by the fact that complainant refused, without valid justification to approve the monetization of accrued leave credits of petitioner, the crime committed is only slight oral defamation. (Villanueva vs. People, G.R. No. 160351, April 10, 2006)

Slander by deed and acts of lasciviousness, distinguished.

Kissing a girl in public and touching her breast *without lewd designs*, committed by a rejected suitor *to cast dishonor on the girl* was held to be slander by deed and not acts of lasciviousness. (People vs. Valencia, CA-G.R. No. 4136-R, May 29, 1950)

Slander by deed and maltreatment, distinguished.

The *nature* and *effects* of the maltreatment determine the crime committed. If the offended party suffered from shame or humiliation caused by the maltreatment, it is slander by deed.

The act of holding a school teacher by the hair and shaking him violently in the presence of school children and other teachers, because he had stopped a boy who had been pursuing another, is not maltreatment under par. 3, Art. 266, but slander by deed, because (1) *of the public office held by the offended party, and* (2) the *nature and effects of the maltreatment inflicted* upon him. (People vs. Velez, G.R. No. 41234, Aug. 31, 1934)

Unjust vexation, slander by deed, and act of lasciviousness, distinguished.

The common denominator present in unjust vexation, slander by deed, and act of lasciviousness is irritation or annoyance. Without any other concurring factor, the offense would be merely unjust vexation because unjust vexation is equated with anything that annoys or irritates another without justification. If in addition to the irritation or annoyance, there was attendant publicity and dishonor or contempt, the offense would be slander by deed. (Art. 359, Revised Penal Code) However, if, in addition to the annoyance or irritation, there was present any of the circumstances provided for in Art. 335 of the Code, on rape, *i.e.,* use of force or intimidation, deprivation of reason or otherwise rendering the offended party unconscious, or if the offended party was under 12 years of age, together with lewd designs, the crime would be act of lasciviousness. (People vs. Motita, *supra)*

Slander by deed; when offended party's complaint not necessary.

Under the last paragraph of Article 360 of the Revised Penal Code, only defamation imputing crimes which may not be prosecuted *de oficio* under Article 344, *i.e.,* adultery, concubinage, seduction, abduction, rape and acts of lasciviousness, must be prosecuted upon complaint by the offended party. (People vs. Juan B. Santos and Francisco Cuballa, 52 O.G. No. 1,203; People vs. Anel, G.R. No. L-8393, April 27, 1956) So that where no imputation of any of the crimes mentioned in Article 344 is made, the complaint by the offended party is not necessary. (Vda. de Corostiza vs. People, G.R. No. L-909, Aug. 28, 1956; People vs. Marquez, 68 Phil. 506) Likewise, the imputation of a vice or defect which does not constitute a crime at all is not within the exception. (People vs. Anel, G.R. No. L-8393, April 27, 1956) As the grave slander by deed charged in the case at bar does not impute any crime, public or private, to the offended party, his complaint was not necessary to confer jurisdiction upon the court. (People vs. Duran, Jr., 58 O.G. 660)

Moral damages awarded do not determine the jurisdiction of the court.

The claim for moral damages is only an incident to a criminal case. If awarded by the court, it is not a penalty for the commission of a crime, nor a fine that is provided for by law as a penalty for the offense which should determine the jurisdiction of the court. (People vs. Tejero, C.A., 59 O.G. 738)

Section Two. — General provisions

Art. 360. *Persons responsible.* — Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: *Provided, however,* That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission

of the offense or where the libelous matter is printed and first published: ***Provided, further,*** That the civil action shall be filed in the same court where the criminal action is filed and vice versa: ***Provided, furthermore,*** That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts: ***And provided, finally,*** That this amendment shall not apply to cases of written defamations, the civil **and/or** criminal actions to which have been filed in court at the time of the effectivity of this law.

Preliminary investigation of criminal actions for written defamations as provided for in this chapter shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such actions may be instituted in accordance with the provisions of this article.

No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted *de* ***oficio*** shall be brought except at the instance of and upon complaint expressly filed by the offended party. *(As amended by Rep. Act No. 4363)*

The persons responsible for libel are:

1. The person who *publishes, exhibits* or *causes the publication or exhibition* of any defamation in writing or similar means. (Art. 360, par. 1)
2. The *author* or *editor* of a book or pamphlet.
3. The *editor* or *business manager* of a daily newspaper magazine or serial publication. (Art. 360, par. 2)
4. The owner of the printing plant which publishes a libelous article *with his consent* and all other persons who in any way participate in or have connection with its publication. (U.S. vs. Ortiz, 8 Phil. 752)

The person who publishes libelous letter written by the offended party is liable.

A, a woman, sent a love letter to B, a man, containing very intimate expressions of sentiment. To a third person the contents of said letter would

be ridiculous. B, after breaking his relation with A, published the letter. Is B liable for libel? Yes. The prime requisite of the crime of libel is *not necessarily the composing of the article, but the publishing of it.*

Liability of the editor is the same as that of the author.

The editor of a daily newspaper, magazine or serial publication is liable for the defamations contained therein to *the same extent as if he were the author* thereof. (People vs. Bailo, *et al.*, C.A., 37 O.G. 2373)

Municipal court of a municipality cannot conduct preliminary investigation of criminal action for written defamation.

Preliminary investigation of criminal actions for written defamations shall be conducted by the provincial or city fiscal of the province or city or by the *municipal* (now city) *court of the city or capital of the province* where the actions may be instituted.

Since "preliminary investigation of criminal actions for written defamations x x x shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province x x x," a judge, who is neither a judge of the municipal court of the city or capital of the province, has no jurisdiction to conduct preliminary investigation of a libel case. (Quizon, *et al.* vs. Baltazar, Jr., 65 SCRA 293)

Venue of criminal and civil actions for damages in cases of written defamations.

The criminal and civil actions for damages in case of written defamations shall be filed simultaneously or separately with the court of first instance of the province or city —

(1) Where the libelous article is printed *and* first published; or

(2) Where *any of the offended parties* actually resides at the time of the commission of the offense.

Where one of the offended parties is a public officer.

Where *one of the offended parties is* a public *officer* whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed *and* first published.

In case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed *and* first published.

In case one of the offended parties is a private individual.

In case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where *he actually resides* at the time of the commission of the offense or where the libelous matter is printed *and* first published.

The limitation of the choices of venue, as introduced into the Penal Code through its amendment by Republic Act No. 4363, was intended "to minimize or limit the filing of out-of-town libel suits" to protect an alleged offender from "hardships, inconveniences and harassments" and, furthermore, to protect "the interest of the public service" where one of the offended parties is a public officer. The intent of the law is clear: a libeled public official must sue in the court of the locality where he holds office, in order that the prosecution of the action should interfere as little as possible with the discharge of his official duties and labors. The only alternative allowed him by law is to prosecute those responsible for the libel in the place where the offending article was printed and first published. Here, the law tolerates the interference with libeled officers' duties only for the sake of avoiding unnecessary harassment of the accused. Since the offending publication was not printed in the Philippines, the alternative venue was not open to respondents Mayor Villegas of Manila and Undersecretary of Finance Enrile, who were the offended parties. (Time, Inc. vs. Reyes, 39 SCRA 303)

Civil and criminal actions must be filed in the same court.

The civil action shall be filed in the same court where the criminal action is filed and vice versa. (Art. 360, par. 3, as amended by Rep. Act No. 4363)

Exclusive jurisdiction of the court.

The court where the criminal action or civil action for damages *is first filed* shall acquire jurisdiction to *the exclusion of other courts.* (Art. 360, par. 3, as amended by Rep. Act No. 4363; People vs. Felisa Te, *et al.*, 60 O.G. 3593)

Considering the third proviso of Republic Act 1289 which states that "the court where the criminal action or civil action for damages is first filed shall acquire jurisdiction to the exclusion of other courts," it is clear that the Court of First Instance of Manila, where the information for libel was filed on May 18, 1955, excluded any and all other courts of equal category. The Court of First Instance of Batangas, therefore, did not have jurisdiction in taking cognizance of the present case, the information based on the same libelous publication having been filed in that Court on July 8, 1955. (People vs. Felisa Te, *et al.*, 60 O.G. 3593)

Offended party must file complaint for defamation imputing a crime which cannot be prosecuted de oficio.

The fourth paragraph of Art. 360 of the Revised Penal Code requiring the complaint in an action for defamation imputing a private offense to be expressly filed by the offended party, applies not only to written but also to oral defamation.

The fiscal filed an information, charging the accused with "telling some people in the neighborhood that said Fausta Bravo (a married woman) was a paramour of one Sangalang, a man not her husband." Fausta Bravo did not subscribe to a complaint. *Held:* Since the accused imputed to Fausta Bravo the commission of *adultery,* a crime which cannot be prosecuted *de oficio,* the information filed by the fiscal cannot confer jurisdiction upon the court. (People vs. Padilla, 56 O.G. 3845)

The crimes which may not be prosecuted *de oficio* are *adultery, concubinage, seduction, abduction,* and *acts of lasciviousness.* (Art. 344)

The alleged premarital relations of the offended husband and wife could be a vice or defect, but it is not an imputation of adultery or concubinage, or any of the other crimes which may not be prosecuted *de oficio.* (Mangila vs. Lantin, 30 SCRA 81) Likewise, if adultery is not definitely imputed, the libel may be prosecuted upon information signed and filed by the fiscal. (People vs. Halili, C.A., 57 O.G. 3135)

Libel imputing a vice or defect, not being an imputation of a crime, is always prosecuted upon information signed and filed by the fiscal.

The imputation of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance, tending to cause the dishonor, discredit, or contempt of the offended party, does not involve a crime in the imputation. It may be prosecuted *de oficio.*

Since only a crime *may be* or *may not be* prosecuted *de oficio,* the imputation of a vice or defect, any act, omission, condition, status, or circumstance is not covered by the last paragraph of Art. 360. (See People vs. Santos, *et al.*,52 O.G. 203)

Damages in defamation.

Actual damages need not be proved, at least where the publication is libelous *per se* (Phee vs. La Vanguardia, *supra;* Jimenez vs. Reyes, 27 Phil. 52; Quemuel vs. Court of Appeals, 22 SCRA 44) or when the amount of the award is more or less nominal. (U.S. vs. Cara, 41 Phil. 828; Freeman vs. U.S., 40 Phil. 1039; Quemuel vs. Court of Appeals, *supra)* The reason is that,

by its nature, libel causes dishonor, disrepute and discredit, and injury to the reputation of the offended party its natural and probable consequence. (Quemuel vs. Court of Appeals, *supra)* The liability for damages on account of injury to feelings and reputation in a civil action for libel is an obligation *ex delicto,* and the damages are compensatory and recoverable under Article 104 of the Revised Penal Code. (Lu Chu Sing vs. Lu Tiong Gui, 76 Phil. 669)

An action for exemplary damages in libel may be awarded if the action is based on quasi-delict.

Although moral damages may undoubtedly also be recovered under Article 2219 of the new Civil Code, there is a holding enunciated before said Code went into effect, that the right to recover punitive and exemplary damages had been abolished by the Revised Penal Code which repealed Act No. 277, Section 11 of which granted such right. (See Lu Chu Sing vs. Lu Tiong Gui, *supra)* It would seem, however, that if the action is one based on quasi-delict (as in the Lopez case, *supra),* exemplary or corrective damages may also be awarded under Article 2231 of the new Civil Code.

For liability in damages to arise from an alleged libelous publication without offending press freedom, there is need to prove that the publication was made with actual malice — that is, with the knowledge of its falsity or with reckless disregard of whether it was false or not. (Lopez vs. Court of Appeals, 34 SCRA 116)

No remedy for damages for slander or libel in case of absolutely privileged communication.

An absolutely privileged communication is one for which, by reason of the occasion on which it is made, no *remedy is provided for the damages in a civil action for slander or libel.* (Sison vs. David, G.R. No. L-11268, Jan. 28, 1961, citing 53 C.J.S., p. 142)

Illustration of damages recoverable in defamation;

The defendant, who was convicted of libel, was sentenced to pay, in addition to a fine of P500, the offended party, by way of damages, P1,000.

Held: The damages awarded to the complainant are compensatory for the injury inflicted by the wrongful act of defamation recoverable under Art. 104 of the Revised Penal Code, which provides that the civil liability arising from the commission of a felony includes reparation of the damages caused and indemnification for consequential damages. A libeled person may recover from the libeler, damages for *injury* to *his feelings and reputation,*

in addition to the actual pecuniary damages sustained by him. (People vs. De la Vega-Cayetano, C.A., 52 O.G. 240, citing Lu Chu Sing, *et al.* vs. Lu Tiong Gui, 76 Phil. 677)

Art. 361. ***Proof of the truth.*** — In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and for justifiable ends, the defendant shall be acquitted.

Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against the Government employees with respect to facts related to the discharge of their duties.

In such cases if the defendant proves the truth of the imputation made by him, he shall be acquitted.

When proof of truth is admissible.

Proof of truth is admissible in any of the following:

1. When the *act* or omission *imputed* constitutes a *crime* regardless of whether the offended party is a private individual or a public officer.
2. When the offended party is a Government employee, even if the act or omission imputed does not constitute a crime, provided, it is related to the discharge of his official duties. (See Ocampo vs. Evangelista, *et al.*, C.A., 37 O.G. 2196; Tumang vs. People, 73 Phil. 700)

Example of No. 2:

A stated in the presence of some people that B, a government official was in the habit of drinking intoxicating liquor during office hours and that he was always in a boisterous condition. In case B should file a complaint against A for defamation, the latter can prove the truth of the charge.

Both public interest and the good of the service demand that a drunkard be barred from the service.

But when the imputation involves the *private* life of a government employee which is *not* related to the discharge of his official duties, the offender can not prove the truth thereof.

"In such cases if the defendant proves the truth of the imputation made by him, he shall be acquitted."

The third paragraph of Art. 361 must have reference to the two cases referred to in the second paragraph where proof of the truth may be admitted, namely: (1) if the act or omission imputed constitutes a crime; and (2) if the imputation not constituting a crime is made against Government employees with respect to facts related to the discharge of their duties.

The question may arise whether or not it is necessary to show that the accused who proved the truth of the imputation published it with good motives and for justifiable ends in order that he may be acquitted.

It is believed that since the accused did the public a service, proof of his good motives and justifiable ends is not necessary.

Proof of truth.

The proof of the truth of the accusation cannot be made to rest upon mere hearsay, rumors or suspicion.

It must rest upon *positive, direct evidence* upon which a definite finding may be made by the Court. (See U.S. vs. Sotto, 38 Phil. 666)

But *probable cause* for *belief* in the truth of the statement is sufficient.

When evidence of the truth of imputation not admissible.

Illustration.

A stated before several persons that *B*, a private individual, is a drunkard or is suffering from contagious disease. In case *A* is prosecuted for defamation, he will not be allowed to prove the truth that *B* was really a drunkard or suffering from some communicable diseases.

In a case, the defendant made several imputations against Felix Manalo. Some of them insinuated the commission of crimes and some did not constitute crimes. The defendant was allowed to prove the truth of the imputations constituting crimes but he was not allowed to prove the truth of the imputations constituting crimes.

There is no merit in petitioner's contention that he had been unlawfully deprived of his right to prove the truth of the libelous imputation. The Court of Appeals has rightfully held that proof of the truth of those acts imputed to the offended party which do not constitute a crime cannot be admitted, since he is not a government employee, and, consequently, none of those imputations can have any reference to facts related to the discharge by a government employee of his official duties. This is in consonance with the

second paragraph of Article 361 which limits the scope of the general rule set forth in the first paragraph of the same article. (Tumang vs. People, 73 Phil. 700)

It was held in *Imperial, et al. vs. The Manila Times Publishing Co., Inc., et al.*, C.A., 67 O.G. 5711, that truth is a good defense in action for libel if the imputation is made against government officials and employees with respect to facts related to the discharge of their official duties. (Art. 361, par. 2, R.P.C.; People vs. Salumbides, CA-G.R. No. 14224-R, Jan. 22, 1960; People vs. Trilanes, 10 O.G. 393) In *pari materia* is the ruling laid down by the Supreme Court in the case of *U.S. vs. Bustos*, 37 Phil. 741, to wit:

> "Under our Libel Law, defamatory remarks against government employees with respect to facts related to the discharge of their official duties will not constitute libel if the defendant proves the truth of the imputation."

Three requisites of defense in defamation:

It will be noted that in the first paragraph of Art. 361, proof of the truth is not enough. It is also required that the matter charged as libelous was published with good motives and for justifiable ends.

1. "If it appears that the matter charged as libelous is true."

   The proof of the truth in defamation is limited only (1) to act or omission constituting a crime and, (2) to act or omission of a public officer which, although not constituting a crime, is related to the discharge of his duties.

2. "It was published with good motives."

   Whether or not good motives exist is a question to be determined by the court by taking into consideration not only the intention of the author of the defamatory matter but all the other circumstances of each particular case.

3. "And for justifiable ends."

   A published libelous article against *B*, stating, among other things, that *B* as a captain of the Constabulary, compelled a municipal president to kneel before the bishop. *A* claimed that he published the same to promote the separation of the church and state.

Held: The goodness of the intention is not always sufficient by itself to justify the publication of an injurious fact; thus, the goodness of the end is not a sufficient motive to warrant the employment of illicit means to obtain it. (U.S. vs. Prautch, 10 Phil. 562)

There could possibly be no good motives and justifiable ends in *picturing a lady* before the public as having such *loose morals* as to pose in

the nude either alone or with a man. (People vs. Salumbides, *et al.*, C.A 55 O.G. 2638)

"With good intention and justifiable motive."

A, a nurse, was treating a patient suffering from gonorrhea, a venereal disease. She believed that the patient had been contaminated by her husband. When the husband came to the house, A said "This is the result of your foolishness, you contaminated your wife with venereal disease." This remark was made upstairs within the hearing of several persons therein.

Held: That statement concerning the cause of the sickness of the patient was done in private and only as a precautionary measure to prevent further contamination. Even if it was overheard by other persons, it was not motivated by malice on the part of *A*. There was no showing that she was inspired by any feeling of spite or ill-will towards the complainants. A, being a registered nurse and acting under proper medical instructions, considered it her duty to warn complainants of the dangers of the disease from which she believed they were suffering. The warning is in the nature of a privileged communication.

An imputation that a person has a contagious disease might, under ordinary circumstances, be defamatory, but loses such character when made with *good intention* and *justifiable motive.* (People vs. Chavez, C.A., 53 O.G. 8886)

Good motives and justifiable ends constitute a defense insofar as *they negative malice.* There is no libel if there is no malice.

Retraction may mitigate the damages.

When a periodical gives currency, whether innocently or otherwise, to a false and defamatory statement concerning any person, it is under both a legal and moral duty to check the propagation of such statement as soon as practicable by publishing a *retraction.*

In order to have the desired effect, the retraction should contain an admission of the falsity of the libelous publication and *evince* a desire to repair the wrong occasioned thereby. (Sotelo Matti vs. Bulletin Publishing Co., 37 Phil. 562)

That the publication of the article was an honest mistake is not a complete defense but serves only to mitigate damages where the article is libelous per se.

The plaintiff was pictured as having stabbed another person in a fit of jealousy as his *querida* had abandoned him for said individual. This was

a case of mistaken identity. The defendant contended that the publication was an honest mistake.

Held: It would serve only to mitigate damages where the article is libelous *per se.* (Phee vs. La Vanguardia, 45 Phil. 211)

Note: In this case, the offended party informed the defendant of the mistake, but the latter took no step to correct it.

Art. 362. *Libelous remarks.*— Libelous remarks or comments connected with the matter privileged under the provisions of Article 354, if made with malice, shall not exempt the author thereof nor the editor or managing editor of a newspaper from criminal liability.

Libelous remarks or comments on matters privileged, if made with malice in fact, do not exempt the author and editor.

Thus, if *remarks* or *comments* are made upon a matter privileged, and *malice* in a *fact* is proved, the author and the editor are liable.

Liability of newspaper reporter for distorting facts connected with official proceedings.

The reporter of a newspaper publication, in publishing what passes in a court of justice, must publish the whole case, and not merely state the conclusion which he himself draws from the evidence.

Thus, the author or the editor of a publication who *distorts, mutilates* or *discolors* the official proceedings reported by him, or *add comments* thereon to cast aspersion on the character of the parties concerned, is guilty of libel, notwithstanding the fact that the defamatory matter is published in connection with a privileged matter. (Dorr vs. U.S., 11 Phil. 706)

Chapter Two

INCRIMINATORY MACHINATIONS

What are the felonies under incriminatory machinations?

They are:

1. Incriminating innocent person. (Art. 363)
2. Intriguing against honor. (Art. 364)

Art. 363. *Incriminating innocent person.* — Any person who, by any act not constituting perjury, shall directly incriminate or impute to an innocent person the commission of a crime, shall be punished by *arresto* ***mayor.***[1]

Elements:

1. That the offender performs an act.
2. That by such *act* he *directly incriminates* or *imputes* to an innocent person the commission of a crime.
3. That such act does not constitute *perjury.*

This article is limited to "planting" evidence and the like, which tend directly to cause false prosecution.

This article is limited to acts of *"planting" evidence* and the like, *which do not in themselves constitute false prosecutions* but *tend* directly to *cause* false prosecutions. (People vs. Rivera, 59 Phil. 236)

A, taking advantage of the fact that B was in the toilet while his (B's) coat was hanging on the back of a chair, placed a small bottle of opium in the pocket of the coat. Then A called a policeman and told the latter that B had a bottle of opium in his pocket.

[1]See Appendix "A," Table of Penalties, No. 1.

Note that A *performed an act* by putting in B's pocket a bottle of opium. This is called "planting" evidence.

False accusation is defamation or perjury under the Revised Penal Code.

According to the plaintiffs, it is malicious prosecution or false accusation; according to the defendant and the lower court, it is defamation or libel.

Let us first consider plaintiffs' contention. Articles 326 and 327 of the old Penal Code, which respectively defined and penalized the crime of false accusation, were not reenacted in the Revised Penal Code but, since the old Penal Code has been repealed, they must be deemed to have been abrogated.

Article 363 of the Revised Penal Code, which penalizes any person who by any act not constituting perjury shall directly incriminate or impute to an innocent person the commission of a crime, does not apply to false accusations but to acts tending directly to cause false accusations, such as "planting" evidence and the like. (People vs. Rivera, 59 Phil. 236)

In the case last cited (page 242), this court said:

> It is to be noted that Article 326 of the old Penal Code contains the provision that the accuser could be prosecuted only on the order of the court, when the court was convinced upon trial of the principal cause that there was sufficient basis for a charge of false accusation. Article 363 of the Revised Penal Code contains no such safeguard. If we extended said article by interpretation to administrative and judicial proceedings, it is apparent that we would open the door to a flood of prosecutions in cases where the defendants were acquitted. There is no reason to believe that the Legislature intended such a result."

Under the Revised Penal Code one who falsely accuses another of a crime may be held liable either for *libel* or for *perjury,* depending upon the manner or form in which the act is committed. (Lu Chu Sing and Lu Tian Chiong vs. Lu Tiong Gui, 76 Phil. 674, citing the concurring opinion of Justice Diaz in People vs. Rivera, *supra)*

Incriminating an innocent person distinguished from perjury by making false accusation.

1. Incriminating an innocent person is committed by performing an *act* by which the offender directly incriminates or imputes to an innocent person the commission of a crime; in perjury, the gravamen of the offense is the *imputation itself,* falsely made, before an officer.

2. Incriminating an innocent person is limited to the *act of planting evidence* and the like, in order to incriminate an innocent person; while perjury is the giving of *false statement* under oath or the making of a false affidavit, imputing to a person the commission of a crime. (See People vs. Rivera, 59 Phil. 236)

Incriminatory machinations distinguished from defamation.

In incriminatory machinations, the offender does not avail himself of *written* or *spoken words* in besmirching the victim's reputation, as would be in the case of defamation. In defamation, the imputation made by the offender must be *public* and malicious, and, besides, must be calculated to cause the dishonor, discredit or contempt of the aggrieved party; this is not so in the case of incriminatory machinations. (Guevara)

Is there a complex crime of incriminating an innocent person through unlawful arrest?

The allegation in the information that the accused committed the complex crime of incriminatory machinations thru unlawful arrest and the allegation that the act of planting the incriminatory evidence took place during the supposed investigation after the unlawful arrest — are bases for the logical assumption in the absence of evidence to the contrary, that the two acts imputed to the accused had closely followed each other, and that the former was a necessary means to commit the latter. Thus, a complex crime was alleged.

As the Solicitor argued —

> "Under the circumstances of the case, the accused had to arrest Marcial because it was the only way that they could with facility detain him and, more importantly, search his person or effects and, in the process, commingle therewith the marked peso bill. It should be observed that without detaining, investigating and searching Marcial it would have been impossible, if not difficult, for the accused to plant the marked one peso bill, because then they could not have simply held Marcial and placed the marked one peso bill in his pocket, without the latter vigorously protesting the act. Besides, if the accused simply held Marcial and planted in his pocket the marked one peso bill without arresting him, they could not have surely and easily discovered what they were up to. Indeed, the accused had to arrest Marcial, even in the absence of the valid reason, so that under the semblance of a police investigation, they could get whatever money was inside his pockets and include in it the marked one peso bill. In short, the accused had to arrest Marcial so that he could be detained

and pretending to investigate him, search his person and thereby have possibly accomplished their purpose, because Marcial would have the opportunity of planting the marked one peso bill among his belongings."

Therefore, the trial court erred when it ordered the dismissal of the case, on the ground that the information alleged two distinct offenses of incriminating an innocent person and unlawful arrest. The two offenses form a complex crime, which is only one crime. (People vs. Alagao, *et al.*, G.R. No. L-20721, April 30, 1966)

Art. 364. ***Intriguing against honor.*** **— The penalty of** *arresto menor* **or fine not exceeding 200 pesos shall be imposed for any intrigue which has for its principal purpose to blemish the honor or reputation of a person.**

How is intriguing against honor committed?

It is committed by any person who shall make any intrigue which has for its principal purpose to blemish the honor or reputation of another person.

Intriguing against honor is any scheme or plot by means which consist of some trickery.

Intriguing against honor is any scheme or plot designed to blemish the reputation of a person by means which consist of some trickery. It is akin to slander by deed, in that the offender does not avail directly of written or spoken words, pictures or caricatures to ridicule his victim but of some ingenious, crafty and secret plot, producing the same effect. (People vs. Fontanilla, C.A., 56 O.G. 1931)

Incriminating an innocent person distinguished from intriguing against honor.

In incriminating an innocent person, the offender performs an act by which he directly incriminates or imputes to an innocent person the commission of a crime; in intriguing against honor, the offender resorts to an intrigue for the purpose of blemishing the honor or reputation of another person.

Intriguing against honor distinguished from defamation.

While R was sitting on a bench at the entrance of the City Fiscal's Office, the accused F approached her and asked for the reason of her presence there. When R answered that she was in the company of B, F remarked thus: *"Why are you going with her? Masamang tao iyan" and continued saying: "All her neighbors are her enemies. Maraming asunto siya, nagkakagulo-gulo at nagkakapatong-patong ang mga asunto niya."*

Is F guilty of the crime of intriguing against honor, or of the crime of defamation?

Held: **Defamation is defined as "a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead." (Art. 353, Revised Penal Code) Having this in mind, we hold that the case is one of defamation and not that of intriguing against honor which may be committed by means which "consists of some tricky and secret plot." (People vs. Fontanilla, C.A., 56 O.G. 1931)**

Note: **In view of this ruling, gossiping, which is done by availing directly of spoken words, is not intriguing against honor.**

Intriguing against honor distinguished from slander.

The facts do not constitute intriguing against honor because the information given by appellant to Clapano, within the hearing of others, allegedly came from a definite source, to wit: Lim Peng. Where the source of the information can be pinpointed and definitely determined, as what appellant had asserted by stating that it was from a certain Lim Peng, and he, appellant, adopting as his own the information he has obtained, passes the same to another for the purpose of causing dishonor to complainant's reputation, the act is not intriguing against honor, but clearly one of slander. But where the *source* or the *author* of the derogatory information *cannot be determined* and the defendant *borrows the same* and, *without subscribing to the truth thereof, passes it to others,* the defendant's act is one of intriguing against honor. (People vs. Pelayo, Jr., C.A., 64 O.G. 1993)

Title Fourteen

QUASI OFFENSES

Sole Chapter

CRIMINAL NEGLIGENCE

Art. 365. *Imprudence and negligence.* — Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prisioncorreccional* in its medium period;[1] if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods[2] shall be imposed; if it would have constituted a light felony, the penalty of *arresto menor* in its maximum period[3] shall be imposed.

Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of *arresto mayor* in its medium and maximum periods;[4] if it would have constituted a less serious felony, the penalty of *arresto mayor* in its minimum period[5] shall be imposed.

When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than twenty-five pesos.

[1]See Appendix "A," Table of Penalties, No. 9.
[2]See Appendix "A," Table of Penalties, No. 5.
[3]From 21 days to 30 days.
[4]See Appendix "A," Table of Penalties, No. 6.
[5]See Appendix "A," Table of Penalties, No. 2.

A fine not exceeding two hundred pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously would have constituted a light felony.

In the imposition of these penalties, the courts shall exercise their sound discretion, without regard to the rules prescribed in article sixty-four.

The provisions contained in this article shall not be applicable:

1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in which case the courts shall impose the penalty next lower in degree than that which should be imposed, in the period which they may deem proper to apply.

2. When, by imprudence or negligence and with violation of the Automobile Law, the death of a person shall be caused, in which case the defendant shall be punished by *prision correccional* in its medium and the maximum periods.[6]

Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.

Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.

The penalty next higher in degree to those provided for in this article shall be imposed upon the offender who fails to lend on the spot to the parties such help as may be in his hands to give. *(As amended by Rep. Act No. 1790)*

[6] See Appendix "A," Table of Penalties, No. 15.

The quasi-offenses under Art. 365 are committed in four ways:

1. By committing through *reckless imprudence* any act which, had it been intentional, would constitute a *grave* or *less grave felony or light felony.* (Par. 1)
2. By committing through *simple imprudence* or *negligence* an act which would otherwise constitute a grave or a less serious felony. (Par. 2)
3. By causing *damage to the property* of another through *reckless imprudence* or *simple imprudence* or *negligence.* (Par. 3)
4. By causing through *simple imprudence* or *negligence* some wrong which, if done maliciously, would have constituted a *light felony.* (Par. 4)

"Act which, had it been intentional, would constitute a grave felony x x x; x x x a less grave felony x x x a light felony."

Parricide (Art. 246) or homicide (Art. 249), if committed with intent to kill (intentional), is *a grave* felony because the first is punishable by *reclusion perpetua* to death and the second is punishable by *reclusion temporal,* both afflictive penalties and death is capital punishment. If either is committed through reckless imprudence or negligence, Art. 365 is applicable.

Less serious physical injuries (Art. 265) is a *less grave* felony, because it is punishable by *arresto mayor,* a correctional penalty. Slight physical injuries is a *light* felony (Art. 266), because it is punishable by *arresto menor* or a fine not exceeding P200. If either is committed with malice (intentional), Art. 265 or Art. 266 is applicable. If committed through reckless imprudence or negligence, Art. 366 applies.

For firing a warning shot in the air without the least intention of causing injury to anyone, but without taking the necessary precaution demanded by the circumstances as to time and place, and in the process hit and killed a bystander, the accused, who is a policeman, cannot be held liable under Art. 249 of the Revised Penal Code for intentional homicide, but instead is liable under Art. 365 of the same Code for homicide through reckless imprudence. (People vs. Cusi, C.A., 68 O.G. 2777)

If the act performed *would not constitute* a grave or less grave felony or light felony under any other provision of the Code which defines intentional felony, Art. 365 is not applicable. There is no crime committed, because it will be neither an intentional felony nor a culpable felony. There are only two classes of felonies: (1) intentional felony *(by dolo)* and (2) culpable felony *(by culpa),* as provided in Article 3 of the Code.

U.S. vs. Villanueva
(31 Phil. 414)

Facts: That the accused, suddenly and without saying a word, drew the bolo from the sheath in which the aggrieved party Isidoro Benter was carrying at his belt; that the said Isidoro Benter instinctively caught at the bolo to retain it and in so catching it with his right hand, the bolo, in sliding through with all its edge, wounded him across the entire width of the palm of the hand in a direction perpendicular to the base of the fingers; and that the wound was not healed for more than 40 days.

Held: The accused is not criminally liable, either for intentional serious physical injuries or for serious physical injuries through reckless imprudence. The law speaks of a person who by reckless imprudence commits an act which, if maliciously performed, would constitute a grave (less grave, or light) felony. But the act of the accused in the case at bar does not constitute a felony, *grave* or *menosgrave.* The only act which he performed was to take, or attempt to take from its sheath, the bolo which Benter was carrying at his belt, and that was an act which is not defined in any law as being a crime.

If the accused, in drawing the bolo from its scabbard, or if any other person in taking a revolver from the belt of a person carrying it, should, by not employing proper care, wound the latter, clearly, then, he would have to answer for his act of injuring the other, as guilty of having caused an injury without malice and merely by reckless negligence by reason of not using proper care. But the defendant did not wound Benter. It was the latter who, by his own act in catching hold of the edge of the blade of the bolo, wounded himself. Or, the bolo, by its edge or by its own weight, in slipping from Benter's hand, because he did not grasp it firmly, wounded Benter; the bolo did this, not the defendant.

Imprudence or negligence is not a crime in itself; it is simply a way of committing a crime.

Imprudence or negligence merely determines a lower degree of criminal liability. Imprudence or negligence becomes punishable only when it results in a crime. (People vs. Faller, 67 Phil. 529)

It should be "reckless imprudence resulting in homicide," or "simple imprudence causing damages to property."

When a person, by reckless imprudence, caused the death of another, the strict technical offense is more accurately, "reckless imprudence resulting in homicide."

When a person, by simple imprudence or negligence, caused damage to the property of another, the strict technical offense is more accurately, "simple imprudence causing damages to property."

Criminal negligence in our Revised Penal Code is treated as a mere quasi-offense, and dealt separately from willful offenses. It is not a mere question of classification or terminology. In intentional crimes, the act itself is punished; in negligence or imprudence, what is principally penalized is the *mental attitude* or condition behind the act, *the dangerous* recklessness, lack of care or foresight; the *"imprudencia punible."* Much of the confusion has arisen from the common use of such descriptive phrases as "homicide thru reckless imprudence," and the like; when the strict technical offense is more accurately, *"reckless imprudence* resulting in homicide," or *"simple imprudence* causing damages to property."

Our Revised Penal Code (Art. 365) fixes the penalty for reckless imprudence at *arresto mayor* maximum, to *prision correccional* minimum (medium) if the willful act would constitute a grave felony, notwithstanding that the penalty for the latter could range all the way from *prision mayor* to death, according to the case. It can be seen that the actual penalty for criminal negligence bears *no* relation to the *individual* willful crime, but is set in relation to a *whole class,* or series of crimes. (People vs. Cano, G.R. No. L-19660, May 24, 1966, pp. 186-190, citing Quizon vs. J.P. of Bacolor, Pampanga, 97 Phil. 342)

Negligence under the Penal Code and that under the Civil Code.

A negligent act causing damage may produce civil liability arising from crime or create an action for quasi-delict under the Civil Code. The injured party may choose which remedy to enforce. He cannot recover damages twice for the same act or omission of the defendant. (Art. 2177, New Civil Code)

The Penal Code does not draw a well-defined demarcation line between negligent acts that are delictual and those which are quasi-delictual. It is possible that a negligent act may be delictual and quasi-delictual at the same time. (Barredo vs. Garcia, 73 Phil. 607)

Negligence in Civil Law may arise from contract (Art. 1170 — *culpa contractual)* or from tort (Art. 2176 - *culpa aquiliana)*

Imprudence and negligence, distinguished.

Imprudence indicates a deficiency of action; negligence indicates a deficiency of perception.

Hence, failure in *precaution* is termed imprudence. Failure in *advertence* is known as negligence.

The wrongful acts may be avoided on two levels: (1) by paying proper attention and using due diligence in foreseeing them, and (2) by taking the necessary precaution once they are foreseen.

Failure to do the first is negligence. Failure to do the second is imprudence.

Reckless imprudence, defined.

Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.

Simple imprudence, defined.

Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.

Elements of reckless Imprudence.

1. **That the offender *does* or *fails to do an act.***
2. **That the *doing* of or the *failure* to do that act is *voluntary.***
3. **That it be *without malice.***
4. **That *material damage* results.**
5. **That there is *inexcusable lack of precaution* on the part of the offender, taking into consideration —**
   - **(a) his *employment* or *occupation;***
   - **(b) degree of *intelligence, physical condition;* and**
   - **(c) other circumstances regarding *persons, time* and *place.***

Example of reckless imprudence.

A prepared a drink, using methyl alcohol and mixing it with sugar and lemon. A sold it to three soldiers who were poisoned and died.

***Held:* Alcohol for motor vehicles is not proper for human beings; common sense so dictates. Lacking in the simplest precaution, A committed reckless imprudence. (People vs. Lara, 75 Phil. 786)**

Reckless imprudence consists in doing or failing to do an act.

1. *Doing an act.*

Illustration

Defendant went out hunting with some companions. While hunting at night, defendant *shot* at one of his companions in the belief that he was a deer. *Held:* Defendant committed homicide through reckless imprudence. (People vs. Ramirez, 48 Phil. 204)

2. *Failing to do an act.*

Illustration

A parked his car on a sloping ground without putting the handbrake or putting an obstacle on the rear wheels to prevent it from moving backward. There were children playing on the lower part of the ground. Because of *A's failure to put the hand brake* or *to put an obstacle on the rear wheels* of the car, *it* suddenly moved backward, running over one of *the* children who was killed.

3. *Doing or failing to do an act.*

Where the charge is that the accused allowed their cows and carabaos to roam and/or *graze* in the premises of the land planted to coco trees and bananas tenanted by the complainant inspite of several warnings that the latter made to the accused, the accused may be convicted of damage to property thru reckless imprudence if it is their reckless imprudence in letting loose their animals that resulted in damage to property. (People vs. Lumo, *et al.*,C.A., 69 O.G. 3983) Failing to keep the animals in the corral or to keep them tied may also constitute reckless imprudence.

Lack of foresight, as negligence.

Leaving a loaded firearm on a chair within the reach of a child then playing in the place, making it possible for the child to pick it up and play with it, and causing his death by its discharge, constitute homicide through reckless negligence. (Viada, Vol. III, p. 629)

Test of negligence.

The test for determining whether a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: Would a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes a duty on the actor

to refrain from that course or to take precaution against its mischievous results, and the failure to do so constitutes negligence. Reasonable foresight of harm, followed by the ignoring of the admonition born of this provision, is the constitutive fact in negligence. (Picart vs. Smith, 37 Phil. 809)

Reckless imprudence and "force majeure," distinguished.

Where immediate personal harm or damage to property, preventable by the exercise of reasonable care, is threatened upon another by reason of the course of conduct about to be pursued by the actor, his failure to use reasonable care to prevent injury constitutes reckless negligence. The expression *force majeure* has reference to an event which cannot be foreseen, or which being foreseen is inevitable. It implies an extraordinary circumstance independent of the will of the actor. (People vs. Eleazar, *et al.*, 60 O.G. 1728)

Whether tire blowout is fortuitous event.

The ruling of the Supreme Court in *Rodriguez vs. Red Line Transportation*, CA-G.R. No. 8136, Dec. 29, 1954 and *People vs. Palapad*, CA-G.R. No. 18480, June 27, 1958, not only are not binding on the Supreme Court but were based on considerations quite different from those that obtain in the case at bar. The appellate court there made no findings of any specific acts of negligence on the part of the defendants and confined itself to the question of whether or not a tire blowout, by itself alone and without a showing as to the causative factors would generate liability. In the present case, the cause of the blowout was known. The inner tube of the left front tire, according to petitioner's own evidence and as found by the Court of Appeals, was pressed between the inner circle of the left wheel and the rim which had slipped out of the wheel. This was, said court correctly held, a mechanical defect of the conveyance or a fault in its equipment which was easily discoverable if the bus had been subjected to a more thorough or rigid check-up before it took to the road that morning. (La Mallorca vs. De Jesus, G.R. No. L-21486, May 14, 1966, pp. 12-13)

Failure to detect mechanical defect is negligence, if accused driver assumed the duty of inspecting the vehicle.

Accused-appellant, who admitted it his duty, in the absence of the mechanic, to inspect the truck before taking it to the road, did not make a thorough and rigid check-up of the truck, for, otherwise, he would have discovered the mechanical defect and the fault in its equipment which became the cause of the failure of the brakes.

A driver who assumed the duty of inspecting the vehicle before taking it to the road is negligent if he failed to detect the mechanical defect of the

vehicle which an ordinary, experienced driver would have discovered, and such mechanical defect was the cause ftf the injury or damage to another. This rule throws upon the drivers of motor vehicles the entire responsibility of the soundness of the vehicles they are driving and compels them to know and to be certain about it. A contrary rule would expose the pedestrians and other motorists to increasing perils and would make it easier for the drivers at fault to escape liability by the simple expedient of disclaiming knowledge of the defects of their vehicles. (People vs. Martinez, 16 C.A. Rep. 1115)

When the driver could not have known the defect of brakes, he is not liable.

The driver of a motor vehicle is not guilty of negligence and therefore not criminally liable in case of an accident due to failure of the brakes of his vehicle, if he did not know or could not have known that the brakes were defective. (People vs. Villacorta, 6 C.A. Rep. 25, citing Pueblo de Filipinas vs. Aralar, *et al.*, CA-G.R. No. 01451-CR, Nov. 29, 1963, citing Bahia vs. Litonjua, 30 Phil. 624 and Davao Gulf Lumber Corp. vs. Del Rosario, *et al.*, 110 Phil. 532; Joyce vs. Brokett, *et al.*, 200 NYS 394, 395-396; Wilson vs. Central R. Co., 96 Atl 79; Lynn, *et al.* vs. Stratton, 218 SW2d., 962, 963-964)

The doing of the act or the failure to do the act must be voluntary.

Thus, if the accused is compelled to do the act or is prevented from doing the act by means of irresistible force or because of uncontrollable fear (Art. 12, pars. 5 and 6), or if he is an insane or a minor under nine years old (Art. 12, pars. 1 and 2) he cannot be held liable for criminal negligence.

Legally, there can be no negligence on the part of a seven year-old child who is incapable of acting with discernment. (People vs. Beduya, C.A., 60 O.G. 2668-2669)

That it be without malice.

Criminal negligence presupposes *lack of intention to commit the wrong done,* but that it came about due to imprudence on the part of the offender. (People vs. Guzon, C.A., 51 O.G. 4132)

Thus, once intent to kill is proved, the killing of a person is not homicide through imprudence, but plain homicide under Art. 249.

Also, once intent to cause damage due to hate, revenge, or other evil motive is shown, the crime is not damage to property through imprudence, but malicious mischief.

Material damage results.

There must be injury to person or damage to property as a consequence of reckless or simple imprudence.

Inexcusable lack of precaution on the part of the offender.

Illustrations.

1. **A was driving his car. A saw that the vehicle of B was approaching from the opposite direction and was so near that there was no room for him to pass, because there was a *carromata* ahead of him. For overtaking and passing that *carromata,* resulting in the collision between his car and the vehicle of B, A did not take the necessary precaution to avoid damage to the property of another. (People vs. Enriquez, C.A., 40 O.G. 765)**

2. **When a driver, because of *unreasonably fast driving* and carrying a number of passengers in excess of that permitted by law and regulations, permitting two of his passengers to stand on the right running board of the car, caused his car to collide with another, as a result of which a passenger died, he did not take precautions and the lack of precaution was inexcusable. (People vs. Olefernes, C.A., 40 O.G. 765)**

3. **Appellant showed an inexcusable lack of precaution when he disregarded a traffic sign cautioning motorists to slow down and drove his vehicle in full speed despite being aware that he was traversing a school zone and pedestrians were crossing the street. He should have observed the diligence of a reasonably prudent man by slackening his speed and proceeding cautiously while passing the area. (Garcia vs. Romano, G.R. No. 153591, February 23, 2004)**

4. **Here, the car was clearly ahead of the trailer truck prior to the collision. Hence, it was incumbent upon the appellant to reduce his speed or apply on the brakes of the truck in order to allow the car to safely negotiate a left turn at the intersection. Failing, thus, in observing the necessary precaution to avoid inflicting injury or damage to others, We consider appellant to be recklessly imprudent in operating his vehicle. (Veneracion vs. People, G.R. No. 137447, January 31, 2005)**

Basis for determining the inexcusable lack of precaution.

In determining the *inexcusable lack of precaution* on the part of the offender, the court must consider the (1) employment or occupation, (2) degree of intelligence and physical condition of the offender, and (3) other circumstances regarding persons, time, and place.

Employment or occupation.

The profession of pharmacy demands care and skill; and druggists must exercise care of a specially high degree, the highest degree of care known to practical men, so that human life may not constantly be exposed to the danger flowing from the substitution of deadly poisons for harmless medicines. (People vs. Castillo, *et al.*, 42 O.G. 1914)

Other circumstances regarding persons, time and place.

In attempting to overtake another vehicle, the rear of the jeepney driven by the accused collided with a 60-year-old woman who was ambling along the edge of the road. The woman died as a result of the impact. The driver was driving at only 15 to 25 kms. an hour.

Held: **The motorist must not only keep within the speed limit but *observe due care;* and the latter is always a function of the surrounding circumstances of *person, time* and place. At the *time* of the accident, it was *drizzling* and the *road was slippery.* The victim was an *old woman* ambling along the edge of the road. (People vs. Azaola, C.A., 47 O.G. 2458)**

Duty of accused when an approaching vehicle is running on the wrong side of the road.

If an approaching vehicle is running on the wrong side of the road, or on the proper lane of the accused, in order to avoid the impending collision, it becomes the duty of the accused, who *first notice* the approaching vehicle when it is still at some distance, to exercise due care under the existing circumstance in conformity with the conduct expected of a reasonably prudent man, as by slowing down, stopping, or further turning to the right where there is enough space for his vehicle to go to that side. (60 C.J.S., p. 660, pp. 735-736) A motorist should assume that the approaching vehicle on the wrong side of the road, or in the center thereof will turn to its own right side of the road in time to avoid danger, and he may not be expected to anticipate that the driver of the approaching vehicle will not do so and block his path. (People vs. Lozada, 3 C.A. Rep. 281)

Right of way of motor vehicles.

A vehicle driven on a "thru highway" has only a reasonable right of way such that where a vehicle had already entered the intersection, the vehicle on the "thru highway" must yield the right of way. (People vs. Bas, C.A. 68 O.G. 4325, citing 60 CJS, sec. 363, pp. 876-884; Lopez vs. Tinio, 54 O.G. 8637)

Although some authorities hold that the right of way rule is not absolute but merely relative, in the sense that it does not give absolute

and complete preference to drivers proceeding in the favored direction, the same rule is unquestionably controlling *when the vehicles approach the intersection at approximately the same time* as to bring about a collision if they proceed unabated. (People vs. Tio Bonpua, 6 C.A. Rep. 131, citing Villar and De Vega, Revised Motor Vehicle Law, pp. 187-189)

Under the doctrine of pre-emption, in collision cases, although the driver of a motor vehicle crossing a thru-street is supposed to wait (along the intersection) for the driver of another vehicle running along said thru-street, if the driver crossing the street had already reached the middle thereof, the other driver travelling along the thru-street, although with a right of preemption, has the duty to stop his motor vehicle in order to avoid a collision. (People vs. Taradji, 3 C.A. Rep. 460)

The grant of right of way does not relieve the motorist from the duty of keeping a lookout for motorist entering the intersection from his left or right. (People vs. Panuyas, 17 C.A. Rep. 347, citing People vs. Ramirez, CA-G.R. No. 01640-CR, April 16, 1964 citing 8 Am. Jur. 2d "Automobiles and Highway Traffic," Sec. 736 nn 7-9; 5 Am. Jur. p. 666 Sec. 297 nn 13-15)

Sec. 59 of Act 3992, otherwise known as the Revised Motor Vehicle Law, gives the right of way to the driver coming from the right of another, when both are travelling on intersecting streets of the same class. Nevertheless, a driver's favored situation (under Section 59) notwithstanding, he cannot seek protection under the right of way rule in this same section, if in executing a left turn into the other street, he contravenes the provisions of Section 60 of the same Act by cutting corners. (Villar and De Vega, Revised Motor Vehicle Law, p.189) Besides, as the driver making the left turn, he was charged with the duty to sufficiently forewarn any and all oncoming vehicles of his intention (6 Am. Jur. 677), and it has not been shown that appellant complied with this obligation. His violation of Section 60 constitutes negligence *per se.* (People vs. Buiser, C.A., 59 O.G. 80)

Fire truck's right of way.

Under Rule IV, paragraph 1, of the Manila Traffic Code (Ord. 2646), a fire truck or apparatus going to and from the scene of fire has the right of way over all vehicles, notwithstanding the fact that it has responded to a false alarm or is on its way back from a false alarm. The necessity for a fire-fighting device to be ready at a time when there is no fire, or when a fire is still under control, underscores the importance of its right of way. Equally of pressing necessity is the arrival of the said apparatus in its station to be ready for any and all emergency calls. However, such right of way must be exercised with due regard to the right of others lawfully on the road and not to run them down. (People vs. Balboa, 3 C.A. Rep. 10)

Motor Vehicle overtaking another vehicle.

Overtaking a vehicle "from the right" shows recklessness and disregard of traffic laws and regulations, and overtaking a vehicle while another vehicle approaching from the opposite direction is also overtaking still another vehicle is a violation of Sec. 59(b) of the Motor Vehicle Law. (People vs. Songalla, C.A., 67 O.G. 8330)

"When a motor vehicle is approaching or rounding a corner or curve there is a special necessity for keeping to the right-hand side of the road and the driver has not the right to drive on the left-hand side." (60 C.J.S. 656, 725) Overtaking on or upon approaching curves is in itself a violation of Section 9-b of the Traffic Rules and Regulations on National Roads. (People vs. Balderas, C.A., 59 O.G. 1106, 1109)

Driving within speed limit is not a guaranty for due care.

Speed limits are merely *maxima* which are not to be exceeded, so that driving within a certain speed limit is not a guaranty of due care. The degree of care required of motorist is not governed by speed limits but by circumstances and conditions obtaining at a particular time. (People vs. Caluza, C.A., 58 O.G. 8060, citing Villar and De Vega, Revised Motor Vehicle Law, p. 155)

Complex Crime of Reckless Imprudence Resulting in Multiple Homicide with Serious Physical Injuries and Less Serious Physical Injuries.

The accused, being then a young college graduate and an experienced driver, should have known to apply the brakes or swerve to a safe place immediately upon hearing the first bumping thuds to avoid further hitting the other victims. By his own testimony, it was established that the road was slippery and slightly going downward; and worse, the place of the incident was foggy and dark. He should have observed due care in accordance with the conduct of a reasonably prudent man, such as by slackening his speed, applying his brakes, or turning to the left side even if it would mean entering the opposite lane (there being no evidence that a vehicle was coming from the opposite direction). It is highly probable that he was driving at high speed at the time. And even if he was driving within the speed limits, this did not mean that he was exercising due care under the existing circumstances and conditions at the time.

Considering that the incident was not a product of a malicious intent but rather the result of a single act of reckless driving, the accused should be held guilty for the complex crime of reckless imprudence resulting in multiple homicide with serious physical injuries and less serious physical injuries. (People vs. De Los Santos, G.R. No. 131588, March 27, 2001)

Permitting unlicensed person to drive motor vehicle is negligence.

A professional driver who permits any unlicensed person to drive the car placed under his responsibility violates the provisions of section 48(b) of Act 3992. (People vs. Santos, *et al.*, C.A., 44 O.G. 1289)

For Traffic Rules, see Republic Act No. 4136, otherwise known as the "Land Transportation and Traffic Code," Chapter IV, Articles I to V, 61 O.G No. 15, April 12, 1965, p. 2163.

Motor vehicle may be on the left side of the road temporarily.

If an obstruction exists on the right hand side of a highway, the driver of a motor vehicle may be justified in passing to the other side and in driving along that side until he has passed that obstacle; and if he exercises the proper degree of care while there, he is not liable for injuries arising from collision with another vehicle.

But if, as in this case, the immediate cause of accident was the appellant's having made a U-turn *speedily* and *without* making the required signal, he is liable for the damage caused. (People vs. Dean, C.A., 40 O.G. 555)

Elements of simple imprudence.

1. That there is lack of precaution on the part of the offender.
2. That the *damage impending* to be caused *is not immediate* or the *danger is not clearly manifest.*

Example of simple imprudence.

Just as the truck driven by A was about to go up the pontoon bridge, he found B's truck stalled on top of it. B asked A to pull his truck. C, helper of B, was requested to tie a steel cable to the two trucks which were then facing each other at a distance of about two meters. At a signal, A backed out his truck. Scarcely had the truck moved about two meters when the truck of B started functioning, and B directed A to stop. C untied the steel cable. It was then that C was sandwich between the two trucks, resulting in the death of C.

Held: Considering the salient physical circumstances surrounding the accident, such as (1) the narrow distance between the two vehicles, (2) their inclined position, (3) the approximate time (5:00 pm.) when it occurred, and (4) the temporary and slippery condition of the pontoon bridge, the court believed that the two drivers were negligent, when both failed to exercise the necessary and reasonable prudence and care in ascertaining before and whether or not their trucks were already untied and the deceased safely

ensconced prior to maneuvering their vehicles. However, the negligence exhibited by the two drivers does not approximate negligence of a reckless nature but merely amounts to simple negligence. (People vs. Custodio, *et al,* C.A., 51 O.G. 3525)

Placing loaded pistol in one's pocket from which it fell, resulting in the injury of another when it fired, is not negligence for which one is liable.

The trial court concedes that the only conclusion that may be drawn from the facts "is that the shooting was accidental." However, it held that the act of appellant "in keeping his loaded pistol in the same pocket as his wallet, so that when he pulled out his wallet, the pistol fell to the floor, is reckless negligence," and sentenced him accordingly. There is nothing indictable in appellant's act of placing his loaded pistol in his pocket with his wallet. It does not even rise to the level of negligence. That said pistol fell when the wallet was pulled out from appellant's pocket does not make the situation any worse. Besides, even if that act of appellant be in any way considered imprudent, the same nevertheless could not be the proximate cause of complainant's injury. The pistol accidentally fell. And, it was in the course of appellant's act of safekeeping the same — an altogether lawful act — that it fired. The accidental dropping of the pistol was at least an independent intervening cause which interrupted the chain of causation between the act labeled below as negligent and the injury caused. No liability could thus be imputable to appellant on that score. Nor may the firing of the pistol be regarded as negligent. The essence of a negligent act is that it be in every case voluntary. (People vs. Lopez, 44 O.G., No. 2, pp. 584, 589) As heretofore stated, the firing of the pistol was purely accidental. It took place precisely while appellant was making an effort to prevent it from causing injury. Appellant himself was injured thereby. From all aspects, therefore, appellant incurred no criminal liability. (People vs. Rama, C.A., 61 O.G. 1195)

"When the execution of the act covered by this article x x x resulted in damage to the property of another," the penalty is only fine.

Note that when the reckless imprudence or the simple imprudence or negligence *resulted* in damage to the property of another, the penalty is *only fine,* not imprisonment, ranging from an amount *equal* to the value of the *damages* to *three* times such value, but shall not be less than P25.00.

Note: The ruling in the case *of People vs. Valmonte,* CA-G.R. No. 5265-R, July 31, 1950, that the penalty for arson through reckless imprudence is imprisonment, is overruled in the case of *People vs. Bueno,* C.A., 54 O.G. 7405.

The measure of the damage should be the difference in value of the property immediately before the incident and immediately after the repair.

Article 365 of the Revised Penal Code, being a penal legislative provision, must be interpreted strictly. And consistent with this theory, it is our considered opinion that the "damage to the property of another" provided for in the third paragraph of said codal provision *as the basis for the fine* therein prescribed, is the market value of the property destroyed at the time and place of its destruction. Hence, where the property is only partially destroyed, the measure of damages should be the difference between its value immediately before the injury and immediately thereafter, together with the reasonable expenses incurred and the value of time spent to preserve or restore the property to its former form and condition.

There is no proof in the record of the market value of the truck in question, or the parts thereof that were damaged, before the collision. It is however, admitted that that truck was bought by the offended party sometime in the year 1949, and that since then, the latter had been using it continuously in his bakery business. It has been clearly established also that the old hood of the truck has been replaced with a new one, and that the spare parts with which the mechanic replaced its damaged parts were new. There can be no dispute, therefore, that the truck as repaired is much more valuable and stronger than it was, immediately before the collision took place. It is, however, impossible to ascertain on the evidence of record the difference in value of that truck before and after the accident. We therefore, have to use our discretion, and we believe that the cost of the damages to that vehicle may reasonably be assessed at P1,171.64 which is the cost of the repair and replacements of its spare parts minus twenty per cent (20%) thereof. (People vs. Dysico, CA-G.R. No. 20929-R, 56 O.G. 2826)

Art. 64 relative to mitigating and aggravating circumstances is not applicable to crimes committed through negligence.

Paragraph 5 of Article 365 expressly states that in the imposition of the penalties provided for in the Article, the courts shall exercise their sound discretion without regard to the rules prescribed in Article 64. The rationale of the law can be found in the fact that in quasi-offenses penalized under Article 365, the carelessness, imprudence or negligence which characterizes the wrongful act as may vary from one situation to another, in nature, extent, and resulting consequences, and in order that there may be a fair and just application of the penalty, the courts must have ample discretion in its imposition, without being bound by what we may call the mathematical formula provided for in Article 64 of the Revised Penal Code. The trial court was not bound to apply paragraph 5 of Article 64 even if the

accused had two mitigating circumstances in his favor with no aggravating circumstances to offset them. (People vs. Medroso, Jr., 62 SCRA 245)

The penalties provided in Art. 365 are not applicable in the following cases:

1. When the penalty provided for the offense is *equal to* or *lower than* those provided in the *first two paragraphs* of this article (Art. 365), in which case the courts shall impose *the penalty next* lower in degree than that which should be imposed, in the period which they may deem proper to apply.

   Note: The penalty of *arresto mayor* in its minimum and medium periods is provided in the first paragraph of Art. 365 for committing any act which, had it been intentional, would constitute a less grave felony. This penalty should not be imposed if less serious physical injuries are caused to the offended party through reckless imprudence, because the penalty for less serious physical injuries committed with malice is *arresto mayor.* In such case, the penalty of *arresto menor,* which is next lower in degree than *arresto mayor,* should be imposed to preserve the difference between the penalty for intentional felony and that for culpable felony.

2. When, by imprudence or negligence and *with violation of the Automobile Law, the death* of a person shall be caused, in which case the defendant shall be punished by *prision correccional* in its medium and maximum periods.

   Note: The highest penalty prescribed under the first paragraph of Art. 365 is *arresto mayor* in its maximum period to *prision correccional* in its medium period.

First exception applied.

To be precise, paragraph 1 of Art. 365 prescribes the penalty of 21 to 30 days of *arresto menor* for light felonies committed through reckless imprudence.

However, in paragraph 6 of this very same article, there is contained the following exception:

"The provisions contained in this article shall not be applicable:

1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in which case the courts shall impose the penalty next lower in degree than that which should be imposed, in the period which they may deem proper to apply."

The underlying reason for this reduction in penalty is to preserve the difference between an act wilfully performed from one committed through negligence.

Under Art. 266 of the Revised Penal Code, the penalty provided for slight physical injuries is *arresto menor*, that is, imprisonment from 1 to 30 days. Considering that the penalty provided for in paragraph 1 of Art. 365 of the same Code, for imprudent acts which would have constituted light felonies, is 21 to 30 days, the latter is definitely graver, or, at the very least, equal to the one prescribed in Art. 266. This being the case, the mandate contained in paragraph 6 of Art. 365 has to be followed. The proper penalty, therefore, for the crime of slight physical injuries thru reckless imprudence is the penalty next lower in degree to *arresto menor* and this is public censure. (People vs. Regalario y Arcega, CA-G.R. No. 00817-R, prom. Feb. 9, 1961, cited in People vs. Sarsoza, C.A., 58 O.G. 7404)

When death or serious bodily injury to any person has resulted, the motor vehicle driver at fault shall be punished under the Penal Code.

Rep. Act No. 587, which took effect on January 1, 1951, amended the Motor Vehicle Law in its Sec. 67, par. (d). Under Rep. Act No. 587, the Revised Penal Code shall apply when *death* or *serious bodily injury* to any person has resulted from *negligence* or *reckless* or *unreasonable fast driving* by a motor vehicle driver.

The phrase "serious bodily injury" used in the automobile law is not necessarily synonymous with the term "serious physical injuries" used in the Revised Penal Code. There is no reason for excepting less serious physical injury through reckless driving from the purview of Section 67(d) of the automobile law. (People vs. Romualdo, 90 Phil. 739)

Contributory negligence — not a defense — only mitigates criminal liability.

The defense of contributory negligence does not apply in criminal cases through reckless imprudence, since one cannot allege the negligence of another to evade the effects of his own negligence. (People vs. Quiñones, C.A., 44 O.G. 1520)

But where the proximate cause of death is the negligence of the deceased himself, and not the negligence of the accused driver of the car, the latter cannot be held liable for homicide. (U.S. vs. Tayongtong, 21 Phil. 476; U.S. vs. Knight, 26 Phil. 216)

A locomotive engineer, who sounded his whistle upon seeing a laborer cleaning the railroad track, but the laborer who had left the track returned

there for some unaccountable or unjustifiable reason, when it was too late for the engineer to avoid injuring him, was not held guilty of homicide through reckless imprudence. He had the right to assume that the deceased would take notice of the possibility of a passing train and would leave the track in time to avoid injury to himself. (U.S. vs. Azajar, 30 Phil. 556)

Concurrent proximate cause of two negligent drivers.

The two defendants, by their speeding and in overtaking vehicles ahead, even encroaching on the other's lane, without taking due precaution as required by the circumstances, were held guilty of negligence which was the proximate cause of the collision.

Where the concurrent or successive negligent acts or omission of two or more persons, although acting independently of each other are, in combination, the direct and proximate cause of a single injury to a third person, and it is impossible to determine in what proportion each contributed to the injury, either is responsible for the whole injury, even though his act alone might not have caused the entire injury.

The "*raisond'etre*" behind this legal principle is that the negligence of one person is in no sense justified by the concurring negligence of another. (People vs. Desalisa, *et al.*, C.A, 57 O.G. 8689, citing Am. Jur. Vol. 38, p. 716)

Doctrine of "last clear chance."

In accordance with the doctrine of "last clear chance," the contributory negligence of the party injured will not defeat the action if it be shown that the accused might, by the exercise of reasonable care and prudence, have avoided the consequences of the negligence of the injured party. (People vs. Quiñones, *supra)*

Thus, the fact that another truck was parked *on the wrong side of the road* bears no influence to relieve the accused from criminal liability, because despite that admitted fact, the accused had time and opportunity to avoid the mishap if he had been sufficiently careful and cautious. (People vs. Lopez, C.A., 44 O.G. 584)

Emergency rule.

The rule is stated thus: An automobile driver who, by *the negligence of another* and not by his own negligence, is suddenly placed in an emergency and compelled to act instantly to avoid a collision or injury is not guilty of negligence if he makes such a choice which a person of ordinary prudence placed in such a position might make even though he did not make the wisest choice.

The act of a motorist in attempting to pass a car in front of him at a moment when another vehicle is approaching constitutes gross negligence and renders him liable for any damage resulting from said act.

The "emergency" rule cannot be applied to exempt him from liability, because *there is proof of negligence on his part.* (People vs. Santos, *et al.*, C.A., 44 O.G. 1289; Addenbrook vs. People, G.R. No. L-22995, June 29, 1967)

Applicability of the "emergency" doctrine.

A person who is confronted with a sudden emergency may be left no time for thought, must make speedy decision based largely upon impulse or instinct, and cannot be held to the same conduct as one who has had an opportunity to reflect, even though it later appears that he made the wrong decision. But the "emergency" doctrine is applicable only where the situation which arises to confront the actor is *sudden* and *unexpected,* and is such as to deprive him of all opportunity for deliberation. A further qualification which must be made is that some emergencies must be anticipated, and the actor must be prepared to meet them when he engages in an activity from which they are likely to arise. If a person has knowledge that unusual consequences may result from his negligent act, he can be held liable for an injurious consequence of such act notwithstanding it is not the ordinary consequence of an act of that kind. (People vs. Eleazar, *et al.*, 60 O.G. 1728)

Emergency rule, distinguished from last clear chance rule.

People vs. De Joya
(C.A.-G.R.No. 22963-R, 56 O.G. 4778)

Appellant's claim that he perceived the presence of the offended party's car almost immediately before the collision does not relieve him of criminal responsibility. This is not a case for the application of the *emergency rule* in which *a driver, in order to save himself, has to injure someone else.* It is rather a case which falls under the principle of *last clear chance,* as it is clear that the appellant *had time* and *opportunity to avoid the mishap* had he been sufficiently careful and cautious.

It is admitted that the weather was clear and there was no traffic at the intersection of Dewey Boulevard and Isaac Peral Street on the occasion in question. Had the appellant, therefore, taken the care that the law requires of him under the circumstances, he could not have failed to see the car of the offended party from the moment that it turned to the left to cross the east lane of Dewey Boulevard. From the center of the west lane to

the center of the east lane of said boulevard, there is a distance of several meters which could not have been covered by the car of the offended party in the twinkling of an eye. Moreover, said car could not have been running at a great speed. Ordinarily, a car making a turn of 45 degrees could not be driven fast; it would tumble. To all probability, the appellant was also guilty of miscalculation which was aggravated by reckless imprudence.

The appellant is responsible for the occurrence of the incident at bar. His liability, however, is mitigated by contributory negligence on the part of the offended party. We are not aware of any ruling, and none has been called to our attention, prescribing a schedule to be followed in the reduction of liability in such cases. We, therefore, have to use our discretion in the instant case, and hereby fix such mitigation of liability at fifty per cent (50%).

Violation of a rule and regulation or law is proof of negligence.

It has been held that the violation of a statute which *imposes a specific requirement to omit or to do a definite act is* negligence *per se.* (People vs. Santos, *et al.*, C.A., 44 O.G. 1289)

But negligence cannot be predicated upon the mere fact of minority or lack of an operator's license.

Having thus found earlier that appellant was not negligent in the operation of the cargo truck, the fact that he drove without a driver's license is, therefore, of no moment.

"We are unable to see how minority, or lack of an operator's license, could be the proximate cause of an injury. It is true that lack of skill or knowledge concerning the operation of an automobile may cause an injury; and some evidence was introduced tending to establish that Helen Opple was not familiar with the operation of an automobile. But if a person, adult or minor, unlicensed to operate an automobile, is entrusted with one and operates it with that degree of care and skill that is required of a licensed operator, negligence cannot be predicated upon the mere fact of minority or lack of an operator's license." (Opple vs. Ray, 195 N.E., pp. 81, 83; See also Sec. 2246, Babbitt C.J., The Law Applied to Motor Vehicles, Fourth Ed., p. 1626; People vs. Villacorta, C.A., 61 O.G. 6513)

The penalty next higher in degree to be imposed if the offender fails to lend on the spot help to the injured parties.

The last paragraph in Art. 365 provides for the penalty next higher in degree upon the offender who failed to lend on-the-spot help to the victims of his act of negligence.

Art. 275 penalizes with *arresto mayor* "anyone who shall fail to help or render assistance to another whom he has accidentally wounded or injured."

Failing to lend help is a qualifying circumstance.

The failure to render assistance constitutes a qualifying circumstance because the presence thereof raises the penalty by one degree (like treachery which qualifies homicide to murder). The same *must be alleged in the information* to apprise the defendant of this charge unlike an ordinary aggravating circumstance which, even if not alleged in the information, can be taken into account if proved at the trial without objection. (People vs. Beduya, C.A., 60 O.G. 2668-2669)

Defendant is not criminally liable for the death or injuries caused by his recklessly negligent acts to trespassers whose presence in the premises he was not aware of.

People vs. Cuadra
(C.A., 55 O.G. 7265)

Facts: A was driving a cargo truck. Unknown to him, several persons boarded the truck. While driving along a road which had a declination of 25 degrees and whose surface was slippery because it was drizzling, the truck swerved to the right side of the road and thus its left front and rear wheels fell into the ditch. A, in an effort to regain the center of the road, veered the truck abruptly to the left, but as it reached the middle of the road, it turned turtle. As a result, *B* and *C*, two of those who rode on the rear part of the truck without A's knowledge and consent, were thrown out of the truck and injured. *B* died as a consequence.

Held: With respect to the death of *B* and the injury received by C, there can be no question that had the acts which caused them been intentional, they would constitute grave felony and less grave felony, respectively, and acts of this kind committed thru reckless imprudence, are penalized under Article 365 of the Revised Penal Code. But it would seem clear that the provisions of said article of the Revised Penal Code contemplate a situation in which *A* could be held to owe to the victim the duty not to expose him to danger or injury. It is necessary that the victim be in the premises with some color of right and that A had knowledge of his presence therein. If the victim is a mere trespasser and A is not aware of his presence in the premises, the latter is liable only for injuries resulting from willful and wanton acts, but not for those resulting from his negligence. Such is the rule in torts and in criminal cases both here and in American jurisdictions.

In the case of *People vs. Meir*, CA-G.R. No. 1950-B, December 6, 1948, in which the defendant was accused of homicide thru reckless imprudence for the death of a boy about 11 years of age, who "in childish frolic clung to the sides of appellant's vehicle for a joy ride" without the knowledge or consent of the defendant, and who "was crushed against the concrete post of the hospital gate," this Court, in acquitting the defendants, said that "no man can be punished for not taking precautions to prevent injuries to persons that act at his back." And *Corpus Juris Secundum* digests the rule in American jurisdiction as follows:

"The operator of an automobile is under no duty to anticipate the presence of a trespasser on his vehicle (Conn-Salamme vs. Mulloy, 121 a. 870, 99 Conn, 474), or attempting to board it (Kan, Gamble vs. Uncle Sam Oil Co., 164, p. 627, 100 Kan. 74, L.R.A. 1917 D. 875), or to use due care to acquire knowledge of the presence of a trespasser (Conn-Salamme vs. Mulloy, *supra),* and he owes to a trespasser, of whose presence on the vehicle he is unaware, no duties whatsoever, and is not liable for any injury to such a trespasser even though his operation of the car was grossly negligent. (Ala. Birmingham Ice & Cold Storage Co. vs. Alley, 25 So. 2d 37, 247 Ala. 503) Even when the operator becomes aware of the presence of a trespasser, he does not owe to the trespasser the duty of ordinary or reasonable care but merely the duty to refrain from wantonly or willfully causing injury to him." (Ala. Birmingham Ice & Cold Storage Co. vs. Alley, *supra*; 60 C.J.S. 1020)

A quack doctor who treated a sick man, resulting in the latter's death is guilty of homicide through reckless imprudence.

The allegations in the information that the accused acted with reckless imprudence and negligence in diagnosing and treating the deceased, knowing that she did not possess the necessary technical knowledge or skill to do so, thus causing his death, sufficiently charge the crime of homicide through reckless imprudence, since ordinary diligence counsels her not to tamper with human life by trying to treat a sick man. (People vs. Vda. de Golez, 108 Phil. 855)

Action for damages against a surgeon whose patient died after operation.

In an action for damages against a surgeon for operating on and ministering to a patient for tonsillectomy, who died not long thereafter, the plaintiff has the burden of establishing the surgeon's negligence by preponderance of the evidence (70 C.J.S. 999-1003), and for a reasonable conclusion of negligence, there must be proof of breach of duty on the part of the surgeon as well as a causal connection of such breach and the resulting death of the patient (70 C.J.S. 994-995). In the performance of

his professional duties, a physician has no fixed rule to follow. If he has the necessary qualifications, he needs only such degree of skill and ordinary learning as circumstance may require, using the care and diligence as the best of his judgment would dictate, and as the particular circumstance or circumstances may require. (70 C.J.S. 497; 41 Am. Jur. 201-202) x x x Thus, in the absence of a showing that the surgeon has been grossly negligent, the reasonableness and urgency of the employment of such care and diligence and skill expected of him is all that is necessary.

The negligence of an attending physician could only be presumed in case where there is a preponderance of evidence that he had failed to do the best that he could. Under given circumstances, this presumption cannot arise or is not available simply from mere fact that the administration of the physician had been unsuccessful or failed to produce the expected results. For much could be attributed to the twists of nature. (70 C.J.S. 963; 990-1; 41 Am. Jur. 227; Abaya, *et al.* vs. Favis, 3 C.A. Rep. 450)

Title Fifteen

FINAL PROVISIONS

Art. 366. ***Application of laws enacted prior to this Code.*** **— Without prejudice to the provisions contained in Article 22 of this Code, felonies and misdemeanors, committed prior to the date of effectiveness of this Code, shall be punished in accordance with the Code or Acts in force at the time of their commission.**

Art. 367. ***Repealing clause.*** **— Except as is provided in the next preceding article, the present Penal Code, the Provisional Law for the application of its provisions, and Acts Nos. 277, 292, 480, 518, 519, 899, 1121, 1438, 1523, 1559, 1692, 1754, 1755, 1773, 2030, 2036, 2071, 2142, 2212, 2293, 2298, 2300, 2364, 2549, 2557, 2595, 2609, 2712, 2718, 3104, 3195, 3244, 3298, 3309, 3313, 3397, 3559, and 3586, are hereby repealed.**

The provisions of the Acts which are mentioned hereunder are also repealed, namely:

Act 666, Sections 6 and 18.

Act 1508, Sections 9, 10, 11, and 12.

Act 1524, Section 4.

Act 1533, Sections 1, 2, and 6.

Act 1697, Sections 3 and 4.

Act 1757, Sections 1, 2, 3, 4, 5, 6, 7 (first clause), 11, and 12.

Act 2381, Sections 2, 3, 4, 5, 6, 8, and 9.

Act 2711, Sections 102, 2670, 2671, and 2672.

Act 3247, Sections 1, 2, 3, and 5, and

General Orders, No. 58, series of 1900, Section 106.

And all laws and parts of laws which are contrary to the provisions of this Code are hereby repealed.

Approved, December 8, 1930.

The penal acts repealed by the Revised Penal Code are:

1. Act No. 227 — Law on libel and threats to publish libel, etc., now covered by Arts. 353-362.
2. Act No. 292 amended by Act No. 1692 — Law defining and penalizing the crimes of treason, insurrection, sedition, etc., now covered by Arts. 114-116 and Arts. 134-142.
3. Act No. 480 — Law governing cockfighting and cockpits, now covered by Art. 199, and special laws.
4. Act No. 518 amended by Acts Nos. 1121 and 2036 — Law defining and penalizing highway robbery or brigandage, now covered by Arts. 306-307.
5. Act No. 519 — Law on vagrancy, now covered by Art. 202.
6. Act No. 666, Secs. 6 and 18 — Law on trademarks and trade names, now covered by Arts. 188-189.
7. Act No. 899 — Law regarding suspension of sentence, etc., upon U.S. citizens.
8. Act No. 1438 with amendatory Act Nos. 3203, 3309, and 3559 — Provisions governing juvenile offenders and delinquent children, their care and custody, now embodied in Art. 80.
9. Act No. 1508, Secs. 9, 10, 11 and 12 - The Chattel Mortgage Law; its violations are now penalized by Art. 319.
10. Act No. 1523 — Law prohibiting importation, sale, etc. of lottery tickets and lottery, now covered by Arts. 195-196.
11. Act No. 1524, Sec. 4 — Law governing discretion of Governor-General in granting conditional pardons, now covered by Art. 159.
12. Act No. 1533, Secs. 1, 2 and 6, amended further by Act No. 1559 — Law providing for diminution of sentences by reason of good conduct and diligence, now covered by Art. 97.
13. Act No. 1697, Secs. 3 and 4 — Act for the punishment of perjury in official investigations, now covered by Art. 183.
14. Act No. 1754 — Law on counterfeiting and forgery, now covered by Arts. 160-169.

15 Act No. 1755 — Act penalizing crimes against legislative bodies, now covered by Arts. 143-145.

16. Act No. 1757, Secs. 1, 2, 3, 4, 5, 6, 7 (first clause), 11 and 12 amended by Act No. 3242 — Act prohibiting gambling, now covered by Arts. 195-199.

17. Act No. 1773 — Law on the crimes of *adulterio estupro, rapto, violacion, calumnia, injuria,* etc., now covered by Arts. 333-346.

18. Act Nos. 2071 and 2300 — Acts governing slavery, involuntary servitude, peonage, and the sale or purchase of human beings, now covered by Arts. 272-274.

19. Act No. 2212 — Act providing for the confiscation and disposition of money, articles, instruments, appliances and devices in gambling, now covered by Art. 45.

20 Act No. 2293 — Act penalizing willful destruction, injury, or taking or carrying away of any property of the Philippine Library, now covered by Art. 311.

21. Act No. 2364 — Act penalizing infidelity in the custody of prisoners detained for or convicted of a crime, now covered by Arts. 223-225.

22. Act No. 2381, Secs. 2, 3, 4, 5, 6, 8, and 9 — Act restricting the use of opium, etc., now covered by Arts. 190-194.

23. Act No. 2549 — Act prohibiting the forcing, compelling, or obliging of any laborer or other employee to purchase merchandise, commodities, or personal property under certain conditions, and the payment of wages of a laborer or employee by means of tokens or objects other than legal tender currency, now covered by Art. 288, and also by Com. Act No. 303 and the Minimum Wage Law, Rep. Act No. 602.

24. Act No. 2557 — Act providing for the allowance to persons convicted of preventive imprisonment, etc., now embodied in Art. 29.

25. Act No. 2595 — Law fixing prescription of the crime of libel and of a civil action arising therefrom, now covered by Art. 90.

26. Act No. 2711, Secs. 102, 2670, 2671, and 2672 - Act amending the Administrative Code.

27. Act No. 2718 - Act to amend the final section of the Administrative Code by striking from the list of acts repealed there by Act No. 1797.

28. **Act No. 13104 amending Act No. 2726 — Law governing manner in which the death penalty shall be executed, now embodied in Arts. 81-85.**

29. **Acts Nos. 3586 and 3397 — Law governing habitual delinquency is now embodied in Art. 62, par. 5.**

30. **General Orders No. 56, Series of 1900, Sec. 106 - Code of Criminal Procedure.**

Other laws repealed by the Revised Penal Code were Acts Nos. 2030, 2142, 2298, 2712, 3195, 3244, 3298, and 3313 which were merely amendatory laws on the old Penal Code.

APPENDIX "A"

Scale of Penalties

From Which to Take a Penalty Lower or Higher by One or More Degrees

1.	DEATH	
2.	RECLUSION PERPETUA	
3.	RECLUSION TEMPORAL ...	Maximum Medium Minimum
4.	PRISION MAYOR.....	
5.	PRISION CORRECCIONAL	
6.	ARRESTO MAYOR.....	
7.	DESTIERRO.....	
8.	ARRESTO MENOR.....	11 days to 20 days Minimum: 1 day to 10 days
9.	PUBLIC CENSURE	
10.	FINE.....	Must be less than P200

APPENDIX "A"
Scale of Penalties

FINE

When the fine has no minimum.

For example, a fine not more than P5,000 is provided for falsification by private individuals. (Art. 172) The court can impose any amount of fine, say from P10.00 to the maximum of P5,000, depending upon the wealth or means of the culprit and the presence or absence of mitigating and aggravating circumstances. (Art. 66)

When the fine has a minimum and a maximum.

For example, a fine ranging from P200 to P6,000 is provided for failure of accountable officer to render accounts. (Art. 218) The fine is lowered by reducing the maximum by one-fourth. The minimum of each degree is not changed.

One degree lower.....P200, as minimum, to P4,500, as maximum.

Two degrees lower.....P200, as minimum, to P3,000, as maximum.

One degree higher.....P200, as minimum, to P7,000, as maximum.

The court cannot impose a fine less than the minimum of P200, it being the minimum prescribed. But the court has the discretion to impose any amount of the fine from the minimum to the maximum of each degree. (Art. 75)

APPENDIX "A"
Scale of Penalties

Table of Penalties

ARRESTO MAYOR. — 1 month and 1 day to 6 months

Minimum	**1 month and 1 day to 2 months**
Medium	**2 months and 1 day to 4 months**
Maximum	**4 months and 1 day to 6 months**

ARRESTO MAYOR IN ITS MINIMUM PERIOD. - 1 month and 1 day to 2 months

Minimum	**1 month and 1 day to 1 month and 10 days**
Medium	**1 month and 11 days to 1 month and 20 days**
Maximum	**1 month and 21 days to 2 months**

One degree lower is destierro in its maximum period.

Two degrees lower is destierro in its medium period.

ARRESTO MAYOR IN ITS MEDIUM PERIOD. - 2 months and 1 day to 4 months

Minimum	**2 months and 1 day to 2 months and 20 days**
Medium	**2 months and 21 days to 3 months and 10 days**
Maximum	**3 months and 11 days to 4 months**

One degree lower is No. 2.

Two degrees lower is destierro in its maximum period.

ARRESTO MAYOR IN ITS MAXIMUM PERIOD.
4 months and 1 day to 6 months

Minimum	**:**	**4 months and 1 day to 4 months and 20 days**
Medium	**:**	**4 months and 21 days to 5 months and 10 days**
Maximum		**5 months and 11 days to 6 months**

One degree lower is No. 3

Two degrees lower is No. 2

ARRESTO MAYOR IN ITS MINIMUM AND MEDIUM PERIODS. — 1 month and 1 day to 4 months

Minimum	**1 month and 1 day to 2 months**
Medium	**2 months and 1 day to 3 months**
Maximum	**3 months and 1 day to 4 months**

APPENDIX "A"
Scale of Penalties

6. **ARRESTO MAYOR IN ITS MEDIUM AND MAXIMUM PERIODS. — 2 months and 1 day to 6 months**

Minimum	**2 months and 1 day to 3 months and 10 days**
Medium	**3 months and 11 days to 4 months and 20 days**
Maximum	**4 months and 21 days to 6 months**

One degree lower is either destierro in its maximum period or arresto mayor in its minimum period.

Two degrees lower is destierro in its minimum and medium periods.

7. **ARRESTO MAYOR IN ITS MEDIUM PERIOD TO PRISION CORRECCIONAL IN ITS MINIMUM PERIOD. - 2 months and 1 day to 2 years and 4 months**

Minimum	**2 months and 1 day to 4 months**
Medium	**4 months and 1 day to 6 months**
Maximum	**6 months 1 day to and 2 years and 4 months**

One degree lower is either destierro in its medium and maximum periods or arresto mayor in its minimum period.

Two degrees lower is either arresto menor in its medium and maximum periods or destierro in its minimum period.

8. **ARRESTO MAYOR LN ITS MAXIMUM PERIOD TO PRISION CORRECCIONAL IN ITS MINIMUM PERIOD. - 4 months and 1 day to 2 years and 4 months**

Minimum	**4 months and 1 day to 1 year**
Medium	**1 year and 1 day to 1 year, 8 months**
Maximum	**1 year, 8 months and 1 day to 2 years and 4 months**

One degree lower is No. 5.

Two degrees lower is destierro in its medium and maximum periods

9. **ARRESTO MAYOR IN ITS MAXIMUM PERIOD TO PRISION CORRECCIONAL EN ITS MEDIUM PERIOD. - 4 months and 1 day to 4 years and 2 months**

Minimum	**4 months and 1 day to 1 year, 7 months and 10 days**
Medium	**1 year, 7 months and 11 days to 2 years, 10 months and 20 days**
Maximum	**2 years, 10 months and 21 days to 4 years and 2 months**

One degree lower is **destierro** in its maximum period or arresto mayor in its minimum and medium periods.

Two degrees lower is destierro in its minimum and medium periods or arresto menor in its maximum period.

10. PRISION CORRECCIONAL AND DESTIERRO. - 6 months and 1 day to 6 years

Minimum	6 months and 1 day to 2 years and 4 months
Medium	2 years, 4 months and 1 day to 4 years and 2 months
Maximum	4 years, 2 months and 1 day to 6 years

11. PRISION CORRECCIONAL IN ITS MINIMUM PERIOD. - 6 months and 1 day to 2 years and 4 months

Minimum	6 months and 1 day to 1 year, 1 month and 10 days
Medium	1 year, 1 month and 11 days to 1 year, 8 months and 20 days
Maximum	1 year, 8 months and 21 days to 2 years and 4 months

One degree lower is No. 4

Two degrees lower is No. 3

12. PRISION CORRECCIONAL IN ITS MEDIUM PERIOD. - 2 **years,** 4 months and 1 day to 4 years and 2 months.

Minimum	2 years, 4 months and 1 day to 2 years, 11 months and 10 days
Medium	2 years, 11 months and 11 days to 3 years, 6 months and 20 days
Maximum	3 years, 6 months and 21 days to 4 years and 2 months

One degree lower is No. 11.

Two degrees lower is No. 4.

13. PRISION CORRECCIONAL IN ITS MAXIMUM PERIOD. - 4 years, 2 months and 1 day to 6 years

Minimum	4 years, 2 months and 1 day to 4 years, 9 months and 10 days
Medium	4 years, 9 months and 11 days to 5 years, 4 months and 20 days
Maximum	5 years, 4 months and 21 days to 6 years

One degree lower is No. 12.

Two degrees lower is No. 11.

14. PRISION CORRECCIONAL IN ITS MINIMUM AND MEDIUM PERIODS. — 6 months and 1 day to 4 years and 2 months

Minimum	**6 months and 1 day to 1 year, 8 months and 20 days**
Medium	**1 year, 8 months and 21 days to 2 years, 11 months and 10 days**
Maximum	**2 years, 11 months and 11 days to 4 years and 2 months**

One degree lower is No. 6.

Two degrees lower is No. 2 or destierro in its maximum period.

15. PRISION CORRECCIONAL IN ITS MEDIUM AND MAXIMUM PERIODS. — 2 years, 4 months and 1 day to 6 years

Minimum	**2 years, 4 months and 1 day to 3 years, 6 months and 20 days**
Medium	**3 years, 6 months and 21 days to 4 years, 9 months and 10 days**
Maximum	**4 years, 9 months and 11 days to 6 years**

One degree lower is No. 8.

Two degrees lower is No. 5.

16. PRISION CORRECCIONAL IN ITS MEDIUM PERIOD TO PRTSION MAYOR IN ITS MINIMUM PERIOD. - 2 years, 4 months and 1 day to 8 years

Minimum	**2 years, 4 months and 1 day to 4 years, 2 months and 20 days**
Medium	**4 years, 2 months and 21 days to 6 years, 1 month and 10 days**
Maximum	**6 years, 1 month and 11 days to 8 years**

One degree lower is No. 7.

Two degrees lower is destierro in its medium and maximum periods or arresto mayor in its minimum period.

17. PRISION CORRECCIONAL IN ITS MAXIMUM PERIOD TO PRISION MAYOR IN ITS MINIMUM PERIOD. - 4 years, 2 months and 1 day to 8 years

Minimum	**4 years, 2 months and 1 day to 5 years, 5 months and 10 days**

Medium	**5 years, 5 months and 11 days to 6 years, 8 months and 20 days**
Maximum	**6 years, 8 months and 21 days to 8 years**

One degree lower is No. 14.

Two degrees lower is No. 6.

PRISION CORRECCIONAL IN ITS MAXIMUM PERIOD TO PRISION MAYOR IN ITS MEDIUM PERIOD. - 4 years, 2 months and 1 day to 10 years

Minimum	**4 years, 2 months and 1 day to 6 years, 1 month and 10 days**
Medium	**6 years, 1 month and 11 days to 8 years and 20 days**
Maximum	**8 years and 21 days to 10 years**

One degree lower is No. 9.

Two degrees lower is destierro in its maximum period or arresto mayor in its minimum and medium periods.

PRISION MAYOR. — 6 years and 1 day to 12 years

Minimum	**6 years and 1 day to 8 years**
Medium	**8 years and 1 day to 10 years**
Maximum	**10 years and 1 day to 12 years**

One degree lower is No. 10.

Two degrees lower is No. 1

PRISION MAYOR IN ITS MINIMUM PERIOD. - 6 years and 1 day to 8 years

Minimum	**6 years and 1 day to 6 years and 8 months**
Medium	**6 years, 8 months and 1 day to 7 years and 4 months**
Maximum	**7 years, 4 months and 1 day to 8 years**

One degree lower is No. 13.

Two degrees lower is No. 12.

PRISION MAYOR IN ITS MEDIUM PERIOD. - 8 years and 1 day to 10 years

Minimum	**8 years and 1 day to 8 years and 8 months**
Medium	**8 years, 8 months and 1 day to 9 years and 4 months**

Maximum 9 years, 4 months and 1 day to 10 years

One degree lower is No. 20.

Two degrees lower is No. 13.

22. PRISION MAYOR IN ITS MAXIMUM PERIOD. - 10 years and 1 day to 12 years

Minimum 10 years and 1 day to 10 years and 8 months

Medium 10 years, 8 months and 1 day to 11 years and 4 months

Maximum 11 years, 4 months and 1 day to 12 years

One degree lower is No. 21.

Two degrees lower is No. 20.

23. PRISION MAYOR IN ITS MINIMUM AND MEDIUM PERIODS. —6 years and 1 day to 10 years

Minimum 6 years and 1 day to 7 years and 4 months

Medium 7 years, 4 months and 1 day to 8 years and 8 months

Maximum 8 years, 8 months and 1 day to 10 years

One degree lower is No. 15.

Two degrees lower is No. 8.

24. PRISION MAYOR IN ITS MEDIUM AND MAXIMUM PERIODS. —8 years and 1 day to 12 years

Minimum : 8 years and 1 day to 9 years and 4 months

Medium 9 years, 4 months and 1 day to 10 years and 8 months

Maximum : 10 years, 8 months and 1 day to 12 years

One degree lower is No. 17.

Two degrees lower is No. 14.

25. PRISION MAYOR IN ITS MEDIUM PERIOD TO RECLUSION TEMPORAL IN ITS MINIMUM PERIOD. - 8 years and 1 day to 14 years and 8 months

Minimum 8 years and 1 day to 10 years, 2 months and 20 days

Medium 10 years, 2 months and 21 days to 12 years, 5 months and 10 days

Maximum 12 years, 5 months and 11 days to 14 years and 8 months

One degree lower is No. 16.

Two degrees lower is No. 7.

PRISION MAYOR IN ITS MAXIMUM PERIOD TO RECLUSION TEMPORAL LN ITS MINIMUM PERIOD. - 10 years and 1 day to 14 years and 8 months

Minimum	**10 years and 1 day to 11 years, 6 months and 20 days**
Medium	**11 years, 6 months and 21 days to 13 years, 1 month and 10 days**
Maximum	**13 years, 1 month and 11 days to 14 years and 8 months**

One degree lower is No. 23.

Two degrees lower is No. 15.

PRISION MAYOR IN ITS MAXIMUM PERIOD TO RECLUSION TEMPORAL IN ITS MEDIUM PERIOD. — 10 years and 1 day to 17 years and 4 months

Minimum	**10 years and 1 day to 12 years, 5 months and 10 days**
Medium	**12 years, 5 months and 11 days to 14 years, 10 months and 20 days**
Maximum	**14 years, 10 months and 21 days to 17 years and 4 months**

One degree lower is No. 18.

Two degrees lower is No. 9.

RECLUSION TEMPORAL. - 12 years and 1 day to 20 years

Minimum	**12 years and 1 day to 14 years and 8 months**
Medium	**14 years, 8 months and 1 day to 17 years and 4 months**
Maximum	**17 years, 4 months and 1 day to 20 years**

One degree lower is No. 19.

Two degrees lower is No. 10.

RECLUSION TEMPORAL IN ITS MINIMUM PERIOD. - 12 years and 1 day to 14 years and 8 months

Minimum	**12 years and 1 day to 12 years, 10 months and 20 days**
Medium	**12 years, 10 months and 21 days to 13 years, 9 months and 10 days**

Maximum — 13 years, 9 months and 11 days to 14 years and 8 months

One degree lower is No. 22.

Two degrees lower is No. 21.

30 RECLUSION TEMPORAL IN ITS MEDIUM PERIOD. - 14 years, 8 months and 1 day to 17 years and 4 months

Minimum — 14 years, 8 months and 1 day to 15 years, 6 months and 19 days

Medium — 15 years, 6 months and 20 days to 16 years, 5 months and 9 days

Maximum — 16 years, 5 months and 10 days to 17 years and 4 months

One degree lower is No. 29.

Two degrees lowers is No. 22.

31. RECLUSION TEMPORAL IN ITS MEDIUM AND MAXIMUM PERIODS. — 14 years, 8 months and 1 day to 20 years

Minimum — 14 years, 8 months and 1 day to 16 years, 5 months and 10 days

Medium — 16 years, 5 months and 11 days to 18 years, 2 months and 20 days

Maximum — 18 years, 2 months and 21 days to 20 years

One degree lower is No. 26.

Two degrees lower is No. 23.

32. RECLUSION TEMPORAL TO RECLUSION PERPETUA. - 12 years and 1 day to reclusion perpetua

Minimum — 12 years and 1 day to 16 years

Medium — 16 years and 1 day to 20 years

Maximum — Reclusion perpetua

One degree lower is No. 19.

Two degrees lower is No. 10.

33. RECLUSION TEMPORAL IN ITS MEDIUM PERIOD TO RECLUSION PERPETUA. - 14 years, 8 months and 1 day to reclusion perpetua

Minimum — 14 years, 8 months and 1 day to 17 years and 4 months

Medium — 17 years, 4 months and 1 day to 20 years

APPENDIX "A"
Scale of Penalties

Maximum Reclusion perpetua

One degree lower is No. 25.

Two degrees lower is No. 16.

34. RECLUSION TEMPORAL IN ITS MAXIMUM PERIOD TO RECLUSION PERPETUA — 17 years, 4 months and 1 day to reclusion perpetua

Minimum 17 years, 4 months and 1 day to 18 years and 8 months

Medium 18 years, 8 months and 1 day to 20 years

Maximum Reclusion perpetua

One degree lower is No. 27.

Two degrees lower is No. 18.

35. RECLUSION TEMPORAL IN ITS MAXIMUM PERIOD TO DEATH. — 17 years, 4 months and 1 day to death

Minimum 17 years, 4 months and 1 day to 20 years

Medium Reclusion perpetua

Maximum Death

One degree lower is No. 27.

Two degrees lower is No. 18.

36. RECLUSION PERPETUA

See Art. 63 in Book I for the imposition of this penalty.

The Indeterminate Sentence Law is not applicable.

37. RECLUSION PERPETUA TO DEATH.

See Art. 63 in Book I for the imposition of this penalty.

The Indeterminate Sentence Law is not applicable.

38. SUSPENSION. - 6 months and 1 day to 6 years

Minimum 6 months and 1 day to 2 years and 4 months

Medium 2 years, 4 months and 1 day to 4 years and 2 months

Maximum 4 years, 2 months and 1 day to 6 years

39. SUSPENSION IN ITS MINIMUM AND MEDIUM PERIODS. - 6 months and 1 day to 4 years and 2 months

Minimum 6 months and 1 day to 1 year, 8 months and 20 days

Medium	**1 year, 8 months and 21 days to 2 years, 11 months and 10 days**
Maximum	**2 years, 11 months and 11 days to 4 years and 2 months**

40. TEMPORARY DISQUALIFICATION. - 6 years and 1 day to 12 years.

Minimum	**6 years and 1 day to 8 years**
Medium	**8 years and 1 day to 10 years**
Maximum	**10 years and 1 day to 12 years**

41. TEMPORARY DISQUALIFICATION LN ITS MINIMUM PERIOD. — 6 years and 1 day to 8 years.

Minimum	**6 years and 1 day to 6 years and 8 months**
Medium	**6 years, 8 months and 1 day to 7 years and 4 months**
Maximum	**7 years, 4 months and 1 day to 8 years**

42. TEMPORARY DISQUALIFICATION IN ITS MAXIMUM PERIOD. — 10 years and 1 day to 12 years

Minimum	**10 years and 1 day to 10 years and 8 months**
Medium	**10 years, 8 months and 1 day to 11 years and 4 months**
Maximum	**11 years, 4 months and 1 day to 12 years**

43. TEMPORARY DISQUALIFICATION IN ITS MAXIMUM PERIOD TO PERPETUAL DISQUALIFICATION. - 10 years and 1 day to perpetual disqualification

Minimum	**10 years and 1 day to 11 years disqualification**
Medium	**11 years and 1 day to 12 years disqualification**
Maximum	**Perpetual disqualification**

THE
REVISED PENAL CODE
CRIMINAL LAW

By

LUIS B. REYES

**Former Professor of Criminal Law and Criminal Law Review;
Bar Reviewer in Criminal Law**

(Retired Associate Justice of the Court of Appeals; Formerly, Second Assistant City Fiscal of Manila; Judge, Court of First Instance of Batangas and Lipa City; and Judge, Court of First Instance of Manila)

BOOK TWO

Articles 114-367

Seventeenth Edition

2008

www.rexpublishing.com.ph

by

LUIS B. REYES

ISBN 978-971-23-5038-2

№ 4176

REPRINTED: DECEMBER 2008

Printed by
rex PRINTING COMPANY, INC.
TYPOGRAPHY & CREATIVE LITHOGRAPHY
84 P. Florentino St., Quezon City
Tel. Nos. 712-41-01 • 712-41-08

PREFACE TO THE SEVENTEENTH EDITION

Several important penal legislation have been passed in the last few years which have a significant impact on crimes punishable under the Revised Penal Code; thus, necessitating the latest revisions to this book. Among these laws are Republic Act No. 9208 (The Anti-Trafficking in Persons Act of 2003), Republic Act No. 9262 (An Act Defining Violence Against Women and Their Children), Republic Act No. 9344 (An Act Establishing a Comprehensive Juvenile Justice and Welfare System), Republic Act No. 9346 (An Act Prohibiting the Imposition of the Death Penalty in the Philippines) and Republic Act No. 9372 (The Human Security Act of 2007). The latest jurisprudence on criminal cases are likewise included herein.

Once again, the invaluable assistance of Atty. Rhoda Regina Reyes-Rara in updating this book is acknowledged with deepest appreciation.

May 2008

PREFACE TO THE FIRST EDITION

This book is intended primarily for the law students and bar candidates. Emphasis is placed on the elements of the legal provisions, because knowledge of such elements will enable one to know easily the meaning of a legal provision and the extent of its application. No one can hope to have a good knowledge of criminal law without first mastering the codal provisions. For the proper understanding and easy recollection of the codal provisions, the author has endeavored to break the provisions of every article into elements, stating them in outline form. In this book, the rulings in important and leading cases are stated in the discussion of each and every element of the legal provisions, indicating thereby the connection of the ruling of a given case with the particular provision of the Code.

Definitions of terms and other important words and phrases used in the different articles are incorporated in the commentaries to enable the readers to have a full grasp of the meaning of the law.

Distinctions of one article from another, whenever necessary to avoid confusion, are stated as part of the commentaries.

The opinions of the late Justice Mariano A. Albert and Judge Guillermo B. Guevara are quoted in connection with certain articles of the Code, because in the discussion of those articles their views are very enlightening.

As a textbook for law students, this book should be amplified by assigning to the students the reading of the original cases cited therein.

Bar questions from 1913 to 1953 are reproduced and included herein as one of the appendices to acquaint the bar candidates with the nature and extent of the questions asked in the past. Most of the questions do not call for controversial answers. The answers given with respect to those questions can be adopted.

As regards the questions calling for controversial answers, notes are placed after the answers and the two sides of the answers are presented.

This book is published in the hope that this humble work will be of great help to the law students and bar candidates.

L. B. R.

Manila, April, 1952

PREFACE TO THE SECOND EDITION

In the preparation of this book, the author has endeavored to fill the needs of the law students and bar candidates who have always desired a brief but comprehensive textbook for the study of Criminal Law.

When all the copies of the first edition of this book had been sold out, many students from different law schools came to the author and requested him to publish more copies for their use. Hence, the publication of this second edition.

As the first edition was hurriedly prepared, several errors were committed through the oversight of the author and the printer. In this second edition, those errors are corrected and the arrangement of the topics and of the discussions under each topic is improved to make clear the points emphasized.

This book is aimed at the mastery of the codal provisions which is essential. The cases decided by the Supreme Court and the Court of Appeals are discussed in relation to the meaning and purpose of the codal provisions involved. Important words and phrases used in the codal provisions are explained in the light of the decisions of the appellate courts.

The author is confident that this book will be of great help to the law students and bar candidates.

L. **B. R.**

Manila, June, 1956

PREFACE TO THE THIRD EDITION

Encouraged by the favorable comments from the candidates for, and members of, the Bar, the author prepared the third edition of this book. Certain improvements are introduced to make the discussion of the provisions and principles of criminal law more comprehensive and exhaustive.

This third edition is intended to meet the difficult questions asked in the Bar Examinations nowadays.

Leading cases involving criminal law, decided by the Supreme Court and the Court of Appeals, are reproduced with pertinent facts and some cases are compared and commented upon to explain the difference of some of the rulings of the appellate courts on certain provisions of the Revised Penal Code.

L. B. R.

Manila, May, 1958

PREFACE TO THE FOURTH EDITION

The fourth edition of this book is published upon request of the numerous law students and bar candidates from different law schools. It is the pride and satisfaction of the author that the previous editions of this book proved very helpful to the law students and the bar candidates.

In preparing this fourth edition, the author endeavored to improve the arrangement of, and to make up-to-date, the annotations and commentaries under each article of the Revised Penal Code. The bar questions, which were reproduced and included in the first three editions, are eliminated in this edition, because the bar questions and the answers thereto will be included in the second edition of the Criminal Law Reviewer by the same author.

L. B. R.

Manila, May 15, 1961

PREFACE TO THE FIFTH EDITION

In the preparation of this edition, new annotations and commentaries are added to make this book up-to-date.

Certain annotations and commentaries are made more detailed, because it has been observed that the law students who do not have the time to read the cases cited have found it difficult to illustrate the application of the principle involved.

It is the hope of the author that the improvements made in this book will greatly facilitate the study of Criminal Law.

L. B. R.

Manila, May 1, 1963

PREFACE TO THE SIXTH EDITION

The publication of this edition is brought about by the increasing demand for copies of this book which, although intended primarily for the law students and bar candidates, has been well received by the members of the Bench and the Bar. Lawyers have found this book handy in the study and preparation of their criminal cases. The Supreme Court and the Court of Appeals have cited this book in some of their decisions.

L. B. R.

Manila, May 25, 1965

PREFACE TO THE SEVENTH EDITION

Since the publication of the sixth edition of this book in May, 1965, new cases involving criminal law have been decided by the Supreme Court and the Court of Appeals. In order to make this book up-to-date, new annotations and new commentaries are made and the new cases on which they are based are reproduced in this edition.

L. B. R.

Manila, August 25, 1967

PREFACE TO THE EIGHTH EDITION

This eighth edition of this Book contains the latest decisions of the Supreme Court and the Court of Appeals involving criminal law, and the latest amendments to the Revised Penal Code, with new annotations and commentaries.

L. B. R.

August 25, 1969

PREFACE TO THE NINTH EDITION

In this ninth edition of this Book are included the latest amendments to the Revised Penal Code and the latest decisions of the Supreme Court and the Court of Appeals involving Criminal Law.

L. B. R.

June 30, 1971

PREFACE TO THE TENTH EDITION

This tenth edition of this Book is in response to the persistent demand for the reprinting of the ninth edition which has long been out of print.

Important changes are made in this tenth edition of Book II of the Revised Penal Code. Among them is the incorporation in this edition of Presidential Decrees which have repealed or amended, or amplified the provisions of, certain articles in this Book II of the code.

L. B. R.

June, 1975

PREFACE TO THE ELEVENTH EDITION

This Book is not a reprint of the Tenth Edition. It is updated with new annotations and commentaries. The latest amendments to certain provisions of the Revised Penal Code and other pertinent Presidential Decrees, for ready reference, are reproduced in this Book.

L. B. R.

Manila, November, 1977

PREFACE TO THE TWELFTH EDITION

This new edition includes the amendments of certain provisions of the Revised Penal Code by Presidential Decrees and by Batas Pambansa, published in the recent issues of the Official Gazette up to Vol. 77, No. 18, p. 2449, May 4, 1981 and the new rulings in criminal cases found in the Supreme Court Reports Annotated (SCRA) up to Vol. 97, and in the Official Gazette up to Vol. 77, No. 18, p. 2449, May 4, 1981.

L. B. R.

August 26, 1981

PREFACE TO THE THIRTEENTH EDITION

The thirteenth edition of this book is made necessary by the new Supreme Court rulings in criminal cases and by the recent amendments of certain provisions of the Revised Penal Code.

The invaluable assistance of Atty. Rhoda Regina M. Reyes-Rara in the updating of this book is hereby acknowledged with deepest appreciation.

L. B. R.

June, 1993

PREFACE TO THE FOURTEENTH EDITION

The fourteenth edition of this book incorporates the revisions to the Revised Penal Code effected by R.A. No. 6968 (An Act Punishing the Crime of Coup D'Etat), R.A. No. 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act), R.A. No. 7659 (An Act to Impose the Death Penalty For Certain Heinous Crimes), R.A. 7390 (An Act Amending Art. 286, Section 3, Chapter 2, Title 9 of the Revised Penal Code) and R.A. No. 8353 (Anti-Rape Law of 1997) as well as the latest Supreme Court rulings in criminal cases.

Once again, the invaluable assistance of Atty. Rhoda Regina Reyes-Rara, Partner, Ponce Enrile Reyes & Manalastas Law Offices, in updating this book is acknowledged with deepest appreciation.

L. B. R.

June, 1998

PREFACE TO THE FIFTEENTH EDITION

This edition includes the latest relevant laws and Supreme Court rulings in criminal cases. Revisions have also been made in this edition to clarify certain portions and to correct errors in the printing of the previous edition.

The invaluable assistance of Atty. Rhoda Regina Reyes-Rara, Partner, Ponce Enrile Reyes & Manalastas Law Offices, in updating this book is acknowledged.

L. B. R.

November, 2001

PREFACE TO THE SIXTEENTH EDITION

The ruling of the Supreme Court in the landmark case of People vs. Genosa, G.R. No. 135981, January 1, 2004 and the passage of not just one but two important pieces of legislation, Republic Act No. 9262 otherwise known as "Anti-Violence Against Women and Their Children Act of 2004" and Republic Act No. 9344 or the "Juvenile Justice and Welfare Act of 2006" brought about this revised edition of the country's best-selling book on Criminal Law.

Needless to say, this edition also contains the latest relevant court rulings that will further clarify the law as well as those that modify established rules such as the case of People vs. Mateo, G.R. Nos. 147678-87, July 7, 2004 which enunciated that the Court of Appeals should first review death penalty cases before elevating the same to the Supreme Court for its final disposition.

Finally, it should be acknowledged that this edition would not have seen light if not for the invaluable assistance of Atty. Rhoda Regina Reyes-Rara.

L. B. R.

May, 2006

TABLE OF CONTENTS