THE
REVISED PENAL CODE OF THE PHILIPPINES
Act No. 3815, as amended

B O O K 1

CRIMINAL LAW

It is that branch of law which defines crimes, treats of their nature and provides for their punishment (*REYES, 1*).

CRIMINAL LAW	CRIMINAL PROCEDURE
As to nature	
Substantive Defines crimes, treats of their nature and provides for their punishment;	Remedial Regulates the steps in the apprehension, prosecution and conviction of accused if found guilty;
As to application	
Prospective, unless favorable to the accused provided that the accused is not a habitual delinquent;	Retroactive
As to the authority who may promulgate	
Congress.	Judiciary.

CRIME

A generic term that embraces any violation of the RPC, special penal laws, and municipal of city ordinance (*AMURAO, 47*).

FELONY

An act or omission violative of the RPC committed either intentionally or negligently (*Art. 3, RPC*).

OFFENSE

An act or omission violative of a special law, i.e., any law other than the RPC.

MISDEMEANOR

A minor infraction of the law, such as a violation of an ordinance.

INFRACTION

An act or omission punishable by an ordinance.

SOURCES OF CRIMINAL LAW

1. The Revised Penal Code (*Act No. 3815*) and its amendments;
2. Special Penal Laws;
3. Penal Presidential Decrees issued during Martial Law.

MALA IN SE

Evil in itself. A crime or an act that is inherently immoral such as murder, arson, or rape. Crime committed without criminal intent for it is the act alone which constitutes the offense.

MALA PROHIBITA

An act that is a crime merely because it is prohibited by statute although the act itself is not necessarily immoral. They are violations of regulatory statutes or rules of convenience designed to secure a more orderly regulation of the affairs of society.

NOTE: Good faith or lack of criminal intent is not a defense in *mala prohibita*. However, it must be proven that there was an intent to perpetrate the act, *i.e.,* the act was performed voluntarily, wilfully and persistently despite knowledge that the act is prohibited. The act was not casual or accidental performance.

BASIS OF THE POWER TO ENACT PENAL LAWS

1. Police Power of the State;
2. Right of the State to Self Preservation and Defense.

NOTE: The right of prosecution and punishment for a crime is one of the attributes that by a natural law belongs to the sovereign power (*US v Pablo, 35 Phil. 94, 100*).

LIMITATIONS TO STATE AUTHORITY TO PUNISH CRIMES

See Art. III, Secs. 1, 14, 18, 19, 20, and 22 of the 1987 Constitution.

STATUTORY RIGHTS OF THE ACCUSED [PrInCEss PO SipA]

Rule 115, Sec. 1 of Rules on Criminal Procedure:

1. To be presumed innocent until the contrary is proved beyond reasonable doubt;
2. To be informed of the nature and cause of the accusation against him;
3. To confront and cross-examine the witnesses against him at the trial xxx xxx;
4. To be exempt from being compelled to be a witness against himself;
5. To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf;
6. To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment xxx xxx;
7. To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him;
8. To have speedy, impartial and public trial;
9. To appeal in all cases allowed and in the manner prescribed by law.

PENOLOGICAL OBJECTIVES

1. ***Prevention*** – This assumes that man has a tendency to commit crime and punishing offenders will prevent them from doing so again. Suppression can only be made possible through penal jurisprudence;

2. ***Deterrence/Exemplarity*** – This assumes that man is endowed with free will and of his awareness of the sanctions against crimes and his fear of such. Especially if there is:
   a. *Certainty* – that all crimes will be punished;
   b. *Celerity* – that punishment will come swiftly;
   c. *Severity* – that punishment is proportionate to his crime.

   This is also assumed that punishing the offender with cruel and conspicuous penalties will make an example of him to deter others from doing the same in the future;

3. ***Self-defense*** – This is probably a conclusion reached by the social contract theorists who hold that there is an unwritten contract between men and their society where individuals agree to give up certain rights in exchange for the protection and benefits offered by a community. If individuals violate this contract, then the society, through the State, has the right to enforce its laws and protect its own existence;

4. ***Reformation*** – This assumes that punishment is capable of changing/rehabilitating individuals;

5. ***Retribution*** – This rests on the basic premise that justice must be done: the offender shall not go unpunished. This belongs to that which maintains that punishment is inherent in the very nature of a crime and is thus its necessary consequence.

THEORIES IN PENOLOGY

1. ***Classical or Juristic Theory***

   The basis of criminal liability is human free will and the purpose of the penalty is retribution. Since he injured the society, then society has the right to demand that he must pay and suffer for what he did.

   Man is essentially a moral creature with an absolutely free will to choose between good and evil thereby placing more stress upon the effect or result of the felonious act than upon the man, the criminal itself. If he opts to violate the law, then he must bear the consequences. *Oculo pro oculo, dente pro dente* (an eye for an eye, a tooth for a tooth). The law does not look into why the offender committed the crime.

2. ***Positivist or Realistic Theory***

   Man is subdued occasionally by a strange and morbid phenomenon which constrains him to do wrong, in spite of or contrary to his volition. The crime is essentially a social and natural phenomenon to which the actor is exposed and as such it cannot be treated and checked by applying the law and jurisprudence not by imposition of a punishment, fixed and determined a priori.

   Man is essentially good but by reason of outside factors or influences he is constrained to do wrong despite his volition to the contrary.

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

3. ***Eclective or Mixed Theory***

   A combination of both. Our Code is considered eclectic i.e., the age of the offender is taken into consideration and intoxication of the offender is considered a mitigating circumstance unless it is habitual or intentional.

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

4. ***Utilitarian Theory***

   Man is punished if he is proven to be an actual or potential danger to the society.

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

NOTE: Since the Revised Penal Code was adopted from the Spanish *Codigo Penal*, which in turn was copied from the French Code of 1810 which is classical in character, it is said that our Code is also classical. This is no longer true because with the American occupation of the Philippines, many provisions of common law have been engrafted into our penal laws. The Revised Penal Code today follows the mixed or eclectic philosophy (*Discussions of Prof. Amurao*).

NOTE: For special laws, there are following the positivist theory such as the Law on Probation, Special protection to children. Others follow the classical school such as Heinous Crimes Law and the Dangerous Drugs Law (*Discussions of Prof. Amurao*).

NOTE: Jurisprudence usually applies utilitarian theory, e.g., accused of BP 22 – no danger to society, thus just pay fine (*Discussions of Prof. Amurao*).

CHARACTERISTICS OF CRIMINAL LAW

1. General
2. Territorial
3. Prospective

I.) GENERAL

General Rule:

Penal laws and those of public security and safety shall be obligatory upon all who live and sojourn in the Philippine territory, subject to the principles of public international law and to treaty stipulations (*Art. 14, CC*).

Exemptions:

1. ***Treaties and Treaty Stipulations***

   Visiting Forces Agreement of 1998 (VFA) between the US and the Philippines.

   Rules on Jurisdiction (Art. V)

   Jurisdiction

   i. *Philippines over US personnel:* offenses committed within the Philippines and punishable under Philippine laws;
   ii. *US over US personnel:* all criminal and disciplinary jurisdiction conferred by the US military law.

   Exclusive Jurisdiction

   i. *Philippines over US personnel:* offenses with respect to national security of the Philippines or violation of any law relating to national defense, punishable under Philippine laws but not under US laws;
   ii. *US over US personnel:* offenses with respect to national security of US or violation of any law relating to US national defense, punishable under the US laws but not under Philippines laws.

   Primary Jurisdiction

   US military authorities over US personnel:

   i. Against property or security of US;
   ii. Against property or person of US personnel;
   iii. Act or omission done in performance of official duty.

   In case of concurrent jurisdiction

   - *Philippines shall have the primary right* to exercise jurisdiction over all offenses committed by US personnel over all offenses committed by US personnel, except in cases provided for in par I (b), 2 (b) and 3 (b) of Art. V of the VFA.
   - *US shall have the primary right* to exercise jurisdiction over US personnel subject to the military law of the US in relation to offenses
     - Against property or security of US or property or person of US personnel;
     - Arising out of any act or omission done in performance of duty.
   - *Either government* may request the authorities of the other government to waive their primary right to exercise jurisdiction in a particular case.

2. ***Law of Preferential Application***

   RA 75 penalizes acts which would impair the proper observance by the Philippines and its inhabitants of the immunities, rights and privileges of duly accredited foreign diplomatic representatives in the Philippines.

   Secs. 4 and 5 of RA 75 prohibits issuance of any writ or process or prosecution of any

   - Ambassador (*received as such by President*);
   - Public minister (*received as such by President*);
   - Domestics (*registered in the DFA*);
   - Domestic servants (*registered in the DFA*).

   EXCEPTION: When the domestic is a citizen of the Philippines and the process is founded upon a debt contracted before he entered upon such service.

NOTE: Under Sec. 5, domestics and domestic servants must be registered in the DFA, and transmitted by the Secretary of Foreign Affairs to the Chief of Police of the City of Manila, otherwise, processes and writs may be issued against said person.

3. ***Principles of Public International Law***
   The following persons are not subject to the operation the Philippine criminal laws [SCAM²]:
   1.) Sovereigns and other heads of state;
   2.) Charges d'affaires;
   3.) Ambassadors;
   4.) Ministers plenipotentiary;
   5.) Ministers resident

   NOTE: The main yardstick in ascertaining whether a person is a diplomatic entitled to immunity is the determination of whether or not he performs duties of diplomatic nature (*Municher v CA, GR No. 142396 [2003]*).

   EXCEPTION: The doctrine of immunity from suit will not apply where the public official is being sued in his private and personal capacity as an ordinary citizen. The cloak of protection afforded the officers and agents of the government are removed the moment they are sued in their individual capacity (*Shauf v CA, GR No. 90314 [1990]*).

GENERAL RULE

Members of the AFP, and other persons subject to military law, who commits crimes or offenses penalized under the RPC, other special penal laws, or local government ordinances, shall be tried by the proper civil court.

EXCEPTIONS (*in which case the offender shall be tried in the court martial or military court*)

1. When the offense is service connected;
2. In the place of commission of the crime, there are hostilities in progress and civil courts are not functioning;
3. The person is accused of war crimes even if the hostilities haves ceased as long as a technical state of war continues.

II.) TERRITORIALITY

Criminal laws undertake to punish crimes committed within the Philippine territory (*REYES, 13*).

NATIONAL TERRITORY

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines (*Art. 1, Consti*).

EXTRATERRITORIALITY

The application of the RPC outside the Philippine territory (*Art. 2, RPC*). (This pertains to the exceptions below; please refer to article 2 for a more detailed discussion).

EXCEPTIONS: [SCIPN]

1. RPC shall not be enforced without or outside the Philippine territories if so provided under:
   a. Treaties;
   b. Laws of preferential application (*Art. 2, RPC and Art. 14, CC*).
2. Should commit an offense while on a Philippine ship or airship;
3. Should forge or counterfeit any coin or currency note of the Philippines or obligations or securities issued by the Philippine Gov;
4. Should be liable for acts connected with introduction of #3 exception;
5. While being public officers or employees, should commit an offense in the exercise of their functions;
6. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of the RPC.
   Includes: treason, sabotage, espionage, inciting to war and giving motives for reprisal, violation of neutrality, correspondence with hostile country, flight to enemy's country, piracy and mutiny.

NOTE: A Philippine vessel or aircraft must be understood as that which is registered in the Maritime Industry Authority (MARINA) for ship and Civil Aeronautics Board (CAB) for airship.

III.) PROSPECTIVITY

General Rule: Criminal law cannot penalize an act that was not punishable at the time of its commission (*AMURAO, 29*). As provided in Art. 366, crimes are punished under the laws in force at the time of their commission (*REYES, 14*).

Exception: Whenever a new penal law establishes conditions favorable to the accused, it can be given retroactive effect.

Exceptions to the Exception:

1. Where the new law is expressly made inapplicable to pending actions or existing causes of actions (*Tavera v Valdez, GR No. 922 [1902]*).
2. Where the offender is habitual criminal as defined in Art. 62, par. 5.

HABITUAL DELINQUENT

Within a period of 10 years from the date of his release or last conviction of serious or less physical injuries, *robo, hurto*, estafa or falsification, he is found guilty the 3rd time or oftener (*Art. 62, rule 5*).

EFFECTS OF REPEAL ON PENAL LAW

1. Makes the penalty lighter = the new law shall be applied (*except when otherwise provided or offender is habitual delinquent*);
2. Makes the penalty heavier = the old law shall be applied;
3. Totally repeals the old law = crime is obliterated.

NOTE: When the new law and the old law penalize the same offense, the offender can be tried under the old law.

NOTE: When the repealing law fails to penalize the offense under the old law, the accused cannot be convicted under the new law.

NOTE: A person erroneously accused and convicted under a repealed statute may be punished under the repealing statute.

NOTE: Both RPC and the Civil Code allow for the retroactive application of judicial decisions. While reference in Art. 22 of the Civil Code is made to legislative acts, it would be merely an exaltation of the literal to deny its application to a case like the present. The Civil Code provides that judicial decisions applying or interpreting the constitution, as well as legislation form part of our legal system (*Gumabon v Dir. of Prisons, GR No. L-30026 [1971]*).

CONSTRUCTION OF PENAL LAWS

Where the law is clear and unambiguous, there is no room for the application of the rule.

Penal laws are strictly construed against the Gov. and liberally in favor of the accused.

PRO REO DOCTRINE

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

This is in consonance with the fundamental rule that all doubts shall be construed in favor of the accused and consistent with

presumption of innocence of the accused. This is peculiar only to criminal law.

BASIS: In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved (*Art. III, Sec. 14, par. 2*).

NOTE: In the construction or interpretation of the provisions of the RPC, the Spanish text is controlling because it was approved in its Spanish text (*People v Manaba, 58 Phil. 665*).

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

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

EQUIPOISE RULE

If the inculpatory facts and circumstances are capable of 2 or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfil the test of moral certainty, and does not suffice to produce a conviction, the same must be denied (*People v Abarquez, GR No. 1500762 [2006]*).

Where the evidence of the prosecution and of the defense are equally balanced, the scale should be tilted in favor of the accused in view of the constitutional presumption of innocence (*People v Corpuz, GR No. 74259 [1991]*).

NOTE: Any conviction must rest on the strength of the prosecution's case and not on the weakness of the defense (*BOADO, 17*).

LATIN MAXIMS

1. *Nullum crimen, nulla poena sine lege* – There is no crime when there is no law that punishes it
2. *Actus non facit reum, nisi mens sit rea* – The act cannot be criminal unless the mind is criminal.
3. *Actus me invite factus non est meus actus* – An act done by me against my will is not my act.
4. *El que es causa de la causa es causa del mal causado* – He who is the cause of the cause is the cause of the evil caused.
5. *In duvio, pro reo* – When in doubt, for the accused.

Examples of *Nullum crimen, nulla poena sine lege*

Bernardo v People, 123 SCRA 365

FACTS: The accused were charged and convicted for violating PD No. 772 for possessing and squatting on a parcel of land owned by Cruz.

HELD: Conviction is null and void. PD No. 772 does not apply to pasture lands because its preamble shows that it was intended to apply to squatting in urban communities. It is a basic principle of criminal law that no person should be brought within the terms of a penal statute who is not clearly within them nor should any act be pronounced criminal which is not clearly made so by the statute.

People v Pimentel, GR No. 100210 [1998]

FACTS: Respondent Tujan was charged with subversion under RA 1700. When he was arrested 7 years after he was charged, an unlicensed revolver and ammunition was found in his possession. As such, he was also charged with Illegal Possession of Firearms under PD 1866.

HELD: Tujan was not placed in double jeopardy because *the issue had not yet arisen for he had not yet been actually convicted*. RA 7636 totally repealed RA 1700 making subversion no longer a crime. Based on Art. 22 of RPC, this law should be given retroactive effect since the law is favorable to the accused and since he is not a habitual delinquent. The Court convicted Tujan with simple illegal possession of firearm and ammunition but since Tujan's length of detention is greater than the penalty prescribed, the court ordered immediate release.

LIMITATIONS TO ENACT PENAL LAWS

1. Ex post facto law (*Art. III, Sec. 2, Consti.*); [MACAID]
   a. Makes criminal act done before the passage of the law;
   b. Aggravates a crime;
   c. Changes the punishment and inflicts a greater punishment;
   d. Alters the rules of evidence and authorizes conviction upon less or different testimony than the law required at the time of the commission of an offense;
   e. Imposes penalty or deprivation of right for something which when done was lawful;
   f. Deprives a person accused of a crime some lawful protection to which he has become entitled.

   Bill of Attainder

   A legislative act that inflicts punishment without trial, its essence being the substitution of legislative fiat for a judicial determination.

2. No person shall be held to answer for a criminal offense without due process of law (*Art. III, Sec. 13, par. 1*);

3. No cruel and unusual punishment nor excessive fines (*Art. III, Sec. 19, par. 1*);

   RA 9346 prohibits the imposition of death penalty but instead *reclusion perpetua* or *cadena perpetua* (life imprisonment).

4. Must be general in application and must clearly define the acts and omissions punished as crimes.

RULES OF CONSTRUCTION OF PENAL LAWS

1. Criminal statutes are liberally construed in favor of the offender. This means that no person shall be brought within their terms of the law who is not clearly within them, nor should any act be pronounced criminal which is not clearly made so by statute.;
2. The original text in which a penal law is approved will govern in case of a conflict with an official translation. Hence, the RPC, which was approved in Spanish text, is controlling over its English translation;
3. Interpretation by analogy has no place in criminal matters. Reasoning by analogy is applied only when similarities are limited and it is admitted that significant differences also exist.

NOTE: Book One of the Revised Penal Code consists:

1. Basic principles affecting criminal liability (*Art. 1-20*);
2. Provisions on penalties including criminal and civil liabilities (*Art. 21-113*)

ART. 1

This Code shall take effect on the first day of 1 January 1932.

NOTE: The RPC was approved on 8 Dec. 1930 and took effect on 1 Jan. 1932.

ART. 2

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

1. **Should commit an offense while on a Philippine ship or airship;**

2. **Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations note and securities issued by the Government of the Philippine Islands;**
3. **Should be liable for acts connected with the introduction into these Islands of the obligations and securities mentioned in the preceding number;**
4. **While being public officers or employees, should commit an offense in the exercise of their functions;**
5. **Should commit any of the crimes against nations security and the law of nations, defined in Title One of Book Two of this Code.**

NOTE: Art. 2 sets forth the instances where the provisions of the Revised Penal Code are applicable although the felony is committed outside the Philippine Territory.

1. **Extraterritoriality –** RPC is applicable even though outside the Philippine territory (*see discussion under Territorial as a characteristic of criminal law*);
2. **Exterritoriality –** A term of international law which signifies the immunity of certain persons who, although in the state, are not amenable to its laws (*e.g., ambassadors, ministers plenipotentiary, etc.*);
3. **Intraterritoriality –** RPC is made applicable within the Phil territory.

I.) SHOULD COMMIT AN OFFENSE WHILE ON PHILIPPINE SHIP OR AIRSHIP;
Requisites:
1. Must be committed on board a private or merchant ship;
2. The ship or airship must be registered in the Philippines;
3. The crime must be committed while the registered Philippine ship is on international waters.

NOTE: The ship or airship must be registered with the Maritime Aeronautics Board (MARINA) or with the Civil Aeronautics Board (CAB) in accordance with Philippine laws.

NOTE: The RPC applies when such Philippine vessel is found within the Philippine waters or in the high seas. When the said Philippine vessel or aircraft is within the territory of a foreign country when the crime is committed, the laws of that country will apply as a rule.

FRENCH RULE (Flag or Nationality)	ENGLISH RULE (Territoriality or *Situs* of the Crime)
General Rule	
Crimes committed aboard a vessel with the territorial waters of another country are *not triable* in the courts of that country;	Crimes committed aboard a vessel within the territorial waters of another country are *triable* in that country;
Exception	
When their commission affects the peace and security of the territory or when the safety of the state is endangered.	When the crimes merely affect things within the vessel or when they only refer to the internal management thereof.

SHIP	SITUS OF CRIME	JURISDICTION
Philippine merchant ship;	Philippine territory;	Philippines;
Philippine merchant ship;	High seas where no country has jurisdiction;	Philippines;
Philippine merchant ship;	Foreign territory;	Foreign country;
Foreign merchant ship.	Philippine territory.	Philippines.

NOTE: If the country will not take cognizance, pursuant to Art. 2 of the RPC, the Philippines can assume jurisdiction (*BOADO, 32*).

SITUS	ACT/OMISSION	
In transit;	Possession of dangerous drugs;	Not punishable;
	Use of dangerous drugs;	Punishable;
Not in transit.		Mere possession is punishable law.

WARSHIP

Warships are always reputed to be the territory of the country to which they belong and cannot be subjected to the laws of another state. Thus, their respective national laws shall apply to such vessels wherever they may be found (*REYES, 31*).

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

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

NOTE: The rule in possession of dangerous drugs in a foreign merchant vessel is as follows:
1. *In Transit* – mere possession of dangerous drugs is not punishable, but use of the same is punishable;
2. *Not in Transit* – mere possession of dangerous drugs is punishable (*US v Ah Sing, 36 Phil. 978, 981-982*).

US v Ah Sing, 36 Phil. 978

FACTS: Defendant is a subject of China who bought eight cans of opium in Saigon and brought them on board the steamship Shun Chang during the trip to Cebu. When the steamer anchored in the port of Cebu, the authorities in making the search found the 8 cans of opium. Defendant admitted being the owner but did not confess as to his purpose in buying the opium.

HELD: Bringing opium in local territory even if it is merely for personal use and does not leave the foreign merchant vessel anchored in Philippine waters is subject to local laws particularly under Sec. 4 Act. No. 2381 a.k.a. Opium Law. Under the said law, importation includes merely bringing the drug from a foreign country to Philippine port even if not landed.

II.) SHOULD FORGE OR COUNTERFEIT ANY COIN OR CURRENCY NOTES OF THE PHILIPPINES OR OBLIGATIONS AND SECURITIES ISSUED BY THE GOVERNMENT.

Forgery is committed by giving to a treasury or bank note or any instrument payable to bearer or to order the appearance of a true genuine document or by erasing, substituting, counterfeiting or altering, by any means, the figures, letters, words or signs contained therein (*Art. 169*).

NOTE: Any person who makes false or counterfeit coins or forges treasure or bank notes or other obligations and securities in a foreign country may be prosecuted before our civil courts for violation of our penal laws (*See Title 4, Chap. 1, Sec. 2 of the RPC*).

NOTE: If forgery was perpetrated abroad, the object of the crime must be a coin, currency note or obligations and securities issued by the Government (*ESTRADA, 15*).

III.)SHOULD INTRODUCE INTO THE COUNTRY THE ABOVE-MENTIONED OBLIGATIONS AND SECURITIES
Rationale: The introduction of forged or counterfeited obligations and securities into the Philippines is as dangerous as the forging or counterfeiting of the same, to the economic interest of the country.

NOTE: Still liable even though they were not the ones who counterfeited the same.

NOTE: The reason for Art. 2 pars. b and c is to maintain and preserve the financial credit and stability of the state.

IV.) WHILE BEING PUBLIC OFFICERS OR EMPLOYEES, SHOULD COMMIT AN OFFENSE IN THE EXERCISE OF THEIR FUNCTIONS [$B^3A^2F^3$ T MIC]

1. Direct bribery (*Art. 210*);
2. Indirect bribery (*Art. 211*);
3. Qualified bribery (*Art. 211-A*);
4. Failure to render accounts (*Art. 218*);
5. Failure to render account before leaving the country (*Art. 219*);
6. Illegal use of public funds or property (*Art. 220*);
7. Failure to make delivery of public funds or property (*Art. 221*);
8. Falsification (*Art. 171*);
9. Fraud against public treasury and similar offenses (*Art. 213*);
10. Malversation of public funds or property (*Art. 217*);
11. Possession of prohibited interest (*Art. 216*);
12. Corruption (*Art. 212*);

V.) SHOULD COMMIT ANY OF THE CRIMES AGAINST NATIONAL SECURITY AND THE LAW OF NATIONS DEFINED IN TITLE ONE OF BOOK TWO (*Arts. 114-122*)

EXAMPLES OF CRIMES AGAINST NATIONAL SECURITY

1. Treason (*Art. 114*);
2. Conspiracy and proposal to commit treason (*Art. 115*);
3. Espionage (*Art. 117*);
4. Inciting to war and giving motives for reprisals (*Art.118*);
5. Violation of neutrality (*Art. 119)*;
6. Correspondence to a hostile country (*Art. 120)*;
7. Flight to enemy's country (*Art. 121*);
8. Piracy and mutiny on the high seas (*Arts. 122-123*).

NOTE: The reason for the exception regarding crimes against national security and the law of nations is to safeguard the existence of the state. Piracy is triable anywhere. Piracy and mutiny are crimes against the law of nations while treason and espionage are crimes against national security.

NOTE: Terrorism as defined by RA 9372 (Human Security Act of 2007), is not a crime against national security and the law of nations.

Title One
FELONIES AND CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY

Chapter One
FELONIES

ART. 3

Acts and omissions punished by law are felonies (*delitos*).

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

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

FELONIES

Acts and omissions punishable by the RPC.

ELEMENTS OF FELONIES

1. There must be an *act or omission*, i.e., there must be an external acts;
2. The act or omission must be punishable by the RPC;
3. The act is performed or the omission incurred by means of *dolo* (malice) or *culpa* (fault).

ACT

Any bodily movement tending to produce some effect in the external world. It must be external as internal acts are beyond the sphere of penal law (*People v Gonzales, GR No. 80752 [1990]*). Mere criminal thought or intent is not punishable.

OMISSION

There is a law requiring a certain act to be performed and the person required to do the act fails to perform (*REYES, 34*).

Example:

Failure to render assistance to any person in an uninhabited place wounded or in danger of dying is liable for abandonment of persons in danger (Art. 275 par. 1).

Failing to disclose and make known, to the proper authority, any conspiracy against the Gov. is liable for misprision of treason (Art. 116).

NOTE: Mere passive presence at the scene of another's crime, mere silence and failure to give the alarm, without evidence of agreement or conspiracy, is not punishable (*People v Silvestre, 56 Phil. 353*).

CLASSIFICATION OF FELONIES

As to the manner of commission
1. Intentional Felonies a. By commission b. By omission 2. Culpable felonies
As to nature
1. Mala in se 2. *Mala prohibita*
As to stage of execution
1. *Formal Crimes* – those which are consummated in one instance (e.g., illegal exaction under Art. 213); 2. *Material Felonies* – crimes which have various stages of execution a. Attempted b. Frustrated c. Consummated d.
As to gravity
1. *Grave Felonies* – those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive; 2. *Less Grave Felonies* – those to which the law punishes with penalties which in their maximum period is correctional; 3. *Light Felonies* – those infractions of law for the commission of which the penalty of *arresto menor*, or a fine not exceeding P40,000, or both.
As to count of plurality
1. Compound 2. Complex 3. Composite

INTENTIONAL FELONIES (DOLO)

The act is performed or the omission is incurred with deliberate intent or malice to do an injury (*REYES, 36*).

REQUISITES [FII]

1. Freedom;
2. Intelligence;
3. Intent.

FREEDOM

Voluntariness on the part of the person to commit the act or omission. When a person acts without freedom, he is no longer a human being but a tool.

When there is lack of freedom, the offender is exempt from liability.

INTELLIGENCE

It is the capacity to know and understand the consequences of one's act. Without this power necessary to determine the morality of human acts, no crime can exist (*see Arts. 12, pars. 5-6*).

When there is lack of intelligence, the offender is exempt from liability (*see Art. 12, pars. 1-3*).

INTENT

The purpose to use a particular means to effect such result

Intent to commit an act with malice, being purely a mental process, is presumed which arises from the proof of commission of an unlawful act.

Intent is a mental state, hence, its existence is shown by overt acts (*REYES, 41*).

NOTE: Intent presupposes the exercise of freedom and the use of intelligence. It is shown by the overt acts of a person.

LAWFUL ACT	UNLAWFUL ACT
No presumption of criminal intent.	Criminal intent is presumed and it is for the accused to rebut said presumption.

NOTE: When there is lack of intent, the act is justified. Offender incurs no criminal liability

NOTE: Criminal intent and the will to commit a crime are always presumed to exist on the part of the person who executes an act which the law punishes, unless the contrary shall appear (*US v Apostol, 14 Phil. 92-93*).

NOTE: Criminal intent is presumed from the commission of an unlawful act. Nonetheless, the presumption of criminal intent does not arise from the proof of the commission of an act which is law (*REYES, 42*).

CRIMINAL INTENT IS NECESSARY BECAUSE

1. *Actus non facit reum, nisi mens sit rea* – An act does not make a man guilty unless his intentions were so.
2. *Actus me invite factus non est meus actus* – An act done by me against my will is not my act.

GENERAL CRIMINAL INTENT	SPECIFIC CRIMINAL INTENT
An intention to do a wrong;	An intention to commit a definite act;
Presumed to exist from the mere doing of a wrongful act;	Existence of the intent is not presumed because it is an ingredient or element of a crime;
The burden of proving the absence of intent is upon the accused.	The burden of proving the existence of the intent is upon the prosecution, as such, intent is an element of the crime.

CULPABLE FELONIES

The act or omission is not malicious. The injury cause by the offender to another person is unintentional, it being simply the incident of another act performed without malice (*REYES, 36*).

REQUISITES OF CULPA [FIN]

1. Freedom;
2. Intelligence;
3. Negligence, imprudence, lack of foresight, or light of skill.

NEGLIGENCE

Indicates a deficiency of perception; failure to pay proper attention and to use diligence in foreseeing the injury or damage impending to be caused; usually involves *lack of foresight*.

IMPRUDENCE

Indicates a deficiency of action; failure to take the necessary precaution to avoid injury to person or damage to property; usually involves *lack of skill*.

RATIONALE IN PUNISHING NEGLIGENCE

A man must use his common sense, and exercise due reflection in all his acts; it is his duty to be cautious, careful, and prudent, if not from instinct, then thru fear of incurring punishment (*US v Maleza, GR No. L-5036 [1909]*).

NOTE: Acts executed negligently are voluntary.

NOTE: In Art. 3, culpa is a mode of committing a crime; hence, killing is denominated "homicide through reckless imprudence." In Art. 365, culpa itself is the crime punished; hence, the crime is denominated "reckless imprudence resulting in homicide" (*BOADO, 45*).

Illustration:

Person A committed suicide and jumped off the seventh floor of a building but fell on a pedestrian innocently walking along the sidewalk below. The pedestrian died. Person A is liable because of criminal negligence arising from his failure to observe the standard of care required by the circumstance of place, time and person (AMURAO, 85).

Nonetheless, according to Judge D. Sandoval, retired RTC Judge of Lipa, the accused is not liable for he not in his proper mind when he committed the crime (Class Discussion of Crim 1, 21 September 2018).

ARTICLE 365, PARAGRAPHS 7 & 8, RPC

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 cause is not immediate nor the danger clearly manifest.

INTENTIONAL FELONIES	CULPABLE FELONIES
Malicious;	Not malicious;
With deliberate intent;	Injury caused by unintentional being incident of another act performed without malice;
There is an intention to cause an injury;	Wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

MISTAKE OF FACT

It is a misapprehension of fact on the part of the person causing injury to another. Such person is not criminally liable as he acted without criminal intent. *Ignorantia facti excusat* (*REYES, 44*).

An honest mistake of fact destroys the presumption of criminal intent which arises upon the commission of a felonious act (*People v Oanis, GR No. L-47722 [1943]*).

NOTE: Honest mistake of fact is not applicable to culpable (culpa) felonies; it only applies to intentional (*dolo*) felonies.

REQUISITES [LIF]

1. That the act done would be lawful had the facts been as the accused believed them to be;
2. The intention in performing the act should be lawful;
3. That the mistake must be without fault or carelessness on the part of the accused.

NOTE: Because of having no time or opportunity to make any further inquiry, and being pressed by circumstances to act immediately, the accused had no alternative but to take the facts as they appeared to him, and such facts justified his act of killing his roommate (*US v Ah Chong, GR No. 5272 [1910]*).

NOTE: Police officers who shot a sleeping man in the back mistaking him for a notorious escaped convict wanted dead or alive, could still be held liable for the killing since they did not take reasonable precautionary measures. Police officers are still liable because they are not justified in killing a man whose identity they did not ascertain. The third requisite of mistake of fact is lacking. In this case, self-defense is not tenable as a defense as there was no unlawful

aggression but they may avail of the defense of fulfilment of duty as a mitigating circumstance (*People v Oanis, 74 Phil. 257*).

WHEN DEFENSE OF MISTAKE OF FACT NOT APPLICABLE

1. *Error in personae*;
2. When there is negligence on the part of the accused;
3. When the accused committed culpable felony.

NOTE: In mistake of fact, what is involved is lack of intent on the part of the accused. In culpable felonies, there is no intent to consider, as it is replaced by imprudence, negligence, lack of foresight or lack of skill (*REYES, 48-49*).

NOTE: In mistake of fact, the act done by the accused would have constituted

1. Justifying circumstance under Art. 11;
2. Absolutory cause under Art. 247, par. 2;
3. Involuntary act.

NOTE: When such an unlawful act is wilfully done, a mistake in the identity of the intended victim cannot be considered as reckless imprudence (*Peoplel v Guillen, 85 Phil. 307*).

NOTE: A person causing damage or injury to another, without malice (criminal intent) or fault (negligence or imprudence), is not criminally liable under the RPC (*US v Catangay, 28 Phil. 490*). For this, the act must be lawful.

MALA IN SE

Those crimes which are so serious in their effects on society as to call for almost unanimous condemnation of its members itself (*REYES, 56*).

MALA PROHIBITA

Those punished by special penal laws whereby criminal intent is not necessary, as a rule, it being sufficient that the offender has the intent to perpetrate the act prohibited by the special law. It is punishable because the prohibited act is so injurious to the public welfare that it is the crime itself (*REYES, 56*).

These are acts made evil because there is a law punishing it the basis of criminal liability is the offender's voluntariness; hence, goof faith or lack of criminal intent is not accepted as a defense, unless this is an element of a crime. the act prohibited is not inherently evil but made evil only by the prohibition of the statute (*BOADO, 16*).

Mere commission of the crimes classified as mala prohibita, even without criminal intent, is punishable.

NOTE: A common misconception is that all *mala in se* crimes are found in the RPC, which all *mala prohibita* crimes are provided by special penal law. In reality, however, there may be *mala in se* crimes under the special laws, such as plunder under RA 7080. Similarly, there may be *mala prohibita* crimes defined in the RPC, such as technical malversation.

When acts are inherently immoral, they are *mala in se*, even if punished under special law (*Garcia v CA and People, GR No. 157171 [2006]*).

NOTE: The better approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a *mala in se* crime. On the contrary, if it is not immoral in itself, but there is a stature prohibiting its commission by reasons of public policy, whether or not a crime involves a moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the state (*People v Dungo, GR 209464 [2015]*).

NOTE: Good faith and absence of criminal intent not valid defenses in crimes punished by special laws (*People v Neri, GR No. L-37762 [1985]*).

NOTE: Mere transient possession of unlicensed firearm will not render the accused liable (*People v Estoista, 93 Phil. 647 [1953]*).

MALA IN SE	MALA PROHIBITA
As to nature	
Wrong from its very nature;	Wrong because it is prohibited by law;
Use of good faith as a defense	
Valid, unless the crime is the result of culpa;	Not valid;
Intent as an element	
Intent is an element;	Criminal intent is immaterial;
Degree of accomplishment of the crime	
The degree of accomplishment is taken into account in punishing the offender;	The act gives rise to a crime only when it is consummated;
As to mitigating and aggravating circumstances	
Rules on mitigating and aggravating circumstances apply;	Rules do not apply, unless provided for by the special law itself;
Degree of participation	
When there is more than one offender, the degree of participation of each in the commission of the crime is taken into account;	Degree of participation is generally not taken into account. All who participated in the act are punished to the same extent;
As to penalty	
Penalty is computed on the basis of whether the offender is a principal, accomplice or accessory;	The penalty imposed on the offenders are the same whether they are merely accomplices or accessories;
Laws violated	
Violation of the RPC (general rule)	Violation of special law (general rule)
As stages in execution	
There are three stages: attempted, frustrated, consummated;	No such stages of execution;
As to persons criminally liable	
There are three persons criminally liable: principal, accomplice and accessory;	Generally, only the principal is liable;
As to division of penalties	
Penalties may be divided into degrees and period.	There is no such division of penalties.

NOTE: A *mala in se* felony cannot absorb a *mala prohibita* crime. What makes the former a felony is the criminal intent or negligence; what makes the latter crime are the special laws enacting them (*Loney v People, GR No. 152644 [2006]*).

NOTE: Laws that merely amend the provisions of the RPC do not convert their violation into *mala prohibita* (*Tae v CA, GR No. 85204 [1990]*).

MOTIVE

It is the moving power which impels one to action for a definite result. The intent is the purpose to use a particular means to effect such result (*REYES, 57*).

Illustration:

A and C are engaged couples. B saw C and immediately fell in love with her. Right then and there, B started persuading C. Eventually, A got wind of B's love for C. A, who is jealous of B shot the latter as a result of which B died. The intent is to kills while the motive is jealousy.

NOTE: One may be convicted of a crime whether his motive appears to be good or bad or even though no motive is proven. A good motive does not prevent an act from being a crime. In mercy killing, the painless killing of a patient who has no change of recovery, the motive may be good, but it is nevertheless punished by law (*REYES, 58*).

MOTIVE: WHEN RELEVANT [CUT NID]

1. If the evidence is merely circumstantial;

2. Where the identification of the accused proceeds from an unreliable source and the testimony is inconclusive and not free form doubt;
3. In ascertaining the truth between two antagonistic theories or versions of the crime;
4. Where there are no eyewitnesses to the crime, and where suspicion is likely to fail upon a number of persons;
5. When there is doubt as to the identity of the assailant;
6. When the act is alleged to be committed in defense of a stranger but it must not be induced by revenge, resentment or other evil motive.

HOW MOTIVE IS PROVED

Generally, the motive is established by the testimony of witnesses on the acts or statements of the accused before or immediately after the commission of the offense. Such deeds or words may indicate the motive (*Barrioquinto v Fernandez, 82 Phil. 642, 649*).

NOTE: The existence of a motive, though perhaps an important consideration, is not sufficient proof of guilt. Mere proof of motive, no matter how strong, is not sufficient to support a conviction if there is no reliable evidence from which it may be reasonably deduced that the accused was the malefactor (*REYES, 60*).

INTENT	MOTIVE
The purpose to use a particular means to effect such result;	The reason or moving power which impels one to commit an act for a definite result;
An element of the crime, except in unintentional felonies;	Not an element of the crime;
Essential in intentional felonies.	Essential only when the identity of the perpetrator is in doubt.

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

I.) BY ANY PERSON COMMITTING A FELONY ALTHOUGH THE WRONGFUL ACT DONE BE DIFFERENT FROM THAT WHICH HE INTENDED

BASIS OF PARAGRAPH 1

El que es causa de la causa es causa del mal causado – He who is the cause of the cause is the cause of the evil caused (*People v Ural, GR No. L-30801 [1974]*).

NOTE: One who commits an intentional felony is responsible for all the consequences which may naturally and logically result therefrom whether foreseen or intended or not (*REYES, 61*).

Illustration:

One who gave a fist blow on the head of A, causing the latter to fall with the latter's head striking a hard pavement (as hard as her heart when she left you), is liable for the death of A, which resulted although the one who gave the fist blow had no intention to kill.

NOTE: When a person has not committed a felony, he is not criminally liable for the result which is not intended.

Illustration:

One who tries to retain the possession of his bolo by which was being taken by another and because of the struggle, the tip of the bolo struck and pierced the breast of a bystander, is not criminally liable therefor, because the law allows a person to use the necessary force to retain what belongs to him (People v Bindoy, 56 Phil. 15).

REQUISITES [IDNaL]
1. That an *intentional felony* has been committed;

   No Intentional Felony When:
   i. When the act or omission is not punishable by RPC;
   ii. When the act is covered by any of the justifying circumstances in Art. 11 of RPC.

   NOTE: The act or omission should not be punished by a special law because the offender violating a special law may not have the intent to do any injury to another. In such case, the wrongful act done could not be different, as the offender did not intend to do any other injury (*REYES, 65*).

2. That the wrong done to the aggrieved party be the *direct, natural and logical consequence* of the felony committed.

"COMMITTING A FELONY"

Art. 4 (1) says that criminal liability shall be incurred by any person "committing a *felony*;" hence, the act performed by the accused must be punishable under the RPC and not under a special law, because an offender violating a special law may not have the intent to do an injury to another. Such felony must be committed by means of *dolo* (*intentional felony*), because the law speaks of wrongful act done "different from that which he *intended*" (*REYES, 63*).

NOTE: When a person has not committed a felony, he is not criminally liable for the result which is not intended as when a person tries to use necessary force to retain what belongs to him (*People v Bindoy, 56 Phil. 15*).

PROXIMATE CAUSE

It is that cause, which, in the natural, logical, and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred (*Vallacar Transit, Inc. v Catubig, GR No. 175512 [2011]*).

If the result can be traced back to the original act, then the doer of the original act can be held criminally liable.

NATURAL An occurrence in the ordinary course of human life or events.

LOGICAL There is a rational connection between the act of the accused and the resulting injury or damage.

INSTANCES WHEN THERE IS A PROXIMATE CAUSE AND WHEN THERE IS NONE
1. When there is an intervening disease and the disease is:
   a. Closely related to the wound – *accused is criminally liable;*
   b. Unrelated to the wound – *accused is not criminally liable;*
   c. Combined force with the wound – *accused is criminally liable because the mortal wound is a contributing factor to the victim's death.*
2. When the death was caused by an infection of the wound due to the unskilled medical treatment from the doctors;
   a. If the wound is mortal – *accused is criminally liable, because the unskilled treatment and infection are not efficient intervening causes;*
   b. If the wound is not mortal – *accused is not criminally liable, because the unskilled treatment and infection are efficient intervening causes.*

NOTE: Mortal wound is contributing factor when:
1. The wound is sufficient to cause the victim's death along with the disease;
2. The mortal wound was caused by actions committed by the accused.

NOTE: The wound caused by accused Urbano was already treated and was in the normal process of healing which is in approximately 4 weeks; but because deceased Javier did not wait for the wound to heal and still worked by fishing, his wound got infected with tetanus which caused his death. The actions of the deceased when he still worked without waiting for his wound to heal was an efficient intervening cause, thus the accused is not liable for his death anymore (*Urbano v IAC, GR No. 72964 [1988]*).

EXTENT OF CRIMINAL LIABILITY IN CRIMES COMMITTED WHICH IS DIFFERENT FROM THAT INTENDED

The lesser penalty will be imposed.

1. If the crime *intended* has a lesser penalty – then that will be charged;
2. If the crime *committed* has a lesser penalty – then that will be charged.

People v Quianson, 62 Phil. 162

FACTS: The accused took hold of a fireband and applied it to the neck of the person who was pestering him. The victim also received from the hand of the accused a wound in his abdomen below the navel. While undergoing medical treatment, the victim took out the drainage from him wound and as a result of the peritonitis that developed, he died. The accused claimed as a defense that had not the deceased taken out the drainage, he would not have died.

HELD: Death was the natural consequence of the mortal wound inflicted. The victim, in removing the drainage from his would, did not do so voluntarily and with knowledge that it was prejudicial to his health. The act of the victim in removing the drainage from his wound was attributed to his pathological condition and state of nervousness and restlessness on account of physical pain caused by the wound, aggravated by the contact of the drainage tube with the inflamed peritoneum.

US v Marasigan, 27 Phil. 504, 506

FACTS: The accused drew his knife and struck at Mendoza. In attempting to ward of the blow, Mendoza was cut in the left hand. The extensor tendon in one of the fingers was severed. As a result, the middle finger of the left hand was rendered useless.

HELD: Nor do we attach any importance to the contention of the accused that the original condition of the finger could be restored by a surgical operation. Mendoza is not obliged to submit to a surgical operation to relieve that accused from the natural and ordinary results of his crime. it was his voluntary act which disable Mendoza and he must abide by the consequences resulting therefrom without aid from Mendoza.

NOTE: The relation of cause and effect consists of:

1. Cause being the felonious act of the offender;
2. Effect being the resultant injuries and/or death of the victim.

NOTE: Any person who creates in another person's mind an immediate sense of danger, which causes the latter to do something resulting in the latter's injuries is liable for the resulting injuries (*People v Toling, GR No. L-27097 [1975]*).

"ALTHOUGH THE WRONGFUL ACT DONE BE DIFFERENT FROM THAT WHICH HE INTENDED"

1. ***Error in Personae*** – Mistake in the identity of the victim. Penalty: the penalty for lesser crime in its maximum period (*Art. 49*).

   Illustration:

   A intended to kill B. One night, A shouted to the person whom he thought to be B. An altercation ensued. In the process, A fired his gun at the person who died as a consequence. It turned out that the person whom he shot and killed was not B but his own father. In this case, A is liable for parricide, the crime actually committed. When he fired his gun, he acted with intent. He is liable for all the direct, logical and natural consequences of his felonious act, whether foreseen intended or unintended.

   NOTE: In the illustration above, the penalty imposable is not the penalty for parricide which is the one committed, but the penalty of homicide which is the crime intended to be committed, the penalty being lesser than the penalty for parricide which was actually committed. But the penalty which will be imposed shall be in its maximum period (*see Art. 49*).

2. ***Aberration Ictus*** – Mistake in the blow. Penalty: penalty for graver offense in its maximum period (*Art. 48*).

   Illustration:

   A, with intent to kill, hacked B. B was not his but C who was behind B. A is also liable for the death of C. The death of C is the natural consequence of the felonious act of A. In this case, there is a complex crime of attempted or frustrated homicide, parricide, infanticide or murder, as the case may be (liability of A with respect to B), and homicide, parricide, infanticide or murder, as the case may be (liability of A with respect to C).

3. ***Praeter Intentionem*** – Injurious result is greater than that intended.

   Illustration:

   A boxed B with the intention of inflicting a lump on B. as a result of the blow, B lost his balance and fell to the ground with is head hitting the pavement causing his death. A is liable for homicide.

ABERRATIO ICTUS	ERROR IN PERSONAE
The victim, as well as the actual victim, is both in the scene of the crime;	The supposed victim may or may not be in the scene of the crime;
The offender delivers the blow to his intended victim but because of poor aim, landed on someone else;	The offender delivers the blow not to his intended victim;
Generally gives rise to complex crime *unless* the resulting consequence is not a grave or less grave felony.	There is no complex crime.

WHEN DEATH IS PRESUMED TO BE THE NATURAL CONSEQUENCE OF PHYSICAL INJURIES INFLICTED [NER]

1. The victim, at the time the physical injuries were inflicted, was in normal heath;
2. The death may be expected from the physical injuries inflicted;
3. The death ensued within a reasonable time.

NOTE: The offended party is not obliged to submit to a surgical operation or medical treatment to relieve the accused from liability (*US v Marasigan, GR No. L-9426 [1914]*).

WHEN FELONY COMMITTED IS NOT THE PROXIMATE CAUSE

1. There is an active force between the felony committed and the resulting injury, such active force is distinct from the felony committed;
2. The resulting injury is due to the intentional act of the victim, i.e., fault or carelessness of the victim to increase the criminal liability of the assailant.

EFFICIENT INTERVENING CAUSE

It is the cause which interrupted the natural flow of the events leading to one's death. This may relieve criminal liability.

THE FOLLOWING ARE NOT EFFICIENT INTERVENING CAUSES (*REYES, 76-77*)

1. The weak or diseased physical condition of the victim;
2. The nervousness or temperament of the victim;
3. Causes which are inherent in the victim;
4. Neglect of the victim or third person (*e.g., refusal of medical attendance*);
5. Erroneous or unskilled medical or surgical treatment (*unless the wound is slight or not mortal*).

II.) BY ANY PERSON PERFORMING AN ACT WHICH WOULD BE AN OFFENSE AGAINST PERSON OR PROPERTY, WERE IT NOT FOR THE INHERENT IMPOSSIBILITY OF ITS ACCOMPLISHMENT OR AN ACCOUNT OF THE EMPLOYMENT OF INADEQUATE OR INEFFECTUAL MEANS

IMPOSSIBLE CRIMES

When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was but its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of arresto mayor or a fine ranging from 40,000 to 1.2M pesos (*Art. 59, RPC*).

BASIS FOR PUNISHMENT

The commission of an impossible crime is indicative of criminal propensity or criminal tendency of the part of the actor. Such person is a potential criminal. According to positivist thinking, the community must be protected from anti-social activities, whether actual or potential, of the morbid type of man called "socially dangerous person" (*REYES, 81*).

REQUISITES [PEMAN]

1. That the act performed would be an offense against persons or property;
2. That the act was done with evil intent;
3. That:
   a. The means employed is either:
      i. Inadequate;
      ii. Ineffectual;
   b. Its accomplishment is inherently impossible;
4. That the act performed should not constitute a violation of another provision of the RPC.

NOTE: In committing an impossible crime, the offender intends to commit a felony against persons or a felony against persons or property, and the acts performed would have been an offense against persons or property. Nonetheless, a felony against persons or property should not be actually committed, for, otherwise, he would be liable for that felony.

FELONIES AGAINST PERSONS [MPHI DRAP]

1. Murder (*Art. 248*);
2. Homicide (*Art. 249*);
3. Parricide (*Art. 246*);
4. Infanticide (*Art. 255*);
5. Duel (*Arts. 260-261*);
6. Rape (*Art. 266-A*);
7. Abortion (*Arts. 256-259*);
8. Physical Injuries (*Arts. 262-266*).

FELONIES AGAINST PROPERTY [TRACE C BUM]

1. Theft (*Arts. 308, 310-311*);
2. Robbery (*Arts. 294, 297-300, 302-303*);
3. Arson and other crimes involving destruction (*Arts. 320-326*);
4. Chattel mortgage (*Art. 319*);
5. Estafa (Swindling and other deceits) (*Arts. 315-318*);
6. Culpable insolvency (*Art. 314*);
7. Brigandage (*Arts. 306-307*);
8. Usurpation (*Arts. 312-313*);
9. Malicious mischief (*Arts. 327-331*).

INHERENT IMPOSSIBILITY

In impossible crime, the act performed by the offender cannot produce an offense against persons or property, because:

1. The commission of the offense is inherently impossible of accomplishment;
2. The means employed is either:
   a. Inadequate;
   b. Ineffectual.

NOTE: The act of the offender is by nature one of impossible accomplishment.

NOTE: In impossible crime, the act performed should not constitute a violation of another provision of the RPC (*REYES, 87*).

THERE MUST EITHER BE:

1. *Legal Impossibility* **–** where the intended acts, even if completed would not amount to a crime;
2. *Physical or Factual Impossibility* – when extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the intended crime.

Illustration:

The accused fired at the room of the supposed victim but no one was actually in the room thus no one was shot. There is factual impossibility in this case. The crime committed is impossible crime and not attempted murder. It occurs when extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the intended crime, in this case, petitioner shoots the place where he thought his victim would be, although in reality, the victim was not present in said place and thus, the petitioner failed to accomplish his end.

NOTE: Rape used to be a crime against chastity; but because of RA 8353, rape was reclassified as a crime against persons, therefore, one can now be held liable for the impossible crime of rape.

PURPOSE OF THE LAW IN PUNISHING IMPOSSIBLE CRIME

To suppress criminal propensity or criminal tendencies. Objectively, the offender has not committed a felony, but subjectively, he is a criminal (*Id.*).

ART. 5

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

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

I.) ACTS WHICH SHOULD BE REPRESSED BUT WHICH ARE NOT COVERED BY THE LAW

Requisites: [No Re² Make]

1. The act committed by the accused appears not punishable by any law;
2. The court deems it proper to repress such act;
3. The court must render the proper decision by dismissing the case and acquitting the accused;
4. The judge must then make a report to the Chief Executive, through the Secretary of Justice, stating the reasons which induce him to believe that the said act should be made the subject of penal legislation (*Id., 88*).

NOTE: The basis of Art. 5, par. 1 is the legal maxim, *nullum crimen, nulla poena sine lege*, that is, there is no crime if there is no law that punishes the act.

WHY DISMISS

In the absence of a law that will punish the accused, the judge cannot impose a penalty because the duty of the judge is only to interpret or apply the law; the judge cannot reprimand or curse the accused because it would equate to public censure; the reprimand would be inconsistent with the acquittal.

II.) EXCESSIVE PENALTIES
Requisites: [GELeNS]

1. The court after trial finds the accused guilty;
2. The penalty provided by law and which the court imposes for the crime committed appears to be clearly excessive because:
    a. The accused acted with lesser degree of malice;
    b. There is no injury or the injury caused is of lesser gravity.
3. The court should not suspend the execution of the sentence;
4. The judge should submit a statement to the Chief Executive, through the Secretary of Justice, recommending executive clemency (*Id., 88-89*).

NOTE: The penalties are not excessive when intended to enforce a public policy

NOTE: The judgment must first thing that it is his duty to apply the law as interpreted by the Highest Court of the land, and that any deviation from a principle laid down by the latter would unavoidable cause, as a sequel, unnecessary inconveniences, delays and expenses to the litigants (*People v Santos, 104 Phil. 560*).

NOTE: Courts are not the forum to plead for sympathy. The duty of courts is to apply the law, disregarding their feeling of sympathy or pity for an accused. *Dura lex sed lex*. The remedy is elsewhere – clemency from the executive or an amendment of the law by the legislative, but surely, at this point, this Court can but apply the law (*People v Amigo, GR No. 116719 [1996]*).

NOTE: The court must impose the penalty prescribed for the crime committed although it finds the penalty too harsh considering the conditions surrounding the commission of the crime.

NOTE: The duty of the court is to apply the law, disregarding their feeling of sympathy or pity for an accused (*People v Amigo, GR No. 116719 [1996]*).

NOTE: The basis of Art. 5, par. 2 is the principle *dura lex sed lex,* that is, the law may be harsh, but it is the law. The most the judge can do is to recommend to the Chief Executive to grant executive clemency.

WHY TO THE CHIEF EXECUTIVE

Under Art. VII, Sec. 19 of the 1987 Constitution, the President has the power to grant executive clemency, through pardon, parole, commutation (reduction of sentence, reprieve or amnesty).

EXECUTIVE CLEMENCY

Power of the President to pardon a person convicted of a criminal offense, or to commute the related sentence, or reduce it to a lesser sentence (*Black's Law Dictionary*).

NOTE: Par. 2 is not applicable to offenses defined and penalized by a special law. Art. 5 (2) may not be invoked in cases involving acts *mala prohibita* because the provision states "takes into consideration the degree of *malice*.

NOTE: Art. 5 applies in relation to penalty that the court believes should be the subject of amendment by the legislature (*Corpuz v People, GR No. 180016 [2014]*).

PARDON

An act of grace with exempts the individual on whom it is bestowed from the punishment that the law inflicts for the crime he has committed (*NACHURA, 304*).

COMMUTATION

Reduction or mitigation of the penalty (*Id.*).

REPRIEVE

Postponement of a sentence or stay of execution (*Id.*).

PAROLE

Release from imprisonment, but without full restoration of liberty, as parolee is still in the custody of the law although not in confinement (*Id.*).

AMNESTY

Act of grace, concurred in by the legislative, usually extended to groups of persons who committed political offenses, which puts into oblivion the offense itself (*Id.*). the person released under an amnesty proclamation stands before the law precisely as though he had committed no offense (*People v Patriarca, GR No. 135157 [2000]*).

PARDON	AMNESTY
The offender committed merely an infractions of peace of the State;	The offender committed political offense;
It is granted to individuals;	It is granted to classes or groups of persons;
Acceptance of pardon from the Chief Executive by the pardonee is necessary;	No need for distinct acts of acceptance;
It does not require a concurrence of Congress;	It requires concurrence of Congress;
A private act which must be pleaded and proved;	A public act which the courts may take judicial notice;
Looks forward and relieves the pardonee of the consequences of the offense.	Looks backward and puts into oblivion the offence itself.

ART.6

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

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

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

CONSUMMATED FELONY

A felony is consummated when all the elements necessary for its execution and accomplishment are present (*REYES, 95*).

FRUSTRATED FELONY

Performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator (*Id.*).

ATTEMPTED FELONY

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

Marks the commencement of the subjective phase.

ATTEMPTED	FRUSTRATED
As to acts of execution	
Not all acts of execution had been done;	All acts of execution had been done;
As to causes of non-accomplishment	
The felony was not produced by reason of some cause or accident other than the offender's own spontaneous desistance;	The reason for the frustration is some cause independent of the will of the perpetrator;
As to phase of the felony involved	
The offender is still in the subjective phase as he has still	The offender is already in the objective phase because all the

control of his acts.	acts of execution were already there.

FORMAL CRIMES OR CRIMES OF EFFECT

These are felonies which by a single act of the accused consummates the offense as a matter of law (*i.e., physical injuries, acts of lasciviousness, attempted flight to an enemy country, coercion, slander, illegal exaction*).

As a rule there can be no attempt at a formal crime, because between the though and the deed, there is no chain of acts that can be severed in any link. Thus, in slander, there is either a crime or no crime at all, depending upon whether or not defamatory words were spoken publicly (*Id., 120*).

MATERIAL CRIMES

These are crimes which involve the three stages of execution (*Id., 121*).

DEVELOPMENT OF CRIME

1. Internal Acts;
2. External Acts:
   a. Preparatory Acts – ordinarily no punishable, except when the law provides for their punishment in certain felonies (*see Art. 8*);
   b. Acts of Execution
      i. Attempted;
      ii. Frustrated;
      iii. Consummated.

NOTE: The stages of execution do not apply to:
1. Crimes punished under special laws, unless otherwise provided;
2. Crimes by omission;
3. Formal crimes.

OVERT ACTS

Some physical activity or deed, indicating intention to commit a particular crime, more than a mere planning or preparation, which if carried to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense (*Id. 120*).

NOTE: Overt act may not be a physical activity. There are felonies where, because of their nature or the manner of committing them, the overt acts are not performed with bodily movement or by physical activity. Thus, a *proposal consisting in making an offer of money* to a public officer for the purpose of corrupting him is the overt act in the crime of corruption of public officer (*US v Gloria, GR No. 1740 [1905]*).

SUBJECTIVE PHASE

It is that portion of the acts constituting the crime, starting from the point where the offender begins the commission of the crime to that point where he has still control over his acts, including his acts' natural course (*REYES., 105*).

If between these two points the offender is stopped by reason of any cause outside of his own voluntary desistance, the subjective phase has not been passed and it is an attempt (*Id.*).

If he is not so stopped but continues until he performs the last act, it is frustrated (*Id.*).

REQUISITES OF ATTEMPTED FELONY [CoNoSCA]

1. Offender commences the commission of the felony directly by overt acts;
2. Does not perform all acts of execution which should produce the felony;
3. The offender's act is not stopped by his own spontaneous desistance;
4. The non-performance of all acts of execution was due to a cause or accident other than the offender's own spontaneous desistance.

FELONY IS DEEMED COMMENCED BY OVERT ACTS WHEN THE FOLLOWING ARE PRESENT:

1. That there be external acts;
2. Such external acts have direct connection with the crime intended to be committed (*Id., 97*).

NOTE: The law requires that "the offender commences the commission of the felony *directly* by overt acts." The word *directly* suggests that the offender must commence the commission of the felony by taking direct part in the execution of the act (*Id., 101*).

NOTE: To be an attempted crime, the purpose of the offender must be thwarted by a foreign force or agency which intervenes and compels him to stop prior to the moment when he has performed all the acts which should produce the crime as a consequence, which act it is his intention to perform (*People v Caballero, Gr Nos. 149028-30 [2003]*).

INDETERMINATE OFFENCE

It is one where the purpose of the offender in performing an act is not certain. Its nature in relation to its objective is ambiguous (*REYES, 100*). The accused may be convicted of a felony defined by the acts performed by him up to the time of desistance.

NOTE: The intention of the accused must be viewed from the nature of the acts executed by him, and not from his admission (*REYES, 101*).

Illustration:

The accused was caught opening with an iron bar a wall of a store of cheap goods. He broke one board and was unfastening another when a patrolling police caught him. He was charged with attempted robbery.

The crime committed is only attempted trespass to dwelling based on the acts performed by him before being caught. There is something yet for him to do to make him liable for the offense charged. the final objective of the accused, once he succeeded in entering the store, may be to rob, to cause physical injury to the inmates, or to commit any other offense. In such case, there is no justification in finding the offender guilty of attempted robbery by the use of force upon things (People v Lamahang, GR No. 43530 [1935]).

REASON OF NON-PERFORMANCE OF ALL ACTS OF EXECUTION

The offender fails to perform all the acts of execution which should produce the felony because of some cause or accident.

DESISTANCE

It is an absolutory cause which negates criminal liability because the law allows a person to desist from committing a crime (*ESTRADA, 55*).

NOTE: The desistance which exempts from criminal liability has reference to the crime intended to be committed, and has no reference to the crime actually committed by the offender before his desistance (*People v Lizada, GR Nos. 143468-71 [2003]*).

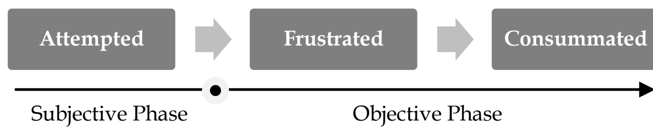
NOTE: Desistance should be made before all the acts of execution are performed.

KINDS OF DESISTANCE

1. ***Legal Desistance*** – it is a desistance referred to in law which would obviate criminal liability unless the overt or preparatory act already committed in themselves constitute a felony other than what the actor intended. It is made during the attempted stage;
2. ***Factual Desistance*** – it is the actual desistance of the actor; the actor is still liable for the attempt. It is one made after the attempted stage of the crime.

OBJECTIVE PHASE

It is the result of the acts of execution, that is, the accomplishment of the crime.



SUBJECTIVE PHASE	OBJECTIVE PHASE
The accused has control;	The accused has no longer control over the result;
Accuse can be pardoned by his spontaneous desistance.	There is a extraneous act.

REQUISITES OF FRUSTRATED [PeNI]

1. The offender performs all acts of execution which would produce the felony as a consequence;
2. But the felony is not produced;
3. By reason of causes independent of the will of the perpetrator.

NOTE: Belief of the accused as to whether or not he had performed all acts of execution is immaterial (*People v Sy Pio, 94 Phil. 885*).

NOTE: The offender must perform all the acts of execution. Nothing more is left to be done by the offender, because he has performed the last act necessary to produce the crime (*REYES, 106*). Nonetheless, the acts performed by the offender must not produce the felony, otherwise, it would be consummated felony (*REYES, 109*).

WOULD PRODUCE THE FELONY AS A CONSEQUENCE

All the acts of execution performed by the offender could have produced the felony as a consequence. Thus, when A approached B from behind and made a movement with his right hand to strike B on the back with a deadly knife, but the blow, instead of reaching the spot intended, landed on the frame of the back of the chair on which B was sitting at the time and did not cause injury on B, the stage of execution should have been that of attempted murder only, because without inflicting a deadly wound upon a vital spot of which B should have died, the crime of murder would not be produced as a consequence (*People v Kalalo, 59 Phil. 715*).

NOTE: In crimes against persons, such as murder, which require that the victim should die to consummate the felony, it is necessary for the frustration of the same that a mortal wound is inflicted (*REYES, 109*).

CAUSE OF NON-CONSUMMATION OF THE FELONY

The prevention of the consummation of the felony must be by reason of other causes *independent of the will of the perpetrator*. Thus, when A gave B a food with poison and B consumes the same, but upon consuming the food, A felt a twinge of conscience that he administered to B the adequate antidote, such would not be considered as frustrated for the perpetrator himself prevented the consummation of the felony (*i.e., to kill B*). Such would not even be considered as attempted for A has already performed all the act of execution (*Id., 110*).

<table>
<tr><th colspan="2">ATTEMPTED AND FRUSTRATED FELONIES</th><th>IMPOSSIBLE CRIMES</th></tr>
<tr><td colspan="2">The evil intent of the offender is possible of accomplishment;</td><td>The evil intent of the offender is not accomplished or cannot be accomplished;</td></tr>
<tr><th>ATTEMPTED</th><th>FRUSTRATED</th><td rowspan="2">What prevented the accomplishment of the evil intent is the inherent impossibility of accomplishment or the inadequacy or ineffectivity of the means employed.</td></tr>
<tr><td>What prevented the accomplishment of the evil intent is the intervention of certain cause or accident in which the offender had no part.</td><td>What prevented the accomplishment of the evil intent are causes independent of the will of the perpetrator.</td></tr>
</table>

EXAMPLES OF CRIMES WHICH DO NOT ADMIT FRUSTRATED STAGE

1. *Rape*, since the gravamen of the offense is carnal knowledge, hence, no matter how slight the penetration, the felony is consummated (*People v Orita, GR No. 88724 [1990]*).
2. *Indirect bribery*, because it is committed by accepting gifts offered to the public officer by reason of his office. If he does not accept, he does not commit the crime. If he accepts, it is consummated;
3. *Direct bribery*;
4. *Corruption of public officer*, because the offense requires the concurrence of the will of both parties, such as that when the offer is accepted, the offense is consummated. But when the offer is rejected, the offense is merely attempted;
5. *Adultery*, because the essence of the crime is sexual congress;
6. *Physical injury*, since it cannot be determined whether the injury will be slight, less serious, or serious unless and until consummated;
7. *Theft*, because the unlawful taking immediately consummates the offense and the disposition of the thing is not an element thereof (*Valenzuela v People, GR No. 160188 [2007]*).

CONSUMMATED FELONY

A felony is consummated when all the elements necessary for its execution and accomplishment are present.

NOTE: There is no attempted or frustrated impossible crime (*REYES, 123*).

NOTE: All the elements of the felony must be present in order to hold the accused liable therefor in its consummated stage, otherwise:

1. The felony is not shown to have been consummated;
2. The felony is not shown to have been committed;
3. Another felony is shown to have been committed (*REYES, 112-113*).

FACTORS IN DETERMINING STAGE OF EXECUTION OF FELONY

1. Manner of committing the felony;
2. Elements constituting the felony;
3. Nature of the offense (*Id., 113*).

DEATH RESULTS	INTENT TO KILL	GRAVITY OF THE WOUND	CRIME COMMITTED
Yes;	Presumed;	Mortal;	MHPI;
No;	Yes;	Mortal;	Frustrated MHPI;
No;	Yes;	Non-mortal;	Attempted MHPI;
No;	Yes;	Overt act only, no wound;	Attempted MHPI;
No;	No;	Mortal wound;	Serious physical injuries;
No.	No.	Non-mortal wound.	Less serious/slight physical injuries.

ROBBERY/ THEFT (RPC, Arts. 293 & 309)

1. Both crimes are committed by the taking of the personal property of another and with the intent to gain;
2. The difference is that in robbery, there is the use of force or violence;
3. In theft, so long as there is possession of the property, no matter how momentary it may be, the crime is consummated;
4. In robbery by the use of force upon things, since the offender must enter the building to commit the crime, he

must be able to carry out of the building the thing taken to consummate the crime;
5. In robbery with violence against or intimidation of persons, the crime is consummated the moment the offender gets hold of the thing taken and/or is in a position to dispose of it freely;
6. In theft, it is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same (*People v Ellasos, GR No. 139323 [2001]*).

NOTE: There is no crime of frustrated theft for the unlawful taking, or *apoderamiento/asportacion*, is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same (*People v Obillo, 411 Phil. 139, 150 [2001]*).

RAPE

The crime of rape is consummated by mere penetration of the male organ no matter how slight or superficial.

NOTE: The mere introduction of the penis into the *labia majora* of the victim's genitalia engenders the crime of rape. Hence, it is the "touching" or "entry" of the penis into the *labia majora* or the *labia minora* of the pudendum of the victim's genitalia that consummates rape (*People v Orita, GR Nos. 148939-40 [2004]*).

WHERE THERE IS ATTEMPTED RAPE
1. When the skirt of the victim has been lifted no matter what position;
2. When the accused mounted on the body of the victim;
3. When there is epidermal touching of the genital organs of the accused and the victim.

NOTE: In attempted rape, there is intent to have carnal knowledge or sexual intercourse. In acts of lasciviousness there is none (*Art. 266-A as amended, and Art. 336*).

NOTE: There is no crime of frustrated rape. The case of People v Eriña (*GR No. 26298 [1927]*) was an exception since the victim was only three years old.

Q: Suppose the accused brought gasoline into the CBEAM building, with the intent to burn the same, but was apprehended by the security guard; did the crime of arson commence?

A: Yes. The accused is liable for attempted arson, because the bringing of gasoline was already an overt act while the apprehension was the reason other than his own spontaneous desistance.

Q: Using the same set of facts above, but without the intent to burn the CBEAM building; is there criminal liability?

A: No. There is no crime committed because the act of bringing a gasoline is only in an indeterminate stage (*see page 14, Indeterminate Offense*).

COMMON CRIMES AND THEIR STAGES OF EXECUTION

CONSUMMATED	FRUSTRATED	ATTEMPTED
Arson (Art. 320)		
Any part of the building burned, even if only a small portion;	The tools used alone are on fire, or the furniture or thing not attached to the building is on fire (*US v Valdez, GR No. L-14128 [1918]*);	The tools to be used for committing the crime are in the building;
Estafa (Art. 315)		
Deceit and damage on the victim are present.	The money taken has not been damaged or spent.	No money was taken yet, only deceit is present.

NOTE: There is no attempted or frustrated impossible crime. Since the offender in impossible crime has already performed the acts for the execution of the same, there could be no attempted impossible crime. In attempted felony, the offender has not performed all the acts of execution. There is no frustrated impossible crime, because the acts performed by the offender are considered as constituting a consummated offense.

ART. 7

Lights felonies are punishable only when they have been consummated, with the exception of those committed against person or property.

LIGHT FELONIES

Infractions of law for the commission of which the penalty of arresto menor or a fine not exceeding P40,000 (*as amended by RA 10951, 2017*).

LIGHT FELONIES PUNISHED BY THE RPC [STAMI]
1. Slight physical injuries (*Art. 266*);
2. Theft (*Art. 306, pars. 7 and 8*);
3. Alteration of boundary marks (*Art. 313*);
4. Malicious mischief (*Art. 328, par. 3, Art. 329, par. 3*);
5. Intriguing against honor (*Art. 364*).

EXCEPTION

Light felonies committed against persons or property are punishable even if attempted or frustrated (*REYES, 124*).

REASON FOR THE GENERAL RULE

Light felonies produce such light, such insignificant moral and material injuries that public conscience is satisfied with providing a light penalty for their consummation (*Id., 124-125*). It presupposes moral depravity.

NOTE: For grave or less grave felonies, those who can be held liable for principals, accomplices and even accessories, because the degree of the penalty to be imposed depends on 3 factors:
1. Stages of execution;
2. Degree of participation;
3. Presence of attending circumstances (*Art. 12-15, RPC*).

ART. 8

Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.

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

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

GENERAL RULE

Mere conspiracy or proposal to commit a felony is not punishable since they are only preparatory acts.

EXCEPTION

Punishable in cases where the law specially provides a penalty therefor as in:

Under RPC [TRIC SM]
1. Treason (*Art. 115*);
2. Rebellion (*Art. 136*);
3. Insurrection (*Art. 136*);
4. *Coup d'etat* (*Art. 136*);
5. Sedition (*Art. 141*),;
6. Monopolies and combination in restraint of trade (*Art. 186*).

Under Special Penal Laws [DEAR ATe]
1. Crimes under the Comprehensive Drugs Ace (*Art. 9165*);
2. Espionage;
3. Illegal Association;

4. Highway Robbery;
5. Arson;
6. Terrorism (*RA 9372*),

CONSPIRACY

It exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It may be oral or written, express or implied.

REQUISITES OF CONSPIRACY [2 ACE]

1. The two or more persons came to an agreement;
2. That the agreement concerned the commission of a felony;
3. That the execution of the felony be decided upon (*REYES, 131*).

CONSPIRACY AS A MANNER OF INCURRING CRIMINAL LIABILITY	CONSPIRACY AS A FELONY
Overt acts are necessary to incur criminal liability;	Mere agreement is sufficient to incur criminal liability;
Offenders are punished for the crime itself;	Punishable only when the law expressly so provides;
If the conspirators commit a felony, *e.g.,* treason, they will be held liable for treason, and the conspiracy which they had before committing treason is only a manner of incurring criminal liability, not treated as a separate offense;	Conspirators should not actually commit treason. It being sufficient that two or more persons agree and decide to commit it;

NOTE: In conspiracy as a felony, the actual felony should not have been committed. It is sufficient that two or more persons agree and decide to commit the same. Otherwise, the conspirators will be held liable for the felony committed (*REYES, 127*).

NOTE: The word "agreement" for conspiracy may either be oral or written, express or implied. It is the burden of the prosecution to prove the existence of conspiracy through circumstantial evidence unless there is a confession or written agreement, which is seldom because criminals will usually deny their participation or the commission of the crime.

OVERT ACTS IN CONSPIRACY MUST CONSISTS OF:

1. Active participation in the actual commission of the crime itself;
2. Moral assistance to his co-conspirators by being present at the time of the commission of the offense;
3. Exerting a moral ascendance over the other co-conspirators by moving them to execute or implement the criminal plan (*BOADO, 80*).

KINDS OF CONSPIRACY AS A MANNER OF INCURRING CRIMINAL LIABILITY

1. **Express Conspiracy –** conspirators meet and plan prior to the execution; participants are conspirators prior to the commission of the crime;
2. **Implied Conspiracy –** may be inferred from the acts of the perpetrators/accused before, during or after the commission of the crime. It can be ascertained from the use of words, remarks or language of the perpetrators. There can be conspiracy even though the perpetrators perform separate, distinct and independent acts in the commission of a crime.

DOCTRINE OF IMPLIED CONSPIRACY

There is implied conspiracy if it is proven that two or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts although apparently independent were in fact connected and cooperative and a concurrence of sentiment (*ESTRADA, 68*).

NOTE: It is enough that at the time of the commission of the offense, the offenders acted in concert, each doing his part to fulfill their common design (*People v Hernandez, GR No. 90641 [1990]*).

NOTE: Mere knowledge, acquiescence to or agreement to cooperate, is not enough to constitute one as party to conspiracy, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose – conspiracy transcends companionship (*People v Patano, GR No. 129306 [2003]*).

GENERAL RULE

The act of one is the act of all. When conspiracy is established, all who participated therein irrespective of the quantity or quality of his participation is liable equally, whether conspiracy is pre-planned or instantaneous (*People v Monroy, GR No. L-11177 [1958]*).

Illustration:

When the defendants by their acts aimed at the same object, one performing one part and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent, where in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy (People v Geronimo, GR No. L-35700 [1973]).

EXCEPTION

One or more conspirators committed some other crime which is not part of the intended crime (*People v Valdez, GR No. L-75390 [1988]*).

Illustration:

The deceased and the accused were friends. One evening, the group of the accused saw the deceased waling nearby, and started making fun of him. Not content, accused suddenly took a can of gasoline and poured its contents on the body of the deceased.

The Court ruled that there is nothing in the records showing that there was previous conspiracy or unity of criminal purpose between the two accused immediately before the commission of the crime, where there was no animosity between the deceased and the accused and it is clear that the accused merely wanted to make fun of the deceased. Each of the accused are liable only for the act committed by him (People v Pugay, 167 SCRA 439).

EXCEPTION TO THE EXCEPTION

1. When the act constitutes an indivisible offense (*e.g., composite crime*);
2. When other crime is the natural consequence of the crime planned;
3. When the other crime was committed in their presence and they did not prevent its commission indicating their approval thereof (*BOADO, 63*).

Illustration:

A, B and C decided to commit robbery in the house of D. Pursuant to their agreement, A would ransack the second floor, B was to wait outside, and C would stay on the first floor. Unknown to B and C, A raped the 60 years old mother of D.

In such case, all of them will be liable for robbery with rape. The crime committed is robbery with rape, which is not a complex crime, but an indivisible felony under Art. 294 of the RPC. Even if B and C did not know that rape was being committed and they agreed only and conspired to rob, yet rape was part of the robbery.

CONSPIRATORS LIABLE AS PRINCIPALS

For conspiracy to exist, there must be an intentional felony, not a culpable felony, and it must be proved that all those to be considered as principal by direct participation (*see Art. 17, RPC*) performed the following:

1. **Unity of Intention/Purpose –** they participated, agreed, or concurred in the criminal design, intent or purposes or resolution.
    a. This participation may be prior to the actual execution of the acts which produce the crime (*anterior conspiracy*) or it may be at the very

moment the acts are actually being executed and carried out (*instant conspiracy*).
   b. Hence, it is not necessary to prove that before the commission of the crime, the several accused actually came and met together to plan or discuss the commission of the crime.
   c. "Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create a joint criminal responsibility" (*Sim, Jr. v CA, 428 SCRA 459*).
2. **Unity of Action/Execution –** all participated in the execution or carrying out of the common intent, design, purpose or objective by acts intended to bring about the common objective.
   a. Each must have performed an act, no matter how small or insignificant so long as it was intended to contributed to the realization of the crime conspired upon.
   b. This requires that the principal by direct participation must be at the crime scene (*as a general rule, if there has been a conspiracy to commit a crime in a particular place, anyone who did not appear shall be presumed to have desisted*). EXCEPT in the following instances (though still a principal by direct participation):
      i. When he is the mastermind;
      ii. When he orchestrates or directs the action of the others from some other place;
      iii. His participation or contribution was already accomplished prior to the actual carrying out of the crime conspired such, *e.g.,* his role was to conduct surveillance or obtain data or information about the place or the victims; to purchase the tools or weapons, or the get-away vehicle or to find a safe house;
      iv. His role/participation is to be executed simultaneously but elsewhere, such as by creating a diversion or in setting up a blocking force such as to cause traffic;
      v. His role/participation is after the execution of the main acts such as guarding the victim; looking for a buyer of the loot; laundering the proceeds of the crime.

WHY PARTICIPATION IN BOTH INTENTION AND ACTION NECESSARY

1. Mere knowledge, acquiescence or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime, with a view to the furtherance of the criminal design and purpose. Conspiracy transcends companionship;
2. He who commits the same or similar acts on the victim but is a stranger to the conspiracy is separately liable. Simultaneous acts by several persons do not automatically give rise to conspiracy.

Illustration:

X joined in planning of the crime but was unable to join his companions on the day of the crime because he was hospitalized. He is thus not liable.

X is the common enemy of A and B who are strangers to one another. Both A and B chanced upon X. A stabbed X while B shot him. A and B will have individual liabilities.

EXCEPTION

When a person joins a conspiracy after its formation, he thereby adopts the previous acts of the conspirators which are admissible against him. This is under the *Principle of Conspiracy by Adoption*.

PROOF OF CONSPIRACY

Direct proof of conspiracy is not necessary. The existence thereof maybe inferred under the *Doctrine of Implied Conspiracy*

DOCTRINE OF IMPLIED CONSPIRACY

In determining whether there is an implied conspiracy, it must be based on:

1. Overt acts done before, during or after the commission of the crime;
2. Words, remarks, or language used before, during or after the commission of the crime:
   a. They must be distinct from each other, independent, or separate;
   b. They must be closely associated, closely related, closely linked, and coordinated;
   c. They must be for a common criminal design, joint criminal interest, unity of criminal purpose, or concerted action, geared towards the attainment of the felony (*People v Sandiganbayan, GR No. 158754 [2007]*).

NOTE: In the absence of conspiracy or unity of criminal purpose and intention immediately before the commission of the crime, or community of criminal design, the criminal responsibility arising from the acts directed against one and the same person is individual and not collective (*Tapalla v CA, GR No. 100682 [1993]*).

NOTE: When several persons who do not know each other simultaneously attack the victim, the act of one is the act of all, regardless of the degree of injury inflicted by any one of them. All will be liable for the consequences. A conspiracy is possible even when participants are not known to each other. Do not think that participants are always known to each other. It is enough that at the time of the commission of the offense, the offenders acted in concert, each doing his part to fulfil their common design.

EFFECTS OF CONSPIRACY

There will be a joint or common or collective criminal liability, otherwise each will be liable only to the extent of the act done by him.

Even though there was conspiracy, if a conspirator merely cooperated in the commission of the crime with insignificant or minimal acts, such that even without his cooperation, the crime could be carried out as well, such co-conspirator should be punished as an accomplice only. The reason given is that penal laws always favor a milder form of responsibility upon an offender. So it is no longer accurate to think that when there is a conspiracy, all are principals (*People v Nierra, GR No. L-32624 [1980]*).

Illustration:

There was a planned robbery, and the taxi driver was present during the planning. There, the conspirators told the taxi driver that they are going to use his taxicab in going to the place of robbery. The taxi driver agreed but said, "I will bring you there, and after committing the robbery I will return later. Kailangan ko lang kasi munang umuwi, may gagawin daw kasi kami ni misis hihihi. Text niyo na lang me ha pag tapos na kayo. Ingats!" The taxi driver brought the conspirators where the robbery would be committed. After the robbery was finished, he took the conspirators back to his taxi and brought them away.

It was held that the taxi driver was liable only as an accomplice. His cooperation was not really indispensable. The robbers could have engaged another taxi. The taxi driver did not really stay during the commission of the robbery. At most, what he only extended was his cooperation. That is why he was given only that penalty for an accomplice.

WHEN IF A CO-CONSPIRATOR FREED FROM LIABILITY

Only if he has performed an overt act either to:

1. Disassociate or detach himself from the plan, such as desistance before an overt act in furtherance of the crime was committed;
2. Prevent the commission of the second or different or related crime.

NOTE: If for any reason not attributable to the law enforcement agents, he was not able to proceed to the crime scene and/or execute an act to help realize the common objective, then he cannot be held liable as a co-conspirator. Thus he is not liable if he got sick, overslept, or forgot about it, but not when law agents took him into custody to prevent him from doing his part of the agreement.

PROPOSAL

When one has decided to commit a felony but proposes its execution to some other person or persons.

REQUISITES OF PROPOSAL

1. That a person has decided to commit a felony;
2. He proposes its execution to some other person or persons (*REYES, 133*).

GENERAL RULE

It is still a preparatory act, and therefore, is not, as a rule, punishable.

EXCEPTION

When there is a specific provision or law punishing a specific kind of proposal.

Under the RPC [TRIC]

1. Treason;
2. Rebellion;
3. Insurrection;
4. *Coup d' etat*.

THERE IS NO CRIMINAL LIABILITY WHEN

1. The person who proposes is not determined to commit the felony;
2. There is no decided or concrete and formal proposal;
3. It is not the execution of a felony that is proposed (*REYES, 134*).

NOTE: There is no crime of proposal to commit the crime of sedition.

DESISTANCE IN PROPOSAL

If he who proposed rebellion to others desists *before* any rebellious act is actually performed by the would-be material executors, inform the authorities and aid in the arrest of their fellow plotters, should the proponents be exempt?

According to Albert, the proponents should be *exempt* from the penalties provided for criminal proposals and conspiracies, for the law would rather prevent than punish crimes and encouragement should be made to those who hearken to the voice of conscience.

But one a proposal to commit rebellion is made by the proponent to another person, the crime of proposal to commit rebellion is consummated and the desistance of the proponent cannot legally exempt him from criminal liability (*Id.*).

NOTE: It is not necessary that the person to whom the proposal is made agrees to commit treason or rebellion (*Id., 135*).

NOTE: The crimes in which conspiracy and proposal are punishable are against the security of the State or economic security (*Id.*).

NOTE: In ordinary crimes, the State survives the victim, and the culprit cannot find in the success of his work any impunity. Whereas, in crimes against the external and internal security of the State, if the culprit succeeds in his criminal enterprise, he would obtain the power and therefore impunity for the crime committed (*Id.*).

ART. 9

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

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

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

GRAVE FELONIES

They are those felonies to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, in accordance with Art. 25 of the Code. These are: **[R²ASP 1.2]**

1. *Reclusion perpetua;*
2. *Reclusion temporal*;
3. Perpetual or Temporary Absolute Disqualification;
4. Perpetual or Temporary Special disqualification;
5. *Prision mayor;*
6. Fines of more than ₱1,200,000 (*as amended by RA 10951*).

LESS GRAVE FELONIES

Felonies which the law punishes with penalties which in their maximum period are correctional, in accordance with Art. 25 of the Code. These are: **[CADS 401]**

1. *Prision Correccional;*
2. *Arresto mayor;*
3. Suspension;
4. *Destierro;*
5. Fines of P40,000 to P1,200,000 (*as amended by RA 10951*).

LIGHT FELONIES

Infractions of law for the commission of which the penalty of *arresto menor* or a fine not exceeding P40,000 (*as amended by RA 10951*).

IMPORTANCE OF CLASSIFICATION

1. To determine whether these felonies can be complexed or not;
2. To determined the prescription of the crime and the prescription of the penalty;
3. To determine the duration of subsidiary penalty to be imposed (*Art. 39, par. 2*) where the subsidiary penalty is based on severity of the penalty;
4. To determine the duration of the detention in case of failure to post the bond to keep the peace (*Art. 35*);
5. To determine whether or not the person in authority or his agents have committed delay in the delivery of detained persons to the judicial authority (*Art. 125*);
6. To determine the proper penalty for quasi-offenses in Art. 365 (*BOADO, 88-89*).

ART. 10

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

NOTE: The first clause should be understood only that the special penal laws are controlling with regard to offenses there in specially punished. Said clause only estates the elemental rule of statutory construction that *special legal provisions prevail over general ones* or that *lex specialis derogant generali* (*REYES, 139*).

GENERAL RULE

RPC provisions are supplementary to special laws.

EXCEPTIONS

1. Where the special law provides otherwise;
2. When the provisions of the RPC are impossible to apply, either by express provision or by necessary implication.

NOTE: Thus, when the special law adopts the nomenclature of penalties imposed in the RPC, such as *reclusion perpetua, reclusion temporal*, etc., the provisions of attendance of mitigating and aggravating circumstances may be applied (*ESTRADA, 81*).

NOTE: When the penalties under the special law are different from and are without reference or relation to those under the RPC, there can be no suppletory effect of the rules, for the application of penalties under the said Code or by other relevant statutory provisions are based on or applicable only to said rules for felonies under the Code (*People v Simon, 234 SCRA 576*).

NOTE: Offenses under special laws are not subject to the provisions of the RPC relating to attempted and frustrated crimes

SUPPLETORY EFFECTS OF THE REVISED PENAL CODE

The suppletory effect of RPC to special laws, by virtue of Art. 10 thereof only finds relevance when the provisions of the special law are silent on the particular matter (*REYES, 146*).

Chapter Two

JUSTIFYING CIRCUMSTANCES AND CIRCUMSTANCES WHICH EXEMPT FROM CRIMINAL LIABILITY

WHY IS THERE A NEED FOR MODIFYING CIRCUMSTANCES

Every penalty under the RPC is understood to be prescribed for consummated felonies and against the principal offenders. Likewise, the RPC is primarily classical; the penalties are predetermined without regard to the moral state of the offender. Thus, the need for circumstances to modify criminal liability taking into consideration the moral, emotional and mental state of the offender and the circumstances when the offense was committed. The RPC, therefore, provides for circumstances which modify the criminal liability of the offenders (*BOADO, 94*).

CIRCUMSTANCES AFFECTING CRIMINAL LIABILITY

1. Justifying circumstances (*Art. 11, RPC*);
2. Exempting circumstances (*Id., Art. 12*);
3. Mitigating circumstances (*Id., Art. 13*);
4. Aggravating circumstances (*Id., Art. 14*);
5. Alternating circumstances (*Id., Art. 15*);

OTHER CIRCUMSTANCES OR FACTORS WHICH AFFECT CRIMINAL LIABILITY

1. ***Absolutory Cause* –** the effect is to absolve the offender from criminal liability, although not from civil liability;
2. ***Extenuating circumstances* –** the effect is to mitigate the criminal liability of the offender and has the same effect as mitigating circumstances (*ESTRADA, 85*).

IMPUTABILITY

It is the quality by which an act may be ascribed to a person as its author or owner. It implies that the act committed has been freely and consciously done and may, therefore, be put down to the doer as his very own (*REYES, 149*).

RESPONSIBILITY

It is the obligation of *suffering the consequences* of the crime (*Id.*).

GUILTY

It is an element of responsibility, for a man cannot be made to answer for the consequences of a crime unless he is guilty (*Id.*).

EXAMPLES OF ABSOLUTORY CAUSES [DELIMA^2 TT]

1. *Art. 6 (3)* – spontaneous desistance in the attempted stage unless the overt act committed already constitutes a crime other than that intended;
2. *Art. 247* – death and physical injuries inflicted under exceptional circumstances;
3. *Art. 7* – attempted/frustrated light felonies except those crimes against persons or property;
4. Instigation by reason of public policy;
5. *Art. 344* – marriage of the offender and the offended party in cases of seduction, abduction, acts of lasciviousness;
6. *Art. 20* – certain relatives who are accessories subject to the requisites provided therein;
7. *Art. 16* – accessories in light felonies;
8. *Art. 332* – certain relatives in theft, estafa, and malicious mischief;
9. *Art.* 280, *par. 3* – trespass to dwelling when the purpose of entering another's dwelling against the latter's will is to prevent some serious harm to himself, the occupants of the dwelling or a third persons, or for the purpose of rendering service to humanity or justice, or when entering cafes, taverns, inns and other public houses, while the same are open.
10. Battered woman syndrome (*Sec. 26, RA 9262*).
11. Status offenses in *Secs. 57 and 58, RA 9344;*
12. Somnambulism;
13. Mistake of fact;
14. Repeal of a penal law, either absolute or modification of the penalty when favorable to the offender.

ART. 11

The following do not incur any criminal liability:

1. **Anyone who acts in defense of his person or rights, provided that the following circumstances concur:**
   First. Unlawful aggression;
   ***Second.* Reasonable necessity of the means employed to prevent or repel it;**
   ***Third.* Lack of sufficient provocation on the part of the person defending himself.**
2. **Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.**
3. **Anyone who acts in defense of the person or rights of a stranger, provided the first and second requisites mentioned in the first circumstances of this article are present and that the person defending be not induced by revenge, resentment or other evil motive.**
4. **Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following requisites are present:**
   ***First.* That the evil sought to be avoided actually exists;**
   ***Second.* That the injury feared be greater than that done to avoid it.**
   ***Third.* That there be no other practical and less harmful means of preventing it.**
5. **Any person who acts in the fulfilment of a duty or in the lawful exercise of a right or office.**
6. **Any person who acts in obedience to an order issued by a superior for some lawful purpose.**

JUSTIFYING CIRCUMSTANCES [SeRSADO]

Those where the act of a person is said to be in accordance with law, so that such person is deemed not to have transgressed that law and is free from both criminal and civil liability. There is no civil liability, except in par. 4 (avoidance of greater evil) where the civil liability is borne by the persons benefited by the act (*ESTRADA, 86*).

1. Self-defense;
2. Defense of relatives;
3. Defense of stranger;
4. Avoidance of greater evil or injury;
5. Fulfilment of duty or lawful exercise of right or office;
6. Obedience to an order issued for some lawful purpose.

NOTE: It is an affirmative defense, hence, the burden of proof is on the accused who must prove it by clear and convincing evidence (*Id.*).

BASIS: Lack of criminal intent.

NOTE: In raising justifying circumstances as a defense, the accused must first admit the act that he is being charged with because he cannot deny the act and then claim in his defense that he committed the act but only did so under justifying circumstance (*AMURAO, 147*).

NOTE: The element of voluntariness that is lacking is *intent*. Without intent, there is no voluntariness; without voluntariness, there is no felony; without felony, there is no criminal liability because there is no crime.

PARAGRAPH 1 – SELF-DEFENSE

One who invokes self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution. For, even if the prosecution is weak, it could not be disbelieved after the accused himself had admitted the killing (*REYES, 151*).

Self-defense must be proved with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it and it cannot be justifiably entertained where it is not uncorroborated by any separate competent evidence but, in itself, is extremely doubtful (*People v Mercado, GR No. L-33492 [1988]*).

REQUISITES [URL]

1. Unlawful aggression (*condition sine qua non*);
2. Reasonable necessity of the means employed to prevent or repel it;
3. Lack of sufficient provocation on the part of the person defending himself.

RIGHTS INCLUDED IN SELF-DEFENSE

Self-defense includes not only the defense of the person or body of the one assaulted but only that of his rights, the enjoyment of which is protected by law. Thus, it includes:

1. ***Right to honor*** **–** a slap on the face is considered as unlawful aggression since the face represents a person and his dignity. It is a serious personal attack; a physical assault, coupled with a wilful disgrace; and it may be frequently regarded as placing in real danger a person's dignity, rights and safety (*Rugas v People, GR No. 147789 [20041]*);
2. ***Defense of property rights*** **–** it can be invoked if there is an attack upon the property although it is not coupled with an attack upon the person of the owner of the premises. All the elements for justification must however be present (*People v Narvaez, GR Nos. L-33466-67 [1983]*).

SUBJECTS OF SELF-DEFENSE

1. Defense of person;
2. Defense of rights;
3. Defense of property;
4. Defense of honor.

UNLAWFUL AGGRESSION IN DEFENSE OF OTHER RIGHTS

1. Defense of right to chastity (*People v Jaurigue, 76 Phil. 174*);
2. Defense of property (*Art. 429, CC*);
3. Defense of home (*People v Mirabiles, 45 OG 5th Supp., 277*);

REASON FOR JUSTIFICATION

1. Impulse of self-preservation;
2. State cannot provide protection for each of its constituents (*REYES, 153*).

STAND GROUND WHEN IN THE RIGHT

The law does not require a person to retreat when his assailant is rapidly advancing upon him with a deadly weapon (*US v Domen, GR No. L-12963 [1917]*). The reason of which is that he runs the risk of being attacked in the back by the aggressor (*REYES, 170-171*).

LAWFUL AGGRESSION

The fulfilment of a duty or the exercise of a right in a more or less violent manner is an aggression, but it is lawful (*REYES, 155*).

NOTE: Paramour surprised in the act of adultery cannot invoke self-defense if he killed the offended husband who was assaulting him (*US v Merced, 39 Phil. 198, 202-203*).

UNLAWFUL AGGRESSION

Equivalent to assault or at least threatened assault of an *immediate* and *imminent* kind (*People v Alconga, 78 Phil. 366*).

It presupposes an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude (*People v Pasco, Jr., GR No. L-45715 [1985]*).

It refers to an attack that has actually broken out or materialized or at the very least is clearly imminent, it cannot consists in oral threats or a merely threatening stances or posture (*People v Lachica, 132 SCRA 230*).

NOTE: Mere belief of an impending attack is not sufficient. Neither is an intimidating or threatening attitude. Even a mere push or shove not followed by other acts placing in real peril the life or personal safety of the accused is not unlawful aggression (*People v Bautista, 254 SCRA 621*).

NOTE: When there is no peril to one's life, limb or right, there is no unlawful aggression (*REYES, 157*).

REQUISITES OF PERIL TO ONE'S LIFE

1. ***Actual*** – the danger must be present and actually in existence;
2. ***Imminent*** – the danger is on the point of happening. It is not required that the attack already begins, for it may be too late (*REYES, 157-158*).

NOTE: When there is no imminent and real danger to the life or limb of the accused, there is no unlawful aggression (*REYES, 161*).

NOTE: There must be actual physical force or actual use of weapon (*REYES, 164*). But the slap on the face is an unlawful aggression. The reason for this is that the face represents a person and his dignity, thus slapping it is a serious personal attack. It is a physical assault coupled with a wilful disregard or a defiance of an individual's personality (*People v Sabio, GR No. L-13734 [1967]*).

SOME PRINCIPLES ON UNLAWFUL AGGRESSION

1. Unlawful aggression is an indispensable requisite;
2. Aggression must be "unlawful," *i.e.*, the victim was not acting in accordance with laws, or under color of right. Thus the following do not constitute "unlawful" aggression:
   a. The act of property owner in pushing out an intruder for refusing to leave peacefully;
   b. The act of a policeman in handcuffing a law violator;
   c. The scolding by a teacher of an unruly student.
3. The aggression must come from the victim;
4. At the time of the defense, the aggression must still be continuing and in existence. In the following instances, there is no more aggression and if the accused still uses force, he becomes the aggressor:
   a. When the attacker desists, or is prevented or restrained by third person or is divested of his weapon, or is overpowered;
   b. When the attacker retreats unless it is to secure a more advantage position.

Q: When the person attacked was able to wrest the weapon or has disarmed his attacker, may he use the weapon against the attacker?

A: No, because the aggression has ceased unless the attacker persist to grab back the weapon for in such case, there is still imminent danger to his life or limb.

PRESUMPTION AS TO THE AGGRESSOR

Where there is no direct evidence who was the aggressor, it may be presumed that the one who was deeply offended by the insult was the one who had a right to demand an explanation from the

perpetrator of the insult and he must have been the one who struck first if the proffered explanation was unsatisfactory (*People v Ramos, 77 Phil. 4*).

RETALIATION	SELF-DEFENSE
The unlawful aggression begun by the injured party had already ceased when the accused attacked him.	The unlawful aggression was still existing when the aggressor was injured by the person making the defense. There must be no appreciable time interval between the unlawful aggression and the killing.

NOTE: When a person who was insulted, slightly injured or threatened, made a strong retaliation by attacking the one who gave the insult, cause the slight injure or made the threat, the former became the offender, and the insult, injury or threat should be considered only as a provocation mitigating his liability (*US v Carrero, 9 Phil. 544*).

NOTE: A public officer exceeding his authority may become unlawful aggressor (*People v Hernandez, 59 Phil. 343*).

NOTE: The unlawful aggression must come from the person who was attacked by the accused (*REYES, 163*).

NOTE: Nature, character, location, and extent of wound of the accused allegedly inflicted by the injured party may belie claim of self defense (*Id., 164-165*).

NOTE: The improbability of the deceased being the aggressor belies the claim of self defense. Thus, it was unlikely that a sexagenarian would have gone to the extent of assaulting the 24 year old accused who was armed with a gun and a bolo, just because the latter refused to give him pig (*People v Diaz, GR No. L-24002 [1974]*).

NOTE: The fact that the accused decline to give any statement when he surrendered to a policeman is inconsistent with the plea of self defense. Thus, when the accused surrendered to the policemen, he declined to give any statement, which is the natural course of things he would have done if he had acted merely to defend himself (*People v Manansala, GR No. L-23514 [1970]*).

WHEN AGGRESSOR FLEES

When the aggressor flees, unlawful aggression no longer exists. When the aggression which has begun no longer exists, because the aggressor runs away, the one making a defense has no more right to kill or even to wound the former aggressor (*People v Alconga, 78 Phil. 366*).

UNLAWFUL AGGRESSION AND AGREEMENT TO FIGHT

There is no unlawful aggression when there is an agreement to fight (*US v Navarror, 7 Phil. 713*). This is because where the fight is agreed upon, each of the protagonists is at once assailant and assaulted, and neither can invoke the right of self defense, because aggression which is an incident in the fight is bound to arise from one or the other of the combatants (*People v Quinto, 55 Phil. 116*). The 2 persons involved in the fight are *in pari delicto*.

Unless, when there is a violation of the agreement, such as that which is ahead of the stipulated time and place (*Justo v CA, 53 OG 4082*), there is unlawful aggression.

NOTE: One who voluntarily joined a fight cannot claim self defense (*People v Kruse, CA 64 OG 12632*).

BELIEF OF THE ACCUSED

Belief of the accused may be considered in determining the existence of unlawful aggression (*see US v Achong, 15 Phil. 502-503*). Hence, there is self defense even if the aggressor used a toy pistol, provided the accused believed it was a real gun (*People v Boral, 11 CA Rep. 914*).

MERE THREAT

Threat to inflict real injury, not preceded by an outward and material aggression, is not unlawful aggression, because it is required that the act be offensive and positively strong, showing the wrongful intent of the aggressor to cause an injury (*US V Guy-sayco, 13 Phil. 292*).

REAL AGGRESSION

The aggression must be real, not merely imaginary. Thus, when the accused disliking the intervention of the deceased in a certain incident between the accused and a couple, armed himself with a gun and went to the house of the deceased, and upon seeing the latter holding a *kris* in his hand, shot him to death, there was no unlawful aggression, notwithstanding the claim of the accused that the deceased was a man of violent temper, quarrelsome and irritable, and that the latter might attack him with the *kris*, because he merely imagine a possible aggression. The aggression must be real or at least, imminent (*People v De La Cruz, 61 Phil. 422*).

REASONABLE NECESSITY OF THE MEANS EMPLOYED

Presupposes the existence of unlawful aggression, which is either *imminent* or *actual*. Hence, in stating the second requisite, two phrases are used, namely:

1. To prevent;
2. To repel

FACTORS TO CONSIDER THE REASONABLENESS OF THE MEANS USED [PINES]

1. Presence of imminent danger;
2. Impelled by the instinct of self-preservation;
3. Nature and quality of the weapon used by the accused compared to the weapon of the aggression;
4. Emergency to which the person defending himself has been exposed to;
5. Size and/or physical character of the aggressor compared to the accused and other circumstances that can be considered showing disparity between the aggressor and accused.

TEST OF REASONABLENESS OF THE MEANS USED

Whether the means employed is reasonable, will depend upon the nature and quality of the weapon used by the aggressor, his physical condition, character, size and other circumstances, and those of the person defending himself, and also the place and occasion of the assault (*REYES, 187*).

Perfect equality between the weapon used is not required, because the person assaulted does not have sufficient tranquillity of mind to think, to calculate and to choose which weapon to use (*People v Padua, CA 40 OG 998*).

LACK OF SUFFICIENT PROVOCATION

Provocation is any unjust or improper conduct or act of the offended party, capable of exciting, inciting or irritating anyone. (*AMURAO, 183*).

RATIONALE:

When the person defending himself from the attack by another gave sufficient provocation to the latter, the former is also to be blamed for having given the cause for the aggression (*REYES, 192*).

HOW TO DETERMINE THE SUFFICIENCY OF PROVOCATION

It should be proportionate to the act of aggression and adequate to steer one to its commission (*People v Albonga, 78 Phil. 366*).

ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (RA 9262)

Victim-survivors who are found by the courts to be suffering from Battered Woman Syndrome do not incur any criminal or civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the RPC (*Sec. 26*).

BATTERY

It is an act of inflicting physical harm upon the woman or her child resulting to physical and psychological or emotional distress (*Sec. 3 (b)*).

BATTERED WOMAN SYNDROME

It is scientifically defined as pattern of psychological and behavioural symptoms found in women living in battering relationships as a result of cumulative abuse (*Sec. 3 (c)*).

THREE PHASES OF THE CYCLE OF VIOLENCE

1. Tension building phase;
2. Acute battering incident;
3. Tranquil, loving or at least non-violent phase (*People v Genosa, GR No. 135981 [2004]*).

NOTE: The defense should prove all 3 phases of cycle of violence characterizing the relationship of the parties.

NOTE: The existence of battered woman syndrome in a relationship does not in itself establish a legal right of a woman to kill her partner. Evidence must still be considered in the context of self-defense (*Id.*).

CHARACTERISTICS OF THE SYNDROME

1. The woman believes that the violence was her fault;
2. She has an inability to place the responsibility for the violence elsewhere;
3. She fears for her life and/or her children's;
4. She has an irrational belief that the abuser is omnipresent and omniscient (*BOADO, 112*).

NOTE: Only a certified psychologist or psychiatrist can prove the existence of the Battered Woman Syndrome in a woman (*Sec. 6 (2)*).

PARAGRAPH 2 – DEFENSE OF RELATIVES

REQUISITES [URO]

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it;
3. In case the provocation was given by the person attacked, the one making the defense had no part therein.

RELATIVES THAT CAN BE DEFENDED [SAD SAC]

1. Spouse;
2. Ascendants;
3. Descendant;
4. Legitimate, natural or adopted siblings;
5. Relatives by affinity in the same degree;
6. Relatives by consanguinity within the 4th civil degree.

NOTE: The relationship by affinity created between the surviving spouse and the blood relatives of the deceased spouse survives the death of either party to the marriage which created the affinity (*Intestate Estate of Gonzales vda. De Carungcong v People, GR No. 181409 [2010]*).

NOTE: The fact that the relative defended gave provocation is immaterial (*ESTRADA, 99*).

NOTE: There is no distinction in the RPC whether the descendant should be legitimate or illegitimate; when the law does not distinguish the courts cannot distinguish.

RATIONALE

It is found not only upon a humanitarian sentiment, but also upon the impulse of blood which impels men to rush, on the occasion of great perils, to the rescue of those close to them by ties of blood (*REYES, 202*).

PARAGRAPH 3 – DEFENSE OF STRANGER

REQUISITES [URN]

1. Unlawful aggression;
2. Reasonable necessity of the means employed to prevent or repel it;
3. The person defending was not induced by revenge, resentment or other evil motive.

BASIS: What one may do in his defense, another may do for him. Persons acting in defense of others are in the same condition and upon the same plane as those who act in defense of themselves. The ordinary man would not stand idly and see his companion killed without attempting to save his life (*US v Aviado, 38 Phil. 10*).

STRANGER

Any person not included in the enumeration of relatives under Par. 2 of Art. 11 (*REYES, 208*).

PERSON DEFENDING "BE NOT INDUCED"

Even if a person has a standing grudge against the assailant, if he enters upon the defense of a stranger out of generous motive to save the stranger from serious bodily harm or possible death, the 3rd requisite of defense of stranger still exists (*Id.*).

PARAGRAPH 4 – AVOIDANCE OF GREATER EVIL OR INJURY

REQUISITES [EIN]

1. That the evil sought to be avoided actually exists;
2. That the injury feared be greater than that done to avoid it;
3. There is no other practical and less harmful means of preventing it.

NOTE: The term "damage to another" covers injury to persons and damage to property (*Id., 209*).

NOTE: The greater evil should not be brought about by the *negligence* or *imprudence* of the actor (*Id., 210*) nor must it result from a violation of law (*Id., 211*).

CIVIL LIABILITY OF THE ACTOR

It is only in par. 4 that the person defending himself incurs civil liability, since generally in this article there is no civil liability on the party of the accused. Such liability is borne by the person benefited (*Id.*).

Art. 11, Par. 4	Art. 12, Par. 4
Offender deliberately caused damage.	Offender accidentally caused damage.

(*REGALADO, 157*)

PARAGRAPH 5 – FULFILMENT OF DUTY OR LAWFUL EXERCISE OF RIGHT OR OFFICE

REQUISITES

1. That the accused acted in the performance of a duty or in the lawful exercise of a right or office;
2. That the injury caused or the offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office (*People v Oanis, GR No. L-47722 [1943]*).

NOTE: In People v Delima (*GR No. 18660 [1922]*), the deceased who escaped from prison while serving sentence was under the obligation to surrender, and had no right, after evading the service of his sentence to commit assault and disobedience with a weapon on his hand, which compelled the policeman to resort to such extreme means, which although it proved to be fatal, was justified by the circumstances.

NOTE: The executor of death convicts at the Bilibid Prison cannot be held liable for murder for the executions performed by him because he was merely acting in lawful exercise of his office.

USE OF DANGEROUS MEANS IN ARRESTING

- When arrest could not be effected – justified (*People v gayrama, 60 Phil. 796*);
- When arrest could be effected – never justified (*People v Oanis, GR No. L-47722 [1943]*).

PROHIBITION OF UNNECESSARY FORCE IN ARRESTING

No violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention (*Sec. 2, par. 2, Rule 113, Rules of Court*).

DOCTRINE OF SELF-HELP

The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property (*Art. 429, CC*).

Q: A constructed a small house in a piece of land which he believed to be a disposable public land. He had been occupying the lot for over a year. One day, B came and claimed ownership over the law. B proceeded in dismantling the house of A. The latter pleaded B to stop but his plea fell on deaf ears. Thereupon, A pulled B to prevent him from further dismantling the house. In the process, B fell on the ground and suffered physical injuries. Is A liable for the injuries sustained by B?

A: No, A is not liable. Under the law, he has the right to employ reasonable force to prevent or repel actual or threatened assault on his property. His act of pulling B was reasonably necessary to protect his possessory rights over the property (*People v Narvaez, GR Nos. L-33466-67 [1983]*).

Q: Suppose in the same problem, A shot B with a gun instead of pulling down B and B dies as a result. Will the answer be the same?

A: No. This time A is criminally liable for the death of B. his act of shooting B to death is not reasonably necessary to prevent the invasion of is property (*ESTRADA, 103*).

PARAGRAPH 6 – OBEDIENCE TO AN ORDER ISSUED FOR SOME LAWFUL PURPOSE

REQUISITES [OPM]

1. That an order has been issued by a superior;
2. That such order must be for some lawful purpose;
3. That the lawful means used by the subordinate to carry out said order (*REYES, 220*).

NOTE: Both the person who gives the order and the person who executes it, must be acting within the limitations prescribed by law (*People v Wilson and Dolores, 52 Phil. 919*).

NOTE: Par. 6 presupposes that what was obeyed by the accused was a lawful order (*REGALADO, 158*). When the order is not for a lawful purpose, the subordinate who obeyed it is criminally liable (*REYES, 221*).

NOTE: The subordinate is not liable for carrying out an illegal order of his superior, if he is *not aware of the illegality* of the order and he is *not negligent* (*People v Beronilla, 96 Phil. 566*).

ART. 12

The following are exempt from criminal liability:

1. **An imbecile or an insane persons, unless the latter has acted during lucid interval.**

   When the imbecile or an insane persons has committed an act which the law defines as a felony (*delito*), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.
2. **A person under 15 years of age (*as amended by RA 9344*).**
3. **A person over 15 years of age and under 18, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Article 80 of this Code.**

   When such minor is adjudged to be criminally irresponsible, the court, in conformity with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education; otherwise, he shall be committed to the care of some institution or person mentioned in said Article 80.
4. **Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.**
5. **Any person who acts under the compulsion of an irresistible force.**
6. **Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.**
7. **Any person who fails to perform an act required by law, when prevented by some lawful or insuperable cause.**

EXEMPTING CIRCUMSTANCES

Those grounds which free the offender from criminal liability but does not relieve him of civil liability except in *paragraph 4* where he is relieved of both criminal and civil responsibility (*AMURAO, 260*).

Also known as ***circumstances of non-imputability***.

NOTE: There is a crime but the person who committed the act is not subjected to criminal liability.

NOTE: The burden of proof to prove the existence of an exempting circumstance lies with the defense (*REYES, 223*).

BASIS: Complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused (*Id., 221*).

JUSTIFYING CIRCUMSTANCES	EXEMPTING CIRCUMSTANCES
It affects the act, not the actor;	It affects the actor, not the act;
The act is considered to have been done with the bounds of law; hence, legitimate and lawful in the eyes of the law;	The act complained of is actually wrongful, but the actor is not liable;
Since the act is considered lawful, there is no crime;	Since the act complained of is actually wrong there is a crime but since the actor acted without voluntariness, there is no *dolo* nor *culpa*;
No crime; No criminal; No criminal liability; No civil liability (*except par. 4*);	There is a crime; No criminal; No criminal liability; There is civil liability (*except par. 4*).
Contemplates unintentional acts and hence, are incompatible with *dolo*.	May be invoked in culpable felonies.

PARAGRAPH 1 – IMBECILITY OR INSANITY

BASIS: Complete absence of intelligence (*Id., 232*).

IMBECILE

It exists when a person, while of advanced age, has a mental development comparable to that of children between 2 and 7 years of age (*Id., 223*).

INSANITY

It exists when there is a complete deprivation of intelligence or freedom of the will. Mere abnormality of mental faculties is not enough especially if the offender has not lost consciousness of his acts (*People v Puno, GR No. L-33211 [1981]*).

NOTE: Insanity and imbecility, to exempt the actor under par. 1, must be complete, and they cannot be graduated in degrees of gravity (*REGALODO, 60*). Mere abnormality of mental faculties is not enough, especially if the offender has not lost consciousness of his acts (*REYES, 224*).

NOTE: An insane person is not so exempt if it can be shown that he acted during a lucid interval. But an imbecile is exempt in all cases from criminal liability.

BURDEN OF PROOF TO SHOW INSANITY

The defense must prove that the accuse was insane at the time of the commission of the crime, because the presumption is always in favor of sanity (*People v Bascos, 44 Phil. 204*).

WHEN THE IMBECILE OR INSANE COMMITTED A FELONY

- Court shall order his confinement in a mental hospital or asylums;
- Accused will only be permitted to leave upon permission of the court;
- Court cannot permit the insane person to leave without obtaining the opinion of the Director of Health (*REYES, 224*).

NOTE: Insanity, in order to exempt the accused, must be present at the time of the commission of the felony. When he was sane at the time of commission, but he became insane at the time of the trial, he is liable criminally, but the trial will be suspended until the mental capacity of the accused be restored (*Id., 225-226*).

DEMENTIA PRAECOX or SCHIZOPHRENIA

Dementia praecox is a form of psychosis where homicidal attack is common, because of delusions that he is being interfered with sexually, or that his property is being taken. During the period of excitement, such person has no control of his acts (*People v Bonoan, GR No. L-45130 [1937]*).

Medical books describe schizophrenia as a chronic mental disorder characterized by inability to distinguish between fantasy and reality and often accompanied by hallucination and delusions. It is included in the term insanity (*REYES, 228*).

SOMNAMBULISM or SLEEPWALKING

Must be clearly proven to be considered as an exempting circumstance under this article (*People v Gimena, GR No. 33877 [1931]*).

FEEBLEMINDEDNESS IS NOT IMBECILITY

Feeblemindedness is not exempting but may be considered as mitigating circumstance (*People v Formigones, GR No. L-3246 [1950]*).

MALIGNANT MALARIA

It affects the nervous system and causes among others such complication as acute melancholia and insanity at times, and if clearly proven will be considered as an exempting circumstance under this paragraph (*People v Lacena, GR No. 46961 [1940]*).

EPILEPSY

Not pervading disease but a nervous disorder. Hence, after a seizure, the victim is normal for all intents and purposes (*People v Teves, GR No. 97435 [1995]*). It may be covered by the term insanity (*REYES, 230*).

TWO TEST OF INSANITY

1. ***Test of Cognition –*** complete deprivation of intelligence in committing the crime;
2. ***Test of Volition –*** total deprivation of freedom of the will (*People v Rafanan,Jr., GR No. 54135 [1991]*).

NOTE: In the Philippines, both cognition and volition tests are applied. There must be complete deprivation of the intellect (*cognition*) or will or freedom (*volition*).

OCCURRENCE OF INSANITY AND ITS EFFECTS ON CRIMINAL LIABILITY

TIME WHEN ACCUSED SUFFERED INSANITY	EFFECT ON CRIMINAL LIABILITY
At the time of the commission of the crime;	Exempted;
During trial;	Proceedings will be suspended and accused is committed to a mental hospital or asylum;
After judgment or while serving sentence.	Execution of the judgment is suspended; the accused is committed to a hospital. The period of confinement in the hospital is counted for the purpose of the prescription of the penalty.

(*ESTRADA, 107*)

NOTE: The fact that a person behave crazily is not conclusive that he is insane. The prevalent meaning of the word crazy is not synonymous with the legal terms insane, *non compos mentis*, unsound mind, idiot, or lunatic. This popular conception of the word crazy is being used to describe a person or an act unnatural or out of the ordinary. A man may behave in a crazy manner but it does not necessarily and conclusively prove that he is legally so (*People v Florendo, GR No. 136845 [2003]*).

PARAGRAPH 2 & 3 – MINORITY (*as amended by RA 9344*)

BASIS: Complete absence of intelligence (*REYES, 232 et 237*).

CHILD IN CONFLICT WITH THE LAW

Refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine law (*Sec. 4, par. e, RA 9344*).

NOTE: Persons who at the time of the commission of the offense is below 18 years old but not less than 15 years old and 1 day (*Revised Rules on Children in Conflict with the Law, AM No. 02-1-18-SC, Sec. 1*).

MINIMUM AGE OF RESPONSIBILITY

Under RA 9344 as amended, the following are exempt from criminal liability:

1. Child 15 years of age or under at the time of the commission of the offense. Nonetheless, the child shall be subject to an intervention program pursuant to Sec. 20 of the Act.

   NOTE: If after the intervention, there is no reform, the minor shall be returned to the court for the promulgation of the decision against the minor; and then the court shall either *decide on the sentence* or *extend the intervention*.

   NOTE: If it has been determined that the child taken into the custody is 15 years old or below, the authority which will have an initial contact with the child, in consultation with the local social welfare and development officer, has the duty to immediately released the child to the custody of the his/her parents or guardian, or in the absence thereof, the child's nearest relative. The child shall be subjected to a community-based intervention program supervised by the local social welfare and development officer, unless the best interest of the child requires the referral of the child to a youth care facility or *Bahay Pag-asa* managed by LGUs or licensed and/or accredited NGOs monitored by the DSWD (*Sec. 20, RA 9344*).

   NEGLECTED CHILD:

   A child who is above 12 years of age up to 15 years of age and who commits parricide, murder, infanticide, kidnapping and serious illegal detention where the victim iskilled or raped, robbery with homicide or rape, destructive arson, rape, or carnapping where the driver or occupant is killed or raped or offenses under RA 9165 (*Comprehensive Dangerous Drugs Act of 2002*) punishable by

more than 12 years of imprisonment, shall be deemed a neglected child under PD 603, as amended, and shall be mandatorily placed in a special facility within the youth care faculty or *Bahay Pag-asa* called the Intensive Juvenile Intervention and Support Center or IJISC (*RA 9344, Sec. 20-A, as amended by RA 10630*).

2. Child above 15 but below 18 *provided that* the child acted without discernment.

DISCERNMENT

A mental capacity to understand the difference between right and wrong as determined by the child's appearance, attitude, comportment and behaviour not only before and during the commission of the offense but also after and during the trial (*Guevara v Almodovar, GR No. 75256 [1989]*). It is manifested through:

1. Manner of committing the crime;
2. Conduct of the offender.

DISCERNMENT	INTENT
Refers to moral significance that the person ascribed to the act.	Refers to the desired act of the person.

AFTER INITIAL INVESTIGATION, THE LOCAL SOCIAL WORKER MAY:

1. Proceed in accordance with Sec. 20 if the child is
   a. 15 years or below;
   b. Above 15 but below 18, who acted without discernment;
2. If the child is above 15 but below 18 and who acted *with* discernment, proceed to diversion under the following without undergoing court proceedings subject to the following conditions: (*Sec. 23, RA 9344*)
   a. Where the imposable penalty is not more than 6 years of imprisonment, the *Punong Barangay* or law enforcement officer shall conduct mediation, family conferencing and conciliation;
   b. Where the imposable penalty exceeds 6 years of imprisonment, diversion measures may be resorted to only by the court.

NOTE: Exemption from criminal liability herein established does not include exemption from civil liability.

DETERMINATION OF THE AGE OF THE CHILD

1. Birth certificate of the child;
2. Baptismal certificate of the child;
3. Any other pertinent documents (*Sec. 7,RA 9344; Sec. 5, AM No. 02-1-18-SC*).

NOTE: In the absence of these documents, age may be based on information from the child himself, testimonies of other persons, the physical appearance of the child and other relevant evidence.

NOTE: In case of doubt as to the age, it shall be resolved in his/her favor (*Sec. 7, RA 9344*).

DUTY OF THE PROSECUTOR

He shall conduct a preliminary investigation and file an information upon determination of probable cause in the following instances: (*Sec. 33, RA 9344*)

1. When the child in conflict with the law does not qualify for diversion;
2. When the child, his/her parents or guardian does not agree to diversion;
3. Upon determination by the prosecutor that diversion is not appropriate for the child in conflict with the law.

AUTOMATIC SUSPENSION OF SENTENCE

Once the child is under 18 years at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committees. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application and impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law (*Sec. 38, RA 9344*).

NOTE: Upon recommendation of the social worker who has custody of the child, the court shall order the final discharge of the child. The discharge of the child in conflict with the law shall not affect the civil liability resulting from the commission of the offense (*Sec. 39, RA 9344*).

OFFENSES NOT APPLICABLE TO PERSONS UNDER 18

Nonetheless, provided that said persons shall undergo appropriate counselling and treatment program.

1. Prostitution (*Art. 202, RPC*);
2. Mendicancy (*PD 1563*);
3. Sniffing of rugby (*PD 1619*).

NOTE: Only when there is

1. Refusal to be subjected to reformation; or
2. Failure to reform

can the child be subjected to criminal prosecution and the judicial system.

PERIODS OF CRIMINAL RESPONSIBILITY (*REYES, 233-234*)

1. Less than 15 – *absolute irresponsibility*;
2. 15 years and 1 day to 18 years – *conditional responsibility*;
3. 18 years to 70 years – *full responsibility*;
4. 15-18 (with discernment) and over 70 years old – *mitigated responsibility.*

SENILITY

Over 70 years, the period of second childhood (*Id., 234*).

PARAGRAPH 4 – ACCIDENT WITHOUT FAULT OR INTENTION OF CAUSING IT

BASIS: Lack of negligence and intent (*Id., 242*).

REQUISITES [PDAF]

1. A person is performing a lawful act;
2. With due care;
3. He causes an injury to another by mere accident;
4. Without fault or intention of causing it (*Id., 237-238*).

ACCIDENT

An occurrence that happens outside the sway of our will, and although it comes about through some act of our will, it lies beyond the bounds of humanly foreseeable consequences (*Id., 240*).

ACCIDENT	NEGLIGENCE
Unforeseen even in which no fault or negligence attaches to the defendant. It is an even without any human agency, or if happening wholly or partly through human agency, an even which under the circumstance is unusual or unexpected by the person to whom it happens.	Failure to observe for the protection of the interest of another person, that degree of care, precaution and vigilance which the circumstances justly demand without which such other persons suffers injury.

(*Jarco Marketing v CA, GR No. 129792 [1992]*)

PARAGRAPH 5 – A PERSONS WHO ACTS UNDER THE COMPULSION OF AN IRRESISTIBLE FORCE

BASIS: Complete absence of freedom, an element of voluntariness (*Id., 244*).

REQUISITES [PIT]

1. That the compulsion is by means of physical force;
2. That the physical force must be irresistible;

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

NOTE: Passion and obfuscation cannot amount to irresistible force (*Id., 244*).

NOTE: The force must be irresistible to reduce the actor to a mere instrument who acts not only without will but against his will (*People v Loreno, GR No. L-54414 [1984]*).

NOTE: The person who used the force or created the fear is criminally and primarily civilly liable, but the accused who performed the act involuntarily and under duress is still secondarily liable (*Art. 101, RPC*).

Illustration:

Person A (the 3rd persons) is point his gun to person B (the accused). Persons A ordered B to burn the house of person C, otherwise, A will kill him.

PARAGRAPH 6 - UNCONTROLLABEL FEAR

BASIS: Complete absence of freedom. *Actus me invite factus non est meus actus* (*REYES, 249*).

REQUISITES

1. The existence of uncontrollable fear;
2. That the fear must be real and imminent;
3. The fear of an injury is greater than, or at least equal to, that committed (*People v Anticamara, GR No. 178771 [2011]*).

NOTE: Duress as a valid defense should be based on real, imminent, or reasonable fear for one's life or limb and should not be speculative, fanciful, or remote fear (*People v Borja, GR No. L-22947 [1979]*).

NOTE: The accused must not have opportunity for escape or self defense (*People v Palencia, GR No. L-38957 [1976]*).

NOTE: The compulsion must be of such character as to leave no opportunity to the accused for escape or self-defense in equal combat (*People v Baldogo, GR Nos. 128106-07 [2003]*).

NOTE: It must presuppose intimidation or threat, not force or violence.

IRRESISTIBLE FORCE	UNCONTROLLABLE FEAR
As to offender's act	
Offender uses violence or physical force to compel another person to commit a crime;	Offender employs intimidation or threat in compelling another to commit a crime;
As to who the act is directed	
Must have been made to operate directly upon the person of the accused;	May be generated by a threatened act directed to a 3rd persons, *e.g.*, the wife of the accused who was kidnapped;
As to the act feared	
Injury feared may be lesser degree than the damage caused by the accused.	The evil feared must be greater or at least equal to the damage caused to avoid it.

PARAGRAPH 7 – INSUPERABLE CAUSE

BASIS: Lack of intent, the third condition of voluntariness in intentional felony (*REYES, 250*).

INSUPERABLE CAUSE

It is some motive which has lawfully, morally, or physically prevented a person to do what the law commands. It applies only to felonies by omission (*BOADO, 143*).

REQUISITES [ReFLI]

1. That an act is required by law to be done;
2. That a person fails to perform such act;
3. That his failure to perform such act was due to some lawful or insuperable cause (*REYES, 249*).

Illustration:

A mother who at the time of childbirth was overcome by severe dizziness and extreme debility, and left the child in a thicket where said child died, is not liable for infanticide, because it was physically impossible for her to take home the child (People v Bandian, 63 Phil. 530. The sever dizziness and extreme debility of the woman constitutes an insuperable cause (Id., 250).

ABSOLUTORY CAUSES

Those where the act committed is a crime but for reasons of public policy and sentiment, there is no penalty imposed (*ESTRADA, 115*).

EXAMPLES OF ABSOLUTORY CAUSES [DELIMA² TT]

1. *Art. 6 (3)* – spontaneous desistance in the attempted stage unless the overt act committed already constitutes a crime other than that intended;
2. *Art. 247* – death and physical injuries inflicted under exceptional circumstances;
3. *Art. 7* – attempted/frustrated light felonies except those crimes against persons or property;
4. Instigation by reason of public policy;
5. *Art. 344* – marriage of the offender and the offended party in cases of seduction, abduction, acts of lasciviousness;
6. *Art. 20* – certain relatives who are accessories subject to the requisites provided therein;
7. *Art. 16* – accessories in light felonies;
8. *Art. 332* – certain relatives in theft, estafa, and malicious mischief;
9. *Art.* 280, *par. 3* – trespass to dwelling when the purpose of entering another's dwelling against the latter's will is to prevent some serious harm to himself, the occupants of the dwelling or a third persons, or for the purpose of rendering service to humanity or justice, or when entering cafes, taverns, inns and other public houses, while the same are open.
10. Battered woman syndrome (*Sec. 26, RA 9262*).
11. Status offenses in *Secs. 57 and 58, RA 9344;*
12. Somnambulism;
13. Mistake of fact;
14. Repeal of a penal law, either absolute or modification of the penalty when favorable to the offender.

NOTE: Entrapment is not an absolutory cause. A buy-bust operation conducted in connection with illegal drug related offenses is a form of entrapment (*ESTRADA, 115*).

ENTRAPMENT	INSTIGATION
As to nature	
Ways and means are resorted to for the capture of lawbreaker in the execution of his criminal place;	Instigator induces the would-be accused to commit the crime, hence he becomes a co-principal;
As to origin	
The means originates from the mind of the criminal;	The law enforcer conceives the commission of the crime and suggests to the accused who adopts the idea and carries it into execution;
As to liability	
Not a bar to the prosecution and conviction of the lawbreaker.	It will result in the acquittal of the accused.

NOTE: If the one who made the intigation is a private individual, not performing public function, both he and the one induced are criminally liable for the crime committed: the former as principal by inducement; and the latter as principal by direct participation (*ESTRADA, 115*).

Chapter Three
CIRCUMSTANCES WHICH MITIGATE CRIMINAL LIABILITY

ART. 13

The following are mitigating circumstances:

1. **Those mentioned in the preceding chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.**
2. **That the offender is under 18 years of age or over 70 years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Article 80.**
3. **That the offender had no intention to commit so grave a wrong as that committed.**
4. **That sufficient provocation or threat on the part of the offended party immediately preceded the act.**
5. **That the act was committed in the immediate vindication of a grave offense to the one committing the felony (*delito*), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relative by affinity within the same degrees.**
6. **That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.**
7. **That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.**
8. **That the offender is deaf and dumb, blind or otherwise suffering some physical defect which thus restricts his means of action, defense or communication with his fellow beings.**
9. **Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of consciousness of his acts.**
10. **And, finally, any other circumstance of a seminal nature and analogous to those above mentioned.**

MITIGATING CIRCUMSTANCES

Shows the lesser perversity of the offender and has the effect of lowering the penalty prescribed for the offense. They are matters of defense which do not have to be alleged in the information. There are also matter circumstances which have the effect of reducing the penalty but are not included in this article and are also called extenuating circumstances (*BOADO, Notes and Cases on the Revised Penal Code [2011], 144*).

RATIONALE

To show mercy and some extent of leniency in favor of an accused who has nevertheless shown lesser perversity in the commission of an offense. Where the evidence on record bespeaks of vileness and depravity, no mercy or leniency should be accorded an accused who should be made to suffer in full for acts perpetrated with complete voluntariness and intent for their tragic consequences (*People v Santos, GR Nos. 99259-60 [1996]*).

CLASSIFICATIONS OF MITIGATING CIRCUMSTANCES

1. ***Ordinary*** **–** lowers the penalty to the minimum period. These are enumerated in Art. 13;
2. ***Privileged*** **–** lowers the imposable penalty, whether divisible or indivisible, by one or more degrees (*see Art. 69*).

PRIVILEGED	ORDINARY
Offset by any aggravating circumstances	
Cannot be offset;	Can be offset;
Effect on the penalty	
Imposing the penalty by 1 or 2 degrees lower than that provided by law;	If not offset, has the effect of imposing the penalty in the minimum period;
When not to consider	
Always considered whether the penalty imposable is divisible or indivisible.	Not considered when what is prescribed is single indivisible penalty.
Kinds	
Minority, incomplete serlf-defense, 2 or more mitigating circumstances without any aggravating circumstances;	Those enumerated in Art. 13;

(*BOADO, 145*)

NOTE: The presence of mitigating circumstance only reduces the penalty, but do not change the nature of the crime. Where the accused is charged with murder, the fact that there is a privileged mitigating circumstance does not change the felony to homicide. If there is an ordinary or generic mitigating circumstance, not offset by any aggravating circumstance, the accused should be found guilty of the same crime of murder, but the penalty to be imposed is reduced to the minimum of the penalty for murder (*REYES, 261*).

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

CIRCUMSTANCES OF JUSTIFYING OR EXEMPTING WHICH MAY GIVE PLACE TO MITIGATING

1. Self-defense (*Art. 11, par. 1*);
2. Defense of relatives (*Art. 11, par. 2*);
3. Defense of stranger (*Art. 11, par. 3*);
4. State of necessity (*Art. 11, par. 4*);
5. Performance of duty (*Art. 11, par. 5*);
6. Obedience to order of superior (*Art. 11, par. 6*);
7. Minority above 15 but below 18 years of age (*RA 9344*);
8. Causing injury by mere accident (*Art. 12 par. 4*);
9. Uncontrollable fear (*Art. 12, par. 6*).

NOTE: Pars. 1 and 2 of Art. 12 cannot give place to mitigation because the mental condition of a person is indivisible; that is, there is no middle ground between sanity and insanity, between presence and absence of intelligence.

But if the offender is suffering from some illness which would diminish the exercise of his willpower, without depriving him of consciousness of his acts, such is considered mitigation under Art. 13, par. 9 (*REYES, 263-264*).

INDISPENSABILITY OF UNLAWFUL AGGRESSION

In the incomplete justification of defense, there must always be unlawful aggression otherwise there is nothing to defend and consequently no occasion to justify the act in defense of self or relatives or strangers. Without unlawful aggression, there is neither complete nor incomplete defense (*BOADO, 146*).

ORDINARY MITIGATING	PRIVILEGED MITIGATING
Presence of one or less than majority of the elements in order to justify or exempt the act from criminal liability.	Presence of majority of elements in order to justify or exempt the act from criminal liability.

ARTICLE 69

A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Arts. 11 and 12, provided that the **majority of such conditions be present**. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking. (emphasis supplied)

MINORITY

If the minor over 15 and under 18 years of age acted with discernment (*see Sec. 6, RA 9344*), he is entitled only to a mitigating circumstance (*REYES, 268*).

NOTE: If the minor acted with discernment, he shall undergo diversion programs provided under Chapter 2 of RA 9344 (*Id., 271*).

DIVERSION

Alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his social, cultural, economic, psychological, or educational background without resulting to formal court proceedings (*Sec. 4[j], RA 9344*).

DIVERSION PROGRAM

Program that the child in conflict with the law is required to undergo after he is found responsible for an offense without resorting to formal court proceedings (*Id.*).

ACCIDENT

The elements of Art. 12, par. 4 are as follows:

1. A person is performing a lawful act;
2. With due care;
3. He causes an injury to another by mere accident;
4. Without fault or intention of causing it.

NOTE: If the 2nd (*with due care*) and first part of the 4th (*without fault*) requisites are absent, the case will fall under Art. 365 which punishes a felony by negligence or imprudence. In effect, there is a mitigating circumstances, because the penalty is lower than that provided for intentional felony (*REYES, 269*).

NOTE: If the 1st (*lawful act*) and second part of the 4th (*without intention*) requisites are absent, it will be an intentional felony. The 2nd and 3rd requisites will not be present either (*Id.*).

Par. 2 – That the offender is over 15 and under 18 years of age or over 70 years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Art. 80.

BASIS: Diminution of intelligence, a condition of voluntariness.

CHILD IN CONFLICT WITH THE LAW

It refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws (*Sec, 4[e], RA 9344*).

RECKONING PERIOD OF AGE

It is the age of the accused at the time of the commission of the crime, which should be determined. His age at the time of the trial is immaterial.

15 and below	Exempting;
Above 15 but under 18	Exempting *Unless*, acted with discernment, penalty is reduced by 1 degree lower than that imposed (*see Art. 68, par. 2, as amended by RA 9344*);
Child in conflict with the law under 18 years who acted with discernment	Sentence is suspended (*Art. 192, RPC; RA No. 9344 as amended by RA 10639*);
18 years or over	Full criminal responsibility;
70 years or over	Mitigating, no imposition of death penalty; if already imposed, execution of death penalty is suspended and commuted.

(*ESTRADA, 121*)

Par. 3 – That the offender had no intention to commit so grave a wrong as that committed.

BASIS: Intent, an element of voluntariness in intentional felony, is diminished.

RULE OF APPLICATION

May be invoked only when the facts proven show that there is a notable and evident disproportion between the means employed to execute the criminal act and its consequences (*US v Reyes, 36 Phil. 904, 907*).

NOTE: It is the lack of intention to commit so grave a wrong as that committed. There should be a great disparity between the intent and its consequences (*BOADO, 148*). *Praeter intentionem* should be appreciated where the accused had no intent to kill by only to inflict injuries when he attacked the victim (*People v Flores, GR Nos. 128823-24 [2002]*).

INTENTION MAY BE ASCERTAINED BY CONSIDERING [WIMP]

1. Weapon used;
2. Injury inflicted;
3. Manner it is inflicted;
4. Part of the body injured (*ESTRADA, 122*).

WHEN MITIGATION BY *PRAETER INTENTIONEM* MAY NOT BE INVOKED

1. The accused committed felonies by negligence (*People v Medina, CA 40 OG 4196*);
2. Murder qualified by treachery (*People v Pajenado, GR No. L-26458 [1976]*);
3. Only physical injuries were inflicted;

   UNLESS: the physical assault resulted to the death of the victim (People v Pugay, GR No. L-74324 [1988])

4. Violation of Anti Hazing Law (*RA 8049*);
5. *Abberatio ictus* and *error in personae* because in these cases, there is intent to commit the felony (*AMURAO, 375*);
6. If the acts of the accused are sufficient to bring about the result intended or when the means employed would naturally result to the felony committed. It does not apply to *culpa* or to crimes not involving intent (*People v Yu, GR No. L-13780 [1961]*);
7. Not applicable to felonies where the intention of the offender is immaterial (*People v Cristobal, GR No. 8739 [1942]*);
8. Offenses not resulting to material harm or physical injuries (*People v Galang de Bautista, CA, 40 OG 4473*).

WHEN IT MAY BE APPRECIATED

1. Murder qualified by circumstances based on manner of commission, not on state of mind of accused (*People v Enriquez, 58 Phil. 536, 544-545*);
2. Robbery with homicide (*People v Abueg, GR No. L-54901 [1986]*);
3. Malversation of funds (*Perez v People, GR No. 164763 [2008]*).

Par. 4 – That sufficient provocation or threat on the part of the offended party immediately preceded the act.

BASIS: Diminution of intelligence and intent.

PROVOCATION

Any unjust or improper conduct or act of the offended party, capable of exciting, inciting, or irritating any one.

REQUISITES [SOPI]

1. The provocation must be sufficient;
2. It must originate from the offended party;

   Illustration:

   A and B were together. A hit C on the head with a piece of stone from his sling-shot and ran away. As he could not overtake A, C faced B and assaulted the latter. In this Case, C is not entitled to this mitigating circumstances, because B never gave the provocation or took part in it (REYES, 286).

3. The provocation must be personal and directed to the accused;
4. The provocation must be immediate to the act.

SUFFICIENT

Adequate to excite a person to commit a wrong and must accordingly be proportionate to its gravity (*People v Nabora, GR No. 48101 [1941]*).

NOTE: It is enough that the provocative act be unreasonable or annoying (*Urbano v People, GR No. 182750 [2009]*).

NOTE: The threat should not be offensive and positively strong. Otherwise, the threat to inflict real injury is an unlawful aggression which may give rise to self-defense (*US v Guysayco, GR No. 4971 [1909]*).

NOTE: Vague threats are not sufficient provocation. Thus, the victim's mere utterance, "*If you do not agree, beware.*" But where the victims shouted at the accused," *Follow us if you dare and we will kill you,*" there is sufficient threat (*REYES, 288*).

NOTE: As to whether provocation is sufficient depends upon:

1. The act constituting the provocation;
2. The social standing of the person provoked;
3. The place and time when the provocation is made (*REYES, 283*).

IMMIDIATE PROVOCATION

Provocation is immediate if no interval of time elapsed between the provocation and the commission of the crime (*People v Pagal, 79 SCRA 570 [1977]*).

NOTE: When the aggression is in retaliation for an insult, injury or threat, the offender cannot successfully claim self-defense, but at most he can be given the benefit of mitigating circumstance (*US v Carrero, GR No. 1956 [1908]*).

NOTE: The liability of the accused is mitigated only insofar as it concerns the harm inflicted upon the person who made the provocation, but not with regard to the other victims who did not participate in the provocation (*US v Malabanan, GR No. 3964 [1907]*).

Illustration:

A and B were together. A hit C on the head with a piece of stone from his sling-shot and ran away. As he could not overtake A, C faced B and assaulted the latter. A, upon seeing that C is assaulting B, said to himself "nako, binubugbug na si bes. Kailangan kong tulungan." Nonetheless, C was stronger than A and B combined and hence, the latter party physical injuries. In this Case, C is not entitled to this mitigating circumstances, because B never gave the provocation or took part in it. However, with regard to the injury given to A, C is entitled to mitigating circumstance for it was indeed A who gave the provocation.

PROVOCATION AS REQUISITE OF INCOMPLETE SELF-DEFENSE	PROVOCATION AS MITIGATING CIRCUMSTANCE
It pertains to its absence on the part of the person defending himself.	It pertains to its presence on the part of the offended party (*People v CA, GR No. 103613 [2001]*).

Par. 5 – That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees.

BASIS: Diminution of free will and self-control.

REQUISITES

1. That there be a grave offense done to the one committing the felony, his spouse, ascendants, descendants, legitimate or adopted brothers or sisters or relatives by affinity within the same degrees;

   NOTE: A nephew is not a relative by affinity "within the same degree" (Bacabac v People, GR No. 149372 [2007]).
   NOTE: The grave offense must be directed to the accused, or to his relatives as specified by law, and not be general in nature (People v Benito, GR No. L-32042 [1975]).

2. That the felony is committed in immediate vindication of such grave offense.

   NOTE: "Immediate" allows for a lapse of time as long as the offender is still suffering from the mental agony brought about by the offense to him (ESTRADA, 124). The word "immediate" used in the English text is not the correct translation. The Spanish text uses "proxima" (REYES, 290).

   NOTE: "Grave offense" includes any act that is offensive to the offender or his relatives and the same need not be unlawful (People v Benito, GR No. L-32042 [1975]).

NOTE: The relationship by affinity created between the surviving spouse and the blood relatives of the deceased spouse survives the death of either party to the marriage which created the affinity. Thus, if A (the surviving husband of B) was killed by C, B's brothers would be entitled to the mitigating circumstance of vindication of grave offense if they cause serious physical injuries to C immediately after learning of A's death (*REYES, 289-290*).

FACTORS TO DETERMINE GRAVITY OF OFFENSE IN VINDICATION

1. Social standing of the person;
2. Place;
3. Time when the insult was made (*Id., 292*).

PROVOCATION	VINDICATION
Made directly only to the person committing the felony;	The grave offense may be committed also against the offender's relatives mentioned by the law;
The cause that brought about the provocation need not be a grave offense;	The offended party must have done a grave offense to the offender or his relatives mentioned by the law;
It is necessary that the provocation or threat immediately preceded the act, *i.e.*, there be no interval of time between the provocation and the commission of the crime;	The vindication of the grave offense may be proximate, which admits of an interval of time between the grave offense done by the offended party and the commission of the crime by the accused;
It is mere spite against the one giving the provocation or threat.	It concerns the honor of a person.

NOTE: The provocation should be proportionate to the damage caused by the act and adequate to stir one to its commission. Thus, the remark attributed to the deceased that the daughter of the

accused is a flirt does not warrant and justify the act of accused in slaying the victim (*People v Lopez, GR No. 136861 [2000]*).

NOTE: The vindication of a grave offense and passion or obfuscation cannot be counted separately and independently (*People v Dagatan, 106 Phil. 88. 98*).

Par. 6 – That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

BASIS: Diminution of intelligence and intent.

REQUISITES

1. There be an act, both unlawful and sufficient to produce passion (*arrebato*) or obfuscation (*obcecacion*);
2. Said act which produced the passion or obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity;
3. The act causing such passion or obfuscation was committed by the victim himself (*ESTRADA, 125*);
4. The accused must have acted from lawful sentiments.

REASON FOR MITIGATION

When there are causes naturally producing in a person powerful excitement, he loses his reason and self-control, thereby diminishing the exercise of his will power (*US v Salandanan, 1 Phil. 464, 465*).

NOTE: Exercise of a right or fulfilment of duty is not proper source of passion or obfuscation. Thus, the action of the deceased in taking the carabao of the accused to him and demanding payment for the sugarcane destroyed by that carabao and in taking the carabao to the barrio lieutenant when the accused refused to pay, was perfectly legal and proper and constituted no reasonable cause for provocation to the accused (*People v Noynay, 58 Phil. 393*).

NOTE: It is a mitigating circumstance only when the same arises from lawful sentiments (*People v Bates, GR No. 139907 [2003]*).

NOTE: It may lawfully arise from causes existing only in the honest belief of the offender (*US v Macalintal, GR No. 1331 [1903]*). This mitigating circumstance may be appreciated even if the reported act causing the obfuscation was not true, as long as it was honestly and reasonably believed by the accused to be true (*People v Guhiting, GR No. L-2843 [1951]*).

NOTE: The act of the offended party must be unlawful or unjust (*US v Taylow, GR No. 2309 [1906]*).

NOTE: There is passion or obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts due to a legitimate stimulus so powerful as to overcome reason (*People v Danafrata, GR No. 143010 [2003]*).

US v Hicks, 14 Phil 217

FACTS: For about five years, the accused and the deceased lived illicitly in the manner of husband and wife. Afterwards, the deceased separated from the accused and lived with another man. The accused enraged by such conduct, killed the deceased.

HELD: Even if it is true that the accused acted with obfuscation because of jealousy, the mitigating circumstance cannot be considered in his favor because the cause which mitigate criminal responsibility for the loss of self-control are such which originate from legitimate feelings, and not those which arise from vicious, unworthy and immoral passions.

US v dela Cruz, 22 Phil. 429

The accused, in the heat of passion, killed his common-law wife upon discovering her *in flagrante* in carnal communication with a mutual acquaintance. The accused was entitled to the mitigating circumstance because in this case, the impulse upon which defendant acted and which naturally produced passion and obfuscation was not that the woman declined to have illicit relations with him but the sudden revelation that she was untrue to him, and his discovery of her *in flagrante* in the arms of another.

NOTE: The passion and obfuscation must originate from lawful sentiments, not from the fact that, for example, the girl's lover killed the girl's father and brother because the girl's parents objected to their getting married and the girl consequently broke off their relationship. Such an act is actuated more by a spirit of lawlessness and revenge rather than any sudden legitimate impulse of natural and uncontrollable fury (*People v Gravino, GR Nos. L-31327-29 [1983]*).

WHEN PASSION AND OBFUSCATION ARE NOT APPRECIATED

1. The accused acted in a spirit of lawlessness. Thus, the accused cannot invoke passion and obfuscation when he raped an almost naked woman he found in a secluded place "having acted upon an impulse so powerful as naturally to have produced passion" (*People v Sanico, CA, 46 OG 98*);
2. When the accused acted in a spirit of revenge. Thus, when the accused poisoned the child because before the killing, the mother of the child scolded her for having surprised her with a man on the master's bedroom (*People v Caliso, 58 Phil. 283, 295*).
3. When the accused and the victim were engaged in a fight for the impulse in the state of receiving a beating is not considered in law so powerful as to produce obfuscation sufficient to mitigate liability (*People v De Guia, CA, 36 OG 1151*);
4. When the accused acted out of jealousy when the relationship with the woman is illegitimate (*People v Salazar, 105 Phil. 1058*).

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

NOTE: If obfuscation and provocation arose from one and the same act, both shall be treated as only one mitigating circumstance.

PASSION OR OBFUSCATION	IRRESISTIBLE FORCE
Mitigating circumstance;	Exempting circumstance;
It cannot give rise to irresistible force as it does not involve physical force;	It requires physical force;
Passion or obfuscation is in the offender himself;	Irresistible force must come from a third person;
Must arise from lawful sentiments.	It is unlawful.

PASSION AND OBFUSCATION CANNOT CO-EXIST WITH:

1. Vindication of grave offense;

   EXCEPTION: when there are other facts, although closely connected (People v Diokno, GR No. 45100 [1936]).

2. Evident premeditation;

   NOTE: The essence of evident premeditation is that the execution of the criminal act must be preceded by calm thought

and reflection upon resolution to carry out the criminal intent during the space of time sufficient to arrive at a composed judgment (People v Pagal, GR No. L-32040 [1977]).

3. Treachery;

NOTE: Passion or obfuscation cannot co-exist with treachery, for while in the mitigating circumstance of passion or obfuscation the offender loses his reason and self-control, in the aggravating circumstance of treachery, the mode of attack must be consciously adopted (People v Domingo, GR No. 131817 [2001]).

4. Lack of intention to commit so grave a wrong (*People v Cabel, 5 CAR (2s) 507, 515*).

Par. 7 – That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of evidence for the prosecution.

REASON WHY PLEA OF GUILT IS MITIGATING

It is the act of repentance and respect for the law; it indicates a moral disposition in the accused, favourable to his reform (*People v De la Cruz, 63 Phil. 874, 876*).

BASIS: Lesser perversity of the offender.

TWO MITIGATING CIRCUMSTANCES

1. Voluntary surrender to a person in authority or his agents;
2. Voluntary confession of guilt before the court prior to the presentation of evidence for the prosecution.

NOTE: When both are present, they should have effect of mitigating as two independent circumstances (*People v Fontable, 61 Phil. 589, 590*).

REQUISITES OF VOLUNTARY SURRENDER [NoS VUS]

1. The offender had not been actually arrested;
2. That the offender surrendered himself to a person in authority or his agent;
3. The surrender was voluntary;
4. The surrender must be unconditional;
5. The surrender must be spontaneous (*AMURAO, 408*).

NOTE: For voluntary surrender to be appreciated, the same must be spontaneous in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses necessarily incurred in his search and capture (*People v Gervacio, GR No. L-21965 [1968]*).

CASES NOT CONSTITUTING VOLUNTARY SURRENDER

1. The accused surrender only after warrant of arrest was served upon him (*People v Roldan, GR No. L-22030 [1968]*);
2. Where the accused was actually arrested by his own admission or that he yielded because of the warrant of arrest, although the police blotter used the word "surrender" (*People v Valdez, GR No. L-30038 [1974]*).
3. Where the accused only went to the police station to report that his wife was stabbed by another person and to seek protection as he feared that the same assailant would also stab him (*People v Trigo, GR No. 74531 [1962]*);
4. Where the accused went into hiding and surrendered only when they realized that the forces of the law were closing in on them (*People v Mationg, GR No. L-33488 [1982]*);
5. Where the search for the accused had lasted 4 years, which belies the spontaneity of the surrender (*People v De la Cruz, GR No. L-30059 [1970]*).

NOTE: The fact that the order of arrest has already been issued is no bar in the consideration of the circumstance because the law does not require that surrender be prior to the order of arrest (*Rivera v CA, GR No. 125867 [2000]*).

PERSON IN AUTHORITY

He is one directly vested with jurisdiction which is the power to govern and to execute the laws, whether as an individual or as a member of some court or governmental corporation, board or commission (*see Art. 152 of RPC, as amended by RA 1978*).

AGENT OF A PERSON IN AUTHORITY

He is one, who by direct provision of the law, or by election, or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property and any person who comes to the aid of persons in authority (*Id.*).

NATURE OF VOLUNTARY SURRENDER

1. It must be spontaneous, which emphasizes the idea of an inner impulse acting without external stimulus;
2. Intent of the accused to submit himself unconditionally to the authorities must be either:
    a. He acknowledges his guilt;
    b. He wishes to save them trouble and expenses necessarily incurred in his search and capture;
3. The conduct of the accused determines the spontaneity of the arrest;
4. Intention to surrender without actually surrendering is not mitigating;
5. Not mitigating when defendant was in fact arrested;
6. It is not required that, to be appreciated, it be prior to the issuance of a warrant of arrest;
7. Surrender of weapons cannot be equated with voluntary surrender;
8. Voluntary surrender does not mean non-flight.

REQUISITES OF PLEA OF GUILT [COPO]

1. The offender spontaneously confessed his guilt;
2. The confession of guilt was made in open court, that is, before the competent court that is to try the case;
3. That the confession of guilt was made prior to arraignment (presentation of evidence);
4. That the confession of guilt was to the offense charged in the information.

NOTE: It is not necessary that all the evidence of the prosecution have been presented. Even if the first witness presented by the prosecution had not finished testifying during the direct exeminaiton when the accused withdrew his former plea of "not guilty" and substituted it with the plea of "guilty," the plea of guilty is *not mitigating* (*People v Lambino, 103 Phil. 504*).

WHEN NOT APPRECIATED

1. Plea of guilt on appeal (*People v Hermino, 64 Phil. 403, 407-408*);
2. Plea of guilt after arraignment;
3. Plea of not guilty at the preliminary investigation;
4. Extrajudicial confession of guilt
5. The offender committed a culpable felony;
6. The crime charged is a violation of special law;
7. Conditional plea of guilt.

WHEN PLEA OF GUILT MAY STILL BE APPRECIATED

1. Plea of guilt in an amended information;
2. Withdrawal of the plea of not guilty and pleading guilty before presentation of evidence

NOTE: The trial court should determine whether the accused really and truly comprehended the meaning, full significance and consequences of his plea and that the same was voluntarily and intelligently entered or given by the accused (*People v Lacson, GR No. L-33060 [1974]*).

RELATE VOLUNTARY PLEA OF GUILT TO PLEA BARGAINING

When accused did not plead to a lesser offense but pleaded guilty to the rape charges and only bargained for a lesser penalty, he did not plea bargain but made conditions on the penalty to be imposed. This is erroneous because by pleading guilty to the offense charged, accused should be sentence to the penalty to which he pleaded. It is the essence of a plea of guilt and responsibility for the offense imputed to him. Hence, an accused may not foist a conditional plea of guilty on the court by admitting his guilt provided that a certain penalty will be meted unto him (*People v Magat, GR No. 130026 [2000]*).

For voluntary confession to be appreciated as an extenuating circumstance it must not only be unconditional but the accused must admit to the offense charged (*People v Gano, GR No. 134373 [2001]*).

PLEA BARGAIN

An agreement as a result of negotiation between the prosecution and defense (at times, also the judge) which settles a criminal case, usually in exchange for a more lenient punishment. Typically the defendant will plead guilty to a lesser crime or for fewer charges than originally charged, in exchange for a more lenient punishment than the defendant would get if convicted at trial.

Par. 8 – That the offender is deaf and dumb, blind or otherwise suffering from some physical defect which thus restricts his means of action, defense, or communication with his fellow beings.

BASIS: Restriction of one's means of action, defense, or communication with one's fellow beings; diminution of freedom of action, therefore, there is a diminution of the element of voluntariness.

NOTE: Art. 13, par. 8 does not distinguish between educated and uneducated deaf-mute or blind persons. The Code considers them as being equal footing (*REYES, 329*).

NOTE: The physical defect must relate to the offense committed. In other words, the defect or illness must be a contributing factor to the commission of the crime. Without such relation, the defect or illness should not be considered, *e.g.*, rape committed by a deaf and dumb on the girl of his dreams to whom he cannot convey his feelings will mitigate his liability unless the circumstances justify the imposition of a single indivisible penalty where modifying circumstances have no effect (*BOADO, 155*).

DUMB

One who cannot speak; a person who is mute (*Black's Law Dictionary*).

Par. 9 – Such illness of the offender as would diminish the exercise of the willpower of the offender without however depriving him of consciousness of his acts.

REQUISITES

1. That the illness of the offender must diminish the exercise of his will-power;
2. That such illness should not deprive the offender of consciousness of his acts (*REYES, 330*).

NOTE: The fact that the offender has a severed left hand does not automatically mean that he should be credited with this mitigating circumstance. In order for this condition to be appreciated, it must be shown that such physical defect limits his means of communication with his fellow beings to such an extent that he did not have complete freedom of action, consequently resulting in diminution of the element of voluntariness. The fact that he had only one hand in no way limited his freedom of action to commit the crime (*People v Deopante, GR No. 102772 [1996]*).

WHAT IS NECESSARY FOR ILLNESS TO BE CONSIDERED AS MITIGATING?

The illness must only diminish and not deprive the offender of the consciousness of his acts; otherwise he will be exempt from criminal liability. The defect or illness must be contributory to the commission of the crime. Without such relation, the defect or illness shall not be considered (*BOADO, 156*).

ILLNESS OF THE OFFENDER CONSIDERED MITIGATING

1. Those who have obsession that witches are to be eliminated are in the same condition as one who, attacked with a morbid infirmity but still retaining consciousness of his acts, does not have real control over his will (*People v Balneg, 79 Phil. 805*);
2. Illness of nerves or moral faculty (*People v Amit, 82 Phil. 820*);
3. Feeble-minded (*People v Forminogenes, 87 Phil. 658*);
4. Impairment of mental faculties such as *schizo-affective* disorder or psychosis (*People v Antonio, Jr, GR No. 144266 [2002]*).

Par. 10 – And, finally, any other circumstances of a similar nature and analogous to those abovementioned.

EXAMPLES

1. Over 60 y/o with failing sight, similar to *par. 2* (*People v Reantillo, CA, GR No. 301 [1938]*);
2. Extreme poverty, as similar to a state of necessity under *par. 1* in relation to *par. 4, Art. 11* (*People v Agustin, GR No. L-18368 [1966]*);
3. Wartime state of confusion resulting in illegal possession of firearm after the liberation, as being similar to lack of intent to commit so grave a wrong in *par. 3*;
4. Outraged feeling of unpaid creditor, as akin to vindication or obfuscation in *pars. 5 and 6*, respectively (*People v Merenilio, CA, 36 OG 2283*);
5. Appeal to the *esprit de corps* of the accused, as analogous to passion in *par. 6* (*People v Villamora, 86 Phil. 287*);
6. Voluntary return of funds malversed by the accused, as equivalent to voluntary surrender in *par. 7* (*Cimafranca v People, GR No. 94408 [1991]*);
7. The act of the accused leading the law enforcers to the place where he buried the instruments he used to commit the crime is similar to voluntary surrender in *par. 7*;
8. Manifestation of battered wife syndrome, analogous to an illness that diminishes the exercise of will power (*People v Genosa, GR No. 135981 [2004]*).

CIRCUMSTANCES WHICH ARE NEITHER EXEMPTING NOR MITIGATING

1. Mistake in the blow or *aberration ictus*;
2. Mistake in the identity or *error in personae*;
3. Entrapment of the accused;
4. Accused is over 18 years of age;
5. Performance of righteous action (*REYES, 337*).

MITIGATING CIRCUMSTANCES WHICH ARE PERSONAL TO THE OFFENDERS

The following shall only serve to mitigate the liability of the principals, accomplices, and accessories as to whom such circumstances are attendant (*Art. 62, par.3*):

1. From the moral attributes of the offender;
2. From his private relations with the offended party;
3. From any other personal cause.

Chapter Four
CIRCUMSTANCES WHICH AGGRAVATE CRIMINAL LIABILITY

ART. 14

The following are aggravating circumstances:

1. **That advantage be taken by the offender of his public position.**
2. **That the crime be committed in contempt of or with insult to the public authorities.**
3. **That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation.**
4. **That the act be committed with abuse of confidence or obvious ungratefulness.**
5. **That the crime be committed in the palace of the Chief Executive, or in his presence, or where public authorities are engaged in the discharge of their duties or in a place dedicated to religious worship.**
6. **That the crime be committed in the nighttime or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.**

   Whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band
7. **That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic, or other calamity or misfortune.**
8. **That the crime be committed with the aid of armed men or persons who insure or afford impunity.**
9. **That the accused is a recidivist.**

   A recidivist is one who, at the time of the trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code.
10. **That the offender has been previously punished for an offense to which the law attached an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.**
11. **That the crime be committed in consideration of a price, reward, or promise.**
12. **That the crime be committed by means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste or ruin.**
13. **That the act be committed with evident premeditation.**
14. **That craft, fraud, or disguise be employed.**
15. **That advantage be taken of superior strength, or means be employed to weaken the defense.**
16. **That the act be committed with treachery (*alevosia*).**

    There is treachery when the offender commits any of the crimes against person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.
17. **That means be employed or circumstances brought about which add ignominy to the natural effects of the act.**
18. **That the crime be committed after an unlawful entry.**

    There is an unlawful entry when an entrance is effected by a way not intended for the purpose.
19. **That as a means to the commission of a crime a wall, roof, floor, door, or window be broken.**
20. **That the crime be committed with the aid of persons under fifteen years of age, or by means of motor vehicle, airships, or other similar means.**
21. **That the wrong done in the commission of the crime e deliberately augmented by causing other wrong not necessary for its commission.**

DEFINITION

Those which, if attendant in the commission of the crime, serve to increase the penalty without, however, exceeding the maximum of the penalty provided by the law for the offense (*REYES, 337-338*).

NOTE: The list in Art. 14 is exclusive – there are no analogous circumstances and this is due to the strict interpretation of the law against the State (*BOADO, 160*).

BASIS: Greater perversity of the offender manifested in the commission of the felon as shown by:

1. Motivating power itself;
2. The place of commission;
3. The means and ways employed;
4. Time;
5. Personal circumstances of the offender, or of the offended party.

KINDS

1. *Generic*
   a. Those that can generally apply to all crimes;
   b. Can be offset by an ordinary mitigating circumstance;
   c. Increase the penalty to the maximum period of the penalty prescribed in the law provided alleged in the information;
2. *Qualifying*
   a. Cannot be offset by any mitigating circumstance;
   b. Change the nature of the crime and the designation of the offense;
   c. Must be alleged in the information, otherwise, cannot be considered ;
   d. Must be proved as conclusively as the guilt of the offender because of its effect which is to change the nature of the offense and consequently increase the penalty by degree.
3. ***Specific or Specific***– those that apply only to specific crimes, cannot be offset by a mitigating circumstance;
4. ***Inherent*** – those that must of necessity accompany the commission of the crime; an element of the felony committed, thus, no longer considered against the offender in the determination of the penalty (*see Art. 62, no. 1, RPC*).

QUALIFYING	GENERIC
It gives the crime its proper and exclusive name.	If not offset by any mitigating circumstance, it increases the penalty to the maximum period without.
Cannot be offset by a mitigating circumstance.	Can be offset by a mitigating circumstance
Must be alleged in the information because it is an integral part of the offense.	It need not be alleged but may be proven during the trial.

RULES ON AGGRAVATING CIRCUMSTANCES

1. Shall not be appreciated if:
   a. Constitute a crime specially punishable by law;
   b. It is included by the law in defining a crime with a penalty prescribed, and therefore shall not be taken into account for the purpose of increasing the penalty;
   c. Circumstances inherent in the crime to such a degree that it must necessarily accompany the commission.
2. Only serve to aggravate the liability of the principals, accomplices and accessories are the aggravating circumstances which arise from:

a. Moral attributes of the offender
b. Private relationships of the offended party
c. Any personal cause

3. The circumstances which consist in the:
   a. Material execution of the act
   b. Means employed to accomplish it

   shall serve to aggravate the liability of only those person who had knowledge of them at the time of execution of the act or their cooperation therein. Except when there is proof of conspiracy in which case the act of one is deemed to be the act of all;
4. Aggravating circumstances, regardless of its kind, should be specifically alleged in the information and proved as fully as the crime itself in order to increase the penalty; it should not be presumed;
5. When there is more than one qualifying aggravating circumstance present, one of them will be appreciated as qualifying while the others will be considered as generic.

AGGRAVATING CIRCUMSTANCES IN SPECIAL LAWS

1. Dangerous Drugs Law of 2002 provides the circumstance of having been found positive for the use of dangerous drugs;
2. RA 7659 (Heinous Crime Law) such that *reclusion perpetua* shall be imposed in the crime of carnapping if murder, homicide or physical injuries were committed; or in the crime of kidnapping;
3. RA 8294 which provides the circumstance of use of unlicensed firearm in the commission of murder or homicide;
4. The Anti Rape Law enumerates several qualifying of rape;
5. RA 7610 (The Special Protection of Children Against Abuse, Exploitation and Discrimination Act of 1992) which provides that if the victim is below 12 years of age, the penalty for the crimes of murder, homicide, intentional mutilation, and serious physical injuries shall be *reclusion perpetua*; and in case of qualified seduction, acts of lasciviousness, corruption of minors and white slave trade, the penalty shall be one degree higher than that imposed by the RPC.

DO QUALIFYING CIRCUMSTANCES INCREASE THE PENALTY TO A HIGHER DEGREE?

No. The penalty prescribed by the law cannot be increased because that will violate the rule that a penalty not prescribed by law cannot be imposed (*see Art. 21, RPC*). Also, the *ex post facto* rule prohibits the imposition of a penalty greater than that prescribed by law when the crime was committed (*BOADO, 161*).

NOTE: It is not the qualifying circumstance itself that increases the penalty by degree. What the qualifying circumstance does is to change the nature of the crime resulting to the increase in the penalty. Thus, homicide becomes murder and the penalty for murder is higher than for the homicide (*Id., 161*).

NOTE: Generic aggravating circumstances, even if not allege in the information, may not be proven during the trial over the objection of the defense and may be appreciated in imposing the sentence. Such evidence merely forms part of the proof of the actual commission of the offense and does not violate the constitutional right of the accused to be informed of the nature and cause of accusation against him (*People v Ang, GR No. L-62833 [1985]*).

NOTE: Aggravating circumstances not alleged in the information but proven during the trial serve only to aid the court in fixing the limits of the penalty but do not change the character of the offense (*People v Collado, 60 Phil. 610, 614*).

AGGRAVATING CIRCUMSTANCES MUST BE ALLEGED IN THE INFORMATION

Under *Secs. 8 and 9 of Rule 110 of the Revised Rules of Criminal Procedure*, the distinction between generic and qualifying circumstances as to the allegation in the Information has been obliterated. The rule that a qualifying circumstance proved during the trial but was not alleged in the Information can be considered as generic aggravating is *no longer true* (*BOADO, 163*).

NOTE: Qualifying aggravating circumstances must be alleged in the information because it is an integral part of the offense (*REYES, 339*).

NOTE: Treachery is merely a generic aggravating circumstance when not alleged in the information but just proven at the trial (*People v Estillore, GR No. L-68459 [1986]*).

Par. 1 – That advantage be taken by the offender of his public position.

BASIS: Based on the greater perversity of the offender, as shown by the *personal circumstance of the offender* and also by the *means* used to secure the commission of the crime (*REYES, 346*).

ELEMENTS [PIPAR]

1. Offender is a public officer;
2. Public officer must use the influence, prestige, or ascendancy which his office gives him as means to realize criminal purpose.

MEAING OF "ADVANTAGE OBE TAKEN BY THE OFFENDER OF HIS PUBLIC POSITION"

The public officer must use the *influence, prestige or ascendancy* which his office gives him as the means by which he realizes his purpose. The essence of the matter is presented in the inquiry, "Did the accused abuse his office in order to commit the crime?" (*US v Rodriguez, 19 Phil. 150, 156-157*).

NOTE: There should be a deliberate intent to use the influence, prestige, or ascendancy.

NOT APPRECIATED WHEN

The public position is an *integral element* or *inherent* in the offense such as:

- Bribery;
- Indirect bribery;
- RA 3019
- Malversation of public funds;
- Falsification of public documents;
- Other crimes against public officer under the RPC.

NOTE: Failure in official duties is tantamount to abusing of office. Thus, the fact that defendant was the vice-president of a town at the time he voluntarily joined a band of brigands made his liability greater (*US v Cagayan, 4 Phil. 424, 426*).

NOTE: There must be proof that the accused took advantage of his public position (*REYES, 349*).

US v Dacuycuy
9 Phil. 84

FACTS: 39 persons requested the accused, then a councillor, to purchase *cedulas* for them. He took only 16 *cedulas*, and spent the rest of the money.

HELD: When a public officer commits a common crime independent of his official functions and does acts that are not connected with the duties of his office, he should be punished as a private individual without this aggravating circumstance.

NOTE: Dacuycuy did not avail himself of the influence, prestige or ascendancy which his position carried with it, when he committed the crime of estafa with abuse of confidence (*Art. 315, par. 1, RPC*). He received the money in his private capacity. He was requested by the people to buy *cedula* certificates for them.

People v Gapasin
GR No. 73489, 25 Apr. 1994
FACTS: Gapasin was a member of the Phil. Constabulary. He was issued a mission order to investigate a report regarding the presence of unidentified armed men in one barrio. He was informed that a certain Calpito had an unlicensed firearm. He shot Calpito with the use of an armalite after seeing the latter walking along the road. Gapasin was convicted of murder.

HELD: The accused took advantage of his public position because as a member of the PC, he committed the crime with an armalite which was issued to him when he received his order.

Par. 2 – That the crime be committed in contempt of or with insult to the public authorities.

BASIS: Greater perversity of the offender, as shown by his *lack of respect for the public authorities* (*REYES, 351*).

ELEMENTS **[ENON]**
1. Public authority is engaged in the exercise of his functions.
2. That he who is thus engaged in the exercise of said functions is not the person against whom the crime is committed;
3. The offender knows him to be a public authority;
4. His presence has not prevented the offender from committing the criminal act.

NOTE: It applies to a circumstance such that the presence of public authority has not prevented the offender from committing the crime. Paragraph 2 of Article 14 does not apply in a case where the crime was committed in the presence of an agent of the person in authority .

PUBLIC or PERSON IN AUTHORITY
One who is directly vested with jurisdiction, that is, a public officer who has the power to govern and execute the laws.

NOTES:
1. Teachers and lawyers are persons in authority for purposes of direct assault (*Art. 148*) and resistance and disobedience (*Art. 152*) but not under this article;
2. The public authority must not be the victim of the crime; but that the crime was committed by the accused in the presence, view or hearing of the public authority, and the former knows that he latter is a public officer. Otherwise, it will constitute direct assault;
3. Aggravating only in crimes against persons and honor, nor against property;
4. This is not applicable when committed in the presence of a mere agent.

AGENT OF PUBLIC AUTHORITY
A person who is charged with the maintenance of public order and the protection and security of life and property.

NOTE: Knowledge that the public authority is present is essential. Lack of knowledge on the part of the offender that a public authority is present indicates lack of intention to insult the public authority.

People v Tiongson
GR No. L-35123, 25 July 1984
FACTS: Rudy Tionson escaped from the Municipal Jail of a town in Oriental Mindoro, together with George dela Cruz and Rolando Santiago, where they were detained under the charge of Attempted Homicide. While in the act of escaping, Tionsong killed Police First Class Patrolman Zosimo Galera and PC Constable Aurelio Canela who went in pursuit of them.

HELD: The aggravating circumstance that the crimes were committed in contempt of or with insult to the public authorities cannot be appreciated since Galera and Canela were the very ones against whom the crime were committed. Besides, Galera and Canela are not persons in authority, but merely agents of persons in authority.

People v Magdueno
GR No. L-68699, 22 Sept. 1986
FACTS: On 15 Oct. 1980, a few minutes past 800H, as soon as Fiscal Fernando Dilig (herein victim) had placed himself at the driver's seat inside his jeep parked near his house, all of a sudden, two successive gunshots burst into the air inflicting fatal wounds that instantaneously caused his death.

HELD: The aggravating circumstance of insult to public authority does not saw to be borne by the records. For this aggravating circumstance to be considered it must not only be shown that the crime was committed in the presence of the public authority but also that the crime was not committed against the public authority himself. In the instance case, Dilig, the public authority involved in the crime, was the victim.

People v Tac-an
GR No. 76338-39, 26 Feb. 1990
FACTS: One day, Francis Ernest Escano, III (victim) accidentally sat down on Renato Tac-an's (accused) scrapbook. Enraged, Renato went to get his gun and returned to their classroom when Math class had just started. Then and there he started to shoot Francis amidst the presence of his their teacher and classmates.

HELD: The Court ruled that teacher or professor is deemed to be a person in authority for the purposes of application of Art 148 (direct assault), and 151 (resistance and disobedience) of the RPC. In marked contrast, the first paragraph of Art. 152 does not identify specific articles of the RPC for the application of which any person "directly vested with jurisdiction, etc." is deemed a "person in authority." Because a penal statute is not to be given a longer reach and broader scope than is called for by the ordinary meaning of the ordinary words used by such statute, hence, the Court ruled that teacher or professor are not to be regarded as "public authority" within the meaning of Art. 14(2) of the RPC.

Par. 3 – That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation.

BASIS: The greater perversity of the offender, as shown by the *personal circumstances of the offended party* and the *place of the commission of the crime* (*REYES, 354 and 360*).

AGGRAVATING CIRCUMSTANCES IN PAR. 4
Insult of disregard of:
1. Rank;
2. Age;
3. Sex
4. Dwelling.

RATIONALE FOR THESE AGGRAVATING CIRCUMSTANCES
Those generally considered of high station in life, on account of their rank, age or sex, deserve to be respected. Therefore, whenever there is a difference in social condition between the offender and the offended party, any of these circumstances sometimes is present (*People v Rodil, GR No. L-35156 [1981]*).

NOTE: When all the four aggravating circumstances are present, they have the weight of one aggravating circumstances only (*REYES, 353*). Nonetheless, the Court in People v Santos (*GR No. L-4189 [1952]*) held that there is the possibility of their being considered separately when their elements are *distinctly perceived* and *can subsist independently*, revealing a greater degree of perversity.

CRIMES AGAINST PERSON OR HONOR

Disregard of rank, age or sex are essentially applicable to crimes against persons or honor. Thus, it is not proper to consider this aggravating circumstance in crimes against property. Robbery with homicide is primarily a crime against property and not against persons. Homicide is a mere incident of robbery, the latter being the main purpose and object of the criminal (*People v Pagal, GR No. L-32040 [1977]*).

"WITH INSULT OR IN DISREGARD"

There must be evidence that in the commission of crime, the *accused deliberately intended to offend or insult* the rank, sex or age of the offended party (*People v Mangsant, 65 Phil. 548*). There must be a conscious or deliberate disregard of the respect of due to the offended party so that these are not appreciated when offender acted under passion, vindication or diminished will power, or was intoxicated.

NOTE: The circumstances under Art. 14, par. 3 are generic aggravating circumstances and can be offset by an ordinary mitigating circumstance.

THE CIRCUMSTANCE OF DISREGARD OF RANK, AGE OR SEX IS NOT APPLICABLE IN THE FOLLOWING CASES:

1. When the offender acted with passion and obfuscation (*People v Ibañez, CA, GR No. 1137-R [1948]*);
2. When there exists a relationship between the offended party and the offender (*People v Valencia, CA, 43 OG 3740*);
3. When the condition of being a woman is indispensable in the commission of the crime, *i.e.,* parricide, rape, abduction or seduction (*People v Lopez, GR No. L-14347 [1960]*);
4. When no evidence that the accused deliberately intended to offend or insult the age of the victim (*People v Diaz, GR No. 24002 [1974]*).

RANK

The designation or title of distinction used to fix the relative position of the offended party in reference to others (*ESTRADA, 141*).

Refers to the high social position or standing as a grade in the armed forces; or to a graded official standing or social position or station (*REYES, 355*).

NOTE: The victim is entitled to respect due to his social standing, high position or station in life or employment. There must be a difference in the social condition of the offender and the offended party, *e.g.,* a pupil who attacked and injured his teacher (*US v Cabiling, 7 Phil. 469*).

EXAMPLES WHERE RANK AGGRAVATED THE CRIME

1. The killing of a staff sergeant by his corporal (*People v Mil, 92 SCRA 89*);
2. The killing of the Assistant Chief of Personnel Transaction of the CSC by a clerk (*People v Benito, 62 SCRA 351*);
3. The murder by a pupil of his teacher (*People v Aragon, 107 Phil. 706*);
4. The murder of a municipal mayor (*People v Lopez de Leon, 69 Phil. 298*);
5. The killing of an army general (*People v Torres, GR No. L-4642 [1953]*);
6. The killing of a Spanish consul by his subordinate (*Peole v Godinez, 106 Phil. 597*);
7. The murder of a city chief of police by the chief of the secret service division (*People v Hollero, 88 Phil. 167*).

AGE

Refers to old age or tender age of the victim. There must be a disparity in their age, *e.g.,* the aggressor was 45 years old, while the victim was an octogenarian (*People v Orbilla, GR No. L-2444 [1950]*).

NOTE: For this circumstance to be appreciated, the disparity of age between the offender and victim can be determined *if the victim can be the father of the accused* (*US v Esmedia, 17 Phil. 260*).

DELIBERATE INTENT TO OFFEND OR INSULT REQUIRED

The circumstances of old age cannot be considered aggravating in the absence of evidence that the accused deliberately intended to offend or insult the age of the victim (*People v Diaz, GR No. L-24002 [1974]*).

NOTE: This circumstance applies to *tender age* as well as to *old age*. This circumstance was applied in a murder case where one of the victims was a boy 12 years of age (*US v Butag, 38 Phil. 746*).

SEX

Only refers to female sex, not to the male sex (*REYES, 358*). Thus, when a person compels a woman to go to his house against her will, the crime of coercion with the aggravating circumstance of disrespect to sex is committed (*US v Quevengco, 2 Phil. 412*).

IS THE MERE FACT THAT THE VICTIM OF THE OFFENSE IS A FEMALE AN AGGRAVATING CIRCUMSTANCE?

No. It must also be shown that the offender specially saw to it that his victim be a woman. The aggravating circumstance of sex is not sustained by the fact that the victim was a woman, unless it further appears that there was in the commission of the crime some specific insult or disrespect shown to her womanhood (*People v Puno, GR No. L-33211 [1981]*).

NOTE: Disregard of sex, age and rank are not absorbed in treachery because the latter refers to the manner of commission while the former pertains to the relationship of the victim (*People v Lapaz, GR No. 68898 [1989]*).

DWELLING (*Morada*)

Refers to any structure habitually used by a person as his place of rest, comfort, privacy, and peace of mind. It may be a man-made or a natural habitat, as a cave used as a residence. What is emphasized is not the appearance but the purpose or use thereof. Dwelling includes dependencies, the foot of the staircase and enclosure under the house (*US v Tapan, 20 Phil. 211*). It is a sanctuary worthy of respect and that one who slanders another in the latter's house is more guilty than he who offends him elsewhere. The victim may be the owner, the lessee, a boarder, a stay-in employee or a temporary visitor (*People v Daniel, GR No. L-40330 [1978]*).

NOTE: The aggravating circumstance of dwelling required that the crime be wholly or partly committed therein or in any integral part thereof.

NOTE: Dwelling does not mean the permanent residence or domicile of the offended party or that he must be the owner thereof. He must, however, be actually living or dwelling there in even for a temporary duration or purpose (*People v Paraza, GR No. 121176 [1997]*).

RECKONING POINT MUST BE THE PLACE OF THE VICTIM WHEN THE OFFENSE WAS COMMITTED

It is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense. It is enough that the victim was attacked inside his own abode, although the assailant might have devised means to perpetrate the assault from the outside (*People v Bagsit, GR No. 148877 [2003]*).

NOTE: Dwelling is not included in the qualifying circumstance of treachery (*People v Catapang, GR No. 128126 [2001]*).

WHAT AGGRAVATES THE COMMISSION OF THE CRIME IN ONE'S DWELLING

1. The abuse of confidence which the offended party reposed in the offender by opening the door to him;
2. The violation of the sanctity of the home by trespassing therein with violence or against the will of the owner (*REYES, 361*).

DWELLING WAS FOUND AGGRAVATING IN THE FOLLOWING CASES ALTHOUGH THE CRIME WAS COMMITTED NOT IN THE DWELLING OF THE VICTIM

1. The victim was raped in the boarding house where she was a bed spacer (*People v Daniel, GR No. L-40330 [1978]*);
2. The victims were raped in parental home where they were guests at the time (*REYES, 366*).

   NOTE: In *People v Ramolete* (*GR No. L-28108 [1974]*), dwelling was not considered aggravating because the victim was a mere visitor in the house where he was killed.

3. The victims, while sleeping as guests in the house of another person, were shot to death (*People v Basa, GR No. L-2014 [1948]*).

NOTE: The Code speaks of "dwelling" not domicile (*People v Parazo, GR No. 121176 [1997]*).

LACK OF SUFFICIENT PROVOCATION ON THE OFFENDED PARTY

A condition *sine qua non* of this circumstance is that the offended party has not given provocation to the offender (*People v Ambis, GR No. 46295 [1939]*).

REASON

When it is the offended party who has provoked the incident, he loses his right to the respect and consideration due him in his own house (*Id.*).

MEANING OF PROVOCATION IN THE AGGRAVATING CIRCUMSTANCE OF DWELLING (*Morada*)

If *all* of the following conditions are present, the offended party is deemed to have given provocation, and the fact that the crime is committed in the dwelling of the offended party is *not* an aggravating circumstance **[GSI]**:

1. Given by the owner of the dwelling;
2. Sufficient;
3. Immediate to the commission of the crime.

NOTE: The provocation must also have a close relation to the commission of the crime in the dwelling (*People v Dequiña, GR No. 41040 [1934]*).

DWELLING IS NOT AGGRAVATING IN THE FOLLOWING CASES

1. When both the offender and the offended party are occupants of the same house (*People v Caliso, GR No. 37271 [1933]*);

   Exception: In case of *adultery* in the conjugal dwelling (*US v Ibañez, GR No. 40672 [1915]*).

   Note: If the paramour also dwells in the conjugal dwelling, the applicable aggravating circumstance is abuse of confidence (*Id.*).

2. When robbery is committed by the use of *force upon things*, dwelling is not aggravating because it is inherent (*Us v Cas, GR No. 5071 [1909]*);

   Note: Dwelling is aggravating in robbery *with violence against* or *intimidation of persons* because this class of robbery can be committed without the necessity of trespassing the sanctity of the offended party's house (*People v Cabato, GR No. L-37400 [1988]*).

   Note: Dwelling is not inherent, hence aggravating, in *robbery with homicide* since the author thereof could have accomplished his heinous deed without having to violate the domicile of the victim (*People v Mesias, GR No. 67823 [1991]*).

3. In the crime of trespass to dwelling, it is inherent or included by law in defining the crime (*REYES, 366*);
4. When the owner of the dwelling gave sufficient and immediate provocation (*Id.*);
5. The victim is not a dweller of the house (*People v Guhiting, 88 Phil. 672*);
6. When the rape was committed in the ground floor of a two-storey structure, the lower floor being used as a video rental store and not as a private place of abode or residence (*People v Taño, GR No. 133872 [2000]*).

NOTE: Although nocturnity and abuse of superior strength are always included in the in the qualifying circumstance of treachery, dwelling *cannot be included therein* (*People v Ruzol, 100 Phil. 537.*

People v Arizobal
GR No. 135051, 14 Dec. 2000

FACTS: Arizobal and two others entered the house of spouses Clementina and Laurencio Gimenez. They then ransacked the house and ordered Laurencio to go with them to his son Jimmy's house. Upon reaching the house, they tied the latter and one Francisco Gimenez. They consumed the food and cigarettes in Erlinda (Jimmy's wife). They proceeded to ransack the household in serach of valuables. Thereafter, Erlinda was ordered to produce P100,000 in exchange for Jimmy's life. Erlinda offered to give a certificate of large cattle but the document was thrown back at her. The 3 then dragged Jimmy outside together with Laurencio. On of the culprits returned and told Erlinda that Jimmy and Laurencio had been killed for trying to escape. The trial court found Arizobal and Lignes guilty of robbery with homicide. It also appreciated the aggravating circumstance of dwelling.

HELD: The Court held the decision of the trial court. Generally, dwelling is considered inherent in the crimes which can only be committed in the abode of the victim, such as trespass to dwelling and robbery in an inhabited place. However, in robbery with homicide the authors thereof can commit the heinous crime without transgressing the sanctity of the victim's domicile. In the case at bar, the robbers demonstrated an impudent disregard of the inviolability of the victims' abode when they forced their way in, looted their houses, intimidated and coerced their inhabitants into submission, disabled Laurencio and Jimmy by trying their hands before dragging them out of the house to be killed.

People v Daniel
GR No. L-40330, 20 Nov 1978

FACTS: 13-year-old Margarita was at the bus station when the accused, Daniel, started molesting her, asking her name and trying to get her bag to carry it for her. She refused and asked the help of the conductor and driver but they did not help her. She ran to the jeepney stop and rode the jeep. Daniel followed her to the boarding house and he raped her.

HELD: Although Margarita was merely renting a bedspace in a boarding house, her room constituted for all intents and purposes a "dwelling" as the term is used in Art. 14(3) of the RPC. Be he a lessee, a boarder, or a bedspacer, the place is his home the sanctity of which the law seeks to protect and uphold.

Par. 4 – That the act be committed with abuse of confidence, or obvious ungratefulness.

BASIS: The greater perversity of the offender, as shown by the *means* and *ways* employed (*REYES, 368*).

NOTE: Par. 4 provides two aggravating circumstances which, if present in the same case, must be independently appreciated While one may be related to the other in the factual situation in the case, they cannot be lumped together as abuse of confidence requires a special confidential relationship between the offender and the victim, but this is not so in ungratefulness.

THE RELATIONSHIP WHICH INVOLVED TRUST MAY BE

1. Created by contract;
2. Created by law, as an appointed guardian, etc;
3. By blood;
4. By affinity;
5. By close association and membership in some common organization or group;
6. By human relationships.

ABUSE OF CONFIDENCE (*Abuso de confianza*)

Exists only when the offended party has *trusted* the offender who later *abuses* such trust by committing the crime. It is the offender's act of taking advantage of the offended party's belief that the former would not abuse said confidence (*Id.*).

REQUISITES OF ABUSE OF CONFIDENCE [FAT]

1. Abuse of confidence facilitated the commission of the crime;
2. The offender abused such trust by committing a crime against the offended party;
3. Offended party had trusted the offender (*People v Luchico, 49 Phil. 689*).

IMMEDIATE AND PERSONAL RELATION

For this aggravating circumstance to exist, the confidence between the offender and the offended party must be immediate and personal (*People v Arojado, GR No. 130492 [2001]*).

NOTE: Abuse of confidence is not appreciated where a nanny who killed the 12 year old child under her care for there is no direct relationship and trust between the nanny (offender) and the child (offended party).

WHEN ABUSE OF CONFIDENCE IS INHERENT [STEM]

1. Qualified seduction (*Art. 337, RPC*).
2. Qualified theft (*Art. 310, RPC*);
3. Estafa by conversion or misappropriation (*Art. 315, RPC*);
4. Malversation (*Art. 217, RPC*);

CONFIDENCE MUST BE EXISTING DURING THE COMMISSION OF THE CRIME

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

REQUISITES OF OBVIOUS UNGRATEFULNESS [TAO]

1. The offended party had trusted the offender;
2. The offender abuse such trust by committing a crime agsint the offended party;
3. The act be committed with obvious ungratefulness, *i.e.*, manifest and clear.

WHEN OBVIOUS UNGRATEFULNESS IS PRESENT

1. When the accused killed his father-in-law in whose house he lived and who partially supported him (*People v Floresca, GR Nos. L-8614-15 [1956]*);
2. When the victim was suddenly attacked while in the act of giving the assailants their bread and coffee for breakfast (*People v Bautista, GR No. L-38624 [1975]*);
3. When the accused was living in the house of the victim who employed him as an overseer and in charge of carpentry work, and had free access to the house of the victim (*People v Lupango, GR No. L-32633 [1981]*);

People v Mandolado
GR No. L-51304-05, 28 June 1983

FACTS: Mandolado and Ortillano, with Erinada and Simon are trainees/draftees of the AFP. They got to know each other and had a drinking session at the bus terminal. The accused was drunk. He got his gun and started firing. Erinada and Simon rode a jeep and tried to escape from Mandolado and Ortillano but the two eventually caught up with them. The two accused shot the victims to death.

HELD: There is no AC of abuse of confidence. In order that abuse of confidence be deemed as aggravating, it is necessary that "there exists a relation of trust and confidence between the accused and one against whom the crime was committed and that the accused made use of such a relationship to commit the crime. It is also essential that the confidence between the parties must be immediate and personal such as would give the accused some advantage to commit the crime. It is obvious that the accused and the victims only met for the first time so there is no personal or immediate relationship upon which confidence might rest between them.

Par. 5 – That the crime be committed in the palace of the Chief Executive, or in his presence, or where the public authorities are engaged in the discharge of their duties, or in any place dedicated to religious worship.

BASIS: The greater perversity of the offender, as shown by the *place of commission of the crime*, which must be *respected* (*REYES, 371*).

SPECIFIED PLACES UNDER PAR. 5

1. Malacañang Palace;
2. In the *presence* of the Chief Executive;
3. Where public authorities are in the *actual performance* of their functions, as in their offices;
4. In a *place dedicated for religious worship*, even if no religious ceremony is going on.

NOTE: Actual performance of duties is not necessary when crime is committed in The Palace or in the presence of the Chief Executive (*REYES, 372*).

THE OFFENDER MUST HAVE INTENTION TO COMMIT A CRIME WHEN HE ENTERED THE PLACE

Any of the following places must have been *purposely sought* for or they were *deliberately chosen.*

NOTE: The offender should have knowledge that the Chief Executive was present or near the place of commission of the crime in order to appreciate the aggravating circumstance.

NOTE: Cemeteries, however respectable they may be, are not considered as place dedicated to the worship of God.

NOTE: In order to appreciate the aggravating circumstance, the place of religious worship should hold religious ceremonies there *regularly*.

Other Public Officers

Par. 2	Par. 5
Engaged in their performance of their duties	
Public duty is being performed outside their office.	Public duty is being performed in their office.
Should not be the offended party.	May/may not be the offended party

Par. 6 – That the crime be committed in the nighttime, or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.

BASIS: Based on the *time* and *place* of the commission of the crime and *means* and *ways* employed (*Id., 374*).

AGGRAVATING CIRCUMSTANCES UNDER PAR. 6

1. In nighttime (*nocturnidad*);
2. In an uninhabited place (*despoblado*);
3. By a band (*en cuadrilla*).

NOTE: When all 3 aggravating circumstances are present in the same case and their elements are distinctly palpable and can subsist independently, they shall be considered separately (*People v Santos, GR No. L-4189 [1952]*).

NOTE: Not applicable when the mitigating circumstances of passion or obfuscation or sufficient provocation are present in the commission of the crime.

APPLICABLE IN CASES WHERE

1. When it facilitated the commission of the crime;
2. When especially sought for by the offender to insure the commission of the crime or for the purpose of impunity;
3. When the offender took advantage thereof for the purpose of impunity (*REYES, 374-375*).

NIGHTTIME (*Nocturnidad*)

That period of darkness beginning at end of dusk and ending at daw. Nights are from sunset to sunrise (*Art. 13, CC*).

NOTE: Nighttime by and of itself is not an aggravating circumstance (*People v Boyles, GR No. 15308 [1964]*).

TWO TEST (*People v Garcia, GR No. L-30449 [1979]*)

1. **Objective Test** – Nighttime facilitated the commission of the crime;
2. **Subjective Test** – The offended *especially sought* or *too advantage of* nighttime in the commission of the offense for the purpose of impunity

NIGHTTIME MAY FACILITATE THE COMMISSION OF THE OFFENSE

Nocturnidad facilitate the commission of the crime when because of the darkness of the night the crime can be perpetrated *unmolested,* or *interference* can be avoided, or there would be greater certainty in attaining the ends of the offender (*People v Matbagon, 60 Phil. 887*).

"ESPECIALLY SOUGHT"

Nighttime was sought for where the accused lingered for almost 3 hours in the evening at the restaurant before carrying out their plan to rob it (*People v Lungbos, GR No. L-57293 [1988]*).

Nighttime is *not* especially sought for when the notion to commit the crime was conceived only *shortly* before its commission (*People v Pardo, 79 Phil. 568*) or when the crime was committed at night upon mere casual encounter (*People v Cayabyab, 274 SCRA 387*).

"TOOK ADVANTAGE OF"

Because of the silence and darkness of the night which enabled the offender to take away the girl with impunity – a thing which undoubtedly the offender could not have done in the daytime and in sight of people (*US v Yumul, 34 Phil. 169*).

"FOR THE PURPOSE OF IMPUNITY"

To prevent the accused's being recognized, or to secure himself against detection and punishment (*People v Matbagon, 60 Phil. 887*).

MUST BE ALLEGED IN THE INFORMATION

The information must allege that nighttime was sought for or taken advantage of by the accused or that if it facilitated the commission of the crime. The bare statement in the information that the crime was committed in the darkness of the night fails to satisfy the criterion (*People v Fernandez, GR No. L-32623 [1972]*).

NOTE: It is necessary that the commission of the crime began and was complete at nighttime (*US v Dowdell, GR No. 4191 [1908]*).

NOTE: When the light was bright enough to see what was going on and to recognize the assailants, nighttime does not qualify as an aggravating circumstance under either the subjective or objective tests (*People Bigcas, GR No. 94534 [1992]*).

NOTE: The Court rejected the contention that nocturnity could not be appreciated because flashlights were used (*People v Berbal, GR No. 71527 [1989]*).

GENERAL RULE

Nighttime is absorbed in treachery (*alevosia*).

EXCEPTION

Where both the treacherous mode of attack and *nocturnidad* were deliberately decided upon in the same case, they can be considered separately if such circumstances have different factual bases. Hence, in the case of *People vs. Berdida, et. al*. (*GR No. L-20183 [1966]*), nighttime was considered since it was purposely sought, and treachery was further appreciated because the victim's hands and arms were tied together before he was beaten up by the accused.

UNINHABITED PLACE (*Despoblado*)

It is one where there are no houses at all, a place at a considerable distance from town, or where the houses are scattered at a great distance from each other (*REYES, 380*).

The uninhabitedness of a place of *locus delicti* is determined not solely by the distance of the nearest house to the scene but also whether or not in the place of commission of the offense, there was reasonable possibility of the victim to receive some help (*People v Balisteros, GR No. 110289 [1994]*).

NOTE: This should not be considered when the place where the crime was committed could be seen and the voice of the deceased could be heard from a nearby house (*People v Santos, GR No. L-38512 [1979]*).

THE PLACE MUST BE SOUGHT BY THE OFFENDERS

It must appear that the accused sought the solitude of the place where the crime was committed in order to better attain his purpose (*People v Aguinaldo, 55 Phil. 610*).

It cannot be applied in cases of chance encounters (*People v Arpa, GR No. L-26789 [1969]*).

The offenders must choose the place as an aid either:

1. To an easy and uninterrupted accomplishment of their criminal designs;
2. To insure concealment of the offense (*People v Andaya, GR No. L-63862 [1987]*).

NOTE: If the defendants did not select the place either to better attain their object without interference or to secure themselves against detection and punishment, *despoblado* cannot be considered (*People v Deguia, 88 Phil. 520*).

BY A BAND (*En Cuadrilla*)

At least 4 malefactors who shall have acted together in the commission of an offense (*REYES, 382*).

REQUISITES [MAD]

1. More than 3 persons;
2. At least 4 of them should be armed;
3. Directly participated

NOTE: At least 4 malefactors must be armed. Hence, even if there are 20 persons, but only 3 are armed, this aggravating circumstance by a band cannot be considered (*US v Mendigoren, 1 Phil. 658*).

NOTE: Stone is included in the term "arms" (*People v Manlolo, GR No. 40778 [1989]*).

PRINCIPALS BY DIRECT PARTICIPATION

The 4 armed persons contemplated in this circumstance must all be *principals by direct participation* who acted together in the execution of the acts constituting the crime (*Art. 17, RPC*). In this case, conspiracy is presumed.

If one of them was a *principal by inducement*, the aggravating circumstance of having acted with the *aid of armed men* may be considered and not *en cuadrilla* (*Gamara v Valero, GR No. L-36210 [1973]*).

NOTE: *En cuadrilla* absorbs the aggravating circumstances of *abuse of superior strength* and *use of firearms* (except when the firearm has no license or there is a lack of license to carry the firearm) if they are present in the commission of the crime (*People v Escabarte, GR No. 42964 [1988]*).

ART. 16, PAR. 6 *By a Band*	ARTS. 295 and 296 *Robbery*
Generic aggravating circumstance.	Applies only to *robbery* with unnecessary violence or physical injuries under Art. 263, pars. 2, 3 and 4 in relation to Art. 294, pars. 3, 4 and 5.

NOTE: If the classes of robbery mentioned in Art. 294, pars. 1 and 2 are perpetrated by a band, they would not be punishable under Art. 295, but then *cuadrilla* would be a generic aggravating circumstance under Art. 14.

NOTE: When conspiracy is proved, *cuadrilla* may be appreciated.

Illustration:

A, B, C and D, all were armed with bolo, went to the house of E with the purpose of killing E. A and B stood at the front door as lookouts. C and D stabbed E which caused his immediate death. A, B, C, and D were all principals in the commission of murder or homicide, as the case may be.

Illustration:

A, B, C and D, all were armed with bolo, went to the house of E with intent to gain. A and B stood at the front door as lookouts. C and D went inside the house. E saw them and upon such, C and D stabbed E which caused his immediate death. A and B were merely accomplice in the commission of murder or homicide, as the case may be.

Par. 7 – That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune.

BASIS: The *time* of the commission of the crime (*REYES, 385*).

REASON FOR THE AGGRAVATION

In the midst of a great calamity, the offender, instead of lending aid to the afflicted, adds to their suffering by taking advantage of their misfortune to despoil them. It is necessary that the offender took advantage of the calamity or misfortune (*US v Rodriguez, 19 Phil. 150*).

OTHER CALAMITY OR MISFORTUNE

Refers to the conditions of distress similar to those precedingly enumerated (*People v Corpus, CA, 43 OG 2249*).

NOTE: There should be deliberate intent to take advantage of this circumstance. Thus, if the accused was provoked by the offended party to commit the crime during the calamity or misfortune, this aggravating circumstance may not be taken into consideration (*REYES, 385*).

NOTE: It is inapplicable to cases attendant of negligence or carelessness, passion or obfuscation and chance encounters.

Par. 8 – That the crime be committed with the aid of armed men, or persons who insure or afford impunity

BASIS: *Means* and *ways* of committing the crime (*Id., 386*).

REQUISITES

1. That armed men or persons took part in the commission of the crime, directly or indirectly;
2. That the accused availed himself of their aid or relied upon them when the crime was committed (*Id.*).

ARMED MEN

Person equipped with a weapon (*Black's Law Dictionary*).

Illustration:

A, in order to get rid of her husband, secured the services of other Moros by promising them rewards and had them kill her husband. In accordance with the plan, they armed themselves with clubs, went to the house of the victim and clubbed him to death while A held a lighted lamp. A also supplied them with rope with which he tie her husband. In this case, A committed parricide with aid of armed men (*People v Ilane, GR No. L-45902 [1938]*).

NOTE: This aggravating circumstance requires that the armed men are accomplices who take part in a minor capacity directly or indirectly, and not when they were merely present at the crime scene. Neither should they constitute a band, for then the proper aggravating circumstance would be *cuadrilla.*

THE DEFENDANT MUST AVAIL HIMSELF OF THEIR AID

The mere casual presence of armed men more or less numerous, near the place of the occurrence does not constitute an aggravating circumstance when it appears that the defendant did not avail himself in any way of their aid, and did not knowingly count upon their assistance in the commission of the crime (*US v Abaigar, GR No. 1255 [1903]*).

WHEN AID OR ARMED MEN IS NOT APPRECIATED

1. When both the attacking party and the party attacked were equally armed (*REYES, 387*);
2. When there is conspiracy (*People v Amion, GR No. 140511 [2001]*).

ART. 14, PAR. 6 *By a Band*	ART. 14, PAR. 8 *Aid of Armed Men*
As to their number	
At least 4;	At least 2;
As to their action	
Requires that more than 3 armed malefactors shall have acted together in the commission of an offense;	This circumstance is present even if 1 of the offenders merely relied on their aid, for actual aid is not necessary;
As to their liability	
Band members are all principals.	Armed men are mere accomplices.

NOTE: Mere moral or psychological aid or reliance is sufficient to constitute this aggravating circumstance.

NOTE: If there are 4 armed men, aid of armed men is absorbed in *cuadrilla* (*REYES, 388*).

NOTE: "Aid of armed men: includes "armed women" (*People v Licop, GR No. L-6061 [1954]*).

Par. 9 – That the accused is a recidivist

A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code.

BASIS: The greater perversity of the offender, as shown by his inclination to crimes (*REYES, 388*).

RECIDIVIST

He is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the RPC (*People v Lagarto, GR No. 65833 [1991]*).

NOTE: A recidivist is entitled to the benefits of the Indeterminate Sentence Law but is disqualified from availing credit of his preventive imprisonment.

REQUISITES

1. That the offender is on trial for an offense;
2. That he was previously convicted by final judgment of another crime;
3. That both the first and the second offenses are embraced in the same title of the Code;
4. That the offender is convicted of the new offense (*REYES, 389*).

NOTE: Recidivism requires at least 2 convictions: the first must be by final judgment and must take place prior to the second conviction. *Final Judgment* means executory, *i.e.*, 15 days have elapsed from its promulgation without the convict appealing the conviction (*BOADO, 179*).

"TIME OF THE TRIAL"

Not to be restrictively construed as to mean the date of arraignment. It is employed in its general sense, including the rendering of the judgment. It is meant to include everything that is done in the course of the trial (*People v Lagarto, GR No. 65833 [1991]*).

RECKONING POINT

What is controlling is the *time of trial*, not the time of the commission of the crime. It is not required that at the time of the commission of the crime, the accused should have been previously convicted by final judgment of another crime.

NOTE: If both offenses were committed on the same date, they shall be considered as only one, hence, they cannot be separately counted in order to constitute recidivism. Also, judgments of conviction handed down on the same day shall be considered as only one conviction (*Galang v People, GR No. L-45698 [1937]*).

NOTE: Recidivism must be taken into account no matter how many years have intervened between the first and second felonies (*People v Jaranilla, GR No. L-28547 [1974]*).

EFFECT OF PARDON FOR THE FIRST OFFENSE

Even if the accused was granted a pardon for the first offense, but he commits another felony embraced in the same title of the Code, the first conviction is still counted to make him a recidivist, since pardon does not obliterate the fact of the prior conviction (*US v Sotelo, GR No. 9791 [1914]*).

NOTE: When one offense is punishable by an ordinance or special law and the other by the RPC, the 2 offenses are not embraced in the same title of the Code (*REYES, 390*). (*Nonetheless, take note of Art. 10 which provides that the provisions of the RPC should be deemed as supplementing special laws of a penal character*).

NOTE: To prove recidivism, it is necessary to alleged the same in the information and to attaché thereto certified copy of the sentence rendered against the accused (*ESTRADA, 151*).

RECIDIVISM	HABITUAL DELINQUENCY
As to conviction	
Two are enough;	Three are required;
As to crimes covered	
Must be both under the same Title of the Code;	Falsification, robbery (*robo*), estafa, theft (*hurto*), serious and less serious physical injuries;
As to prescription	
None as no time limit given by law between the 1st and the 2nd conviction;	Prescribes after 10 years between the 2nd and 3rd conviction;
As to nature	
Generic aggravating circumstance; can be offset by ordinary mitigating circumstance;	Special circumstance; cannot be offset;
As to penalty	
Increase to the maximum period.	Entails additional penalty which increases with the number of conviction.

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

BASIS: The greater perversity of the offender as shown by his inclination to crimes (*REYES, 391*).

REQUISITES OF HABITUALITY (*Reiteracion*) [OPELIC]

1. That the accused in on trial for an offense;
2. That he previously served sentence:
   a. For another offense to which the law attaches an equal or greater penalty;
   b. For 2 or more crimes to which the law attaches a lighter penalty

   than that for the new offense;
3. That he is convicted of the new offense.

NOTE: If the second offense or crime is punishable under a special law, it cannot be considered under *Reiteracion* because Arts. 13, 14 and 15 of the RPC are not applicable to special law crimes.

Illustration:

The accused once served sentence for homicide punishable by a penalty ranging from 12 -20 years. Now, he is convicted of falsification punishable by a penalty ranging from 6-12 years.

Habituality or reiteracion may be appreciated in this case for the penalty for the 1st offense (homicide) for which he served sentence is greater, than that for the new offence (falcification) (REYES, 393).

NOTE: Although the law requires only final judgment in recidivism, even if the convict served sentence for one offense, there is still recidivism, provided that first and the second offenses are embraced in the same title of the Code (*Id.*).

IT IS THE PENALTY ATTACHED TO THE OFFENSE, NOT THE PENALTY ACTUALLY IMPOSED

Par. 10 or Art. 14 speaks of penalty attached to the offense, which may have several periods. Hence, even if the accused served the penalty of *prision mayor* in its minimum period and is not convicted of an offense for which the penalty of *prision mayor* maximum is imposed, there is still habituality, provided that the penalty attached to the 2 offenses is *prision mayor* in its full extent (*Id., 393-394*).

REITERACION IS NOT ALWAYS AGGRAVATING

If, as a result of taking this circumstance into account, the penalty for the crime of murder would be death and the offenses for which the offender has been previously convicted are against property and not directly against persons, the court should exercise its discretion in favor of the accused by not taking this aggravating circumstances into account (*Id., 394*).

FOUR FORMS OF REPETITION

RECIDIVISM Art. 14, par. 9	Where a person, on separate occasions, is convicted of 2 offense embraced in the same title in the RPC;
REITERACION	Where the offender has been previously

Art. 14, par. 10	punished for an offense to which the law attaches an equal or greater penalty or for 2 crimes to which it attaches a lighter penalty;
HABITUAL DELINQUENCY Art. 62, par. 5	Where a person within a period of 10 years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robbery, theft, estafa or falsification, is found guilty of the said crimes a third time or oftener;
QUASI-RECIDIVISM Art. 160	Where a person commits felony before beginning to serve or while serving sentence on a previous conviction for a felony.

NOTE: The first 2 are generic, while the 3rd is an extraordinary aggravating. The 4th is a special aggravating.

Illustration:

A was convicted of and served sentence for theft in 1935; after his release he committed robbery, was convicted in 1937 and was released in 1938; and in 1945 was convicted of estafa. He is habitual delinquent and the law will impose additional penalty aside from that impose by the law to estafa.

Illustration:

A, while serving sentence in Bilibid for one crime, struck and stabbed the foreman of the brigade of prisoners. Under Art. 160 of the Code, he shall be punished with the maximum period of the penalty prescribed by law for the new felony.

ART. 14, PAR. 10 *Reiteracion*	ART. 14, PAR. 9 *Recidivism*
As to the first offense	
It is necessary that the offender shall have served out his sentence for the first offense;	It is enough that a final judgment has been rendered in the first offense;
As to kind of offenses involved	
The previous and subsequent offenses must not be embraced in the same title of the Code;	Requires that the offenses be included in the same title of the Code;
As to frequency	
Not always an aggravating circumstance.	Always to be taken into consideration in fixing the penalty to be imposed upon the accused.

NOTE: Since *reiteracion* provides that the accused has duly served the sentence for his previous conviction/s, or is legally considered to have done so, quasi-recidivism cannot at the same time constitute *reiteracion*. Hence, this aggravating circumstance cannot apply to a quasi-recidivist.

NOTE: If the same set of facts constitutes recidivism and *reiteracion*, the liability of the accused should be aggravated by *recidivism* which can easily be proved.

Par. 11 – That the crime be committed in consideration of a price, reward or promise.

BASIS: The greater perversity of the offender, as shown by the *motivating power* itself (*REYES, 395*).

NOTE: To consider this circumstance, the price, reward, or promise must be the primary reason or primordial motive for the commission of the crime (*ESTRADA, 156*). Evidence must show that one of the accused used money or other valuable consideration for the purpose of inducing another to perform the deed (*US v Gamao, 23 Phil. 81*).

REQUISITES

1. There are at least 2 principals:
   a. Principal by inducement;
   b. Principal by direct participation.
2. The price, reward or promise should be previous to and in consideration of the criminal act.

CONCURRENCE OF TWO OR MORE OFFENDERS

There must be 2 or more principals, the one who gives or offers the price or promise and the one who accepts it, both of whom are principals (*REYES, 395*).

APPLICABILITY

It applies not only to the person who received the price or the reward, but also the person who gave it (*US v Parro, 36 Phil. 923*).

NOTE: If without previous promise it was given voluntarily after the crime had been committed, it should not be taken into consideration for the purpose of increasing the penalty (*US v Flores, GR No. 9008 [1914]*).

NOTE: If the price, reward or promise is alleged in the information as a qualifying aggravating circumstance, it shall be considered against all the accused, it being an element of the crime of murder (*People v Talledo et Timbreza, 85 Phil. 539*). However, if the other co-conspirators did not benefit from the price, promise or reward, they will not have their penalty aggravated because this circumstance is personal to the receiver (*BOADO, 183*).

NOTE: The price, reward, or promise *need not* consist of or refer to material things or that the same were actually delivered.

NOTE: It is sufficient that the offer made by the principal by inducement be accepted by the principal by direct participation before the commission of the offense.

Par. 12 – That the crime be committed by means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste and ruin.

BASIS: *Means* and *ways* employed (*REYES, 397*).

AGGRAVATING CIRCUMSTANCES IN PAR. 12 [FIRE SAD]

1. Fire;
2. Inundation;
3. Poison;
4. Explosion;
5. Stranding or intentional damage of a vessel;
6. Use of artifice involving great waste or ruin;
7. Derailment of a locomotive.

NOTE: The circumstances under this paragraph will only be considered as aggravating if and when they are used by the offender as means to accomplish a criminal purpose (*Id., 398*).

WHEN INCLUDED BY THE IN DEFINING CRIMES

Fire, explosion and derailment of locomotive may be part of the definition of a particular crime, such as, arson, crime involving destruction, and damages and obstruction to means of communication. In these cases, they do not serve to increase the penalty, because they are already included by the law in defining the crimes (*REYES, 400*).

ARTICLE 14, PAR. 12 vs ARTICLE 62, PAR. 1

These circumstances by themselves constitute a crime, hence, Art. 62 (1) will apply. Thus, "aggravating circumstances which in themselves constitute a crime specially punished by law or which are included by the law in defining a crime and prescribing the penalty therefor shall *not be taken* into account for the purpose of increasing the penalty." If one of these circumstances was a means to kills, the crime is murder, not homicide, hence, the penalty will be for murder. The circumstance will no longer be considered aggravating (*BOADO, 183*).

When another aggravating circumstance already qualifies the crime, any of these aggravating circumstances shall be considered as *generic aggravating circumstance* only (*REYES, 398*).

WHEN NOT USED BY THE OFFENDER AS MEANS TO ACCOMPLISH A CRIMINAL DESIGN

When there is no actual design to kill a person in burning a house, it is plain *arson* and the act resulting in the death of that person is not even an independent crime of homicide, it being *absorbed* (*People v Paterno, 85 Phil 722*). Had there been an intent to kill, the crime committed is *murder*, qualified by circumstance that the crime was committed by means of *fire* (*see Art. 248, RPC*).

NOTE: The killing of the victim *by means* of such circumstances as inundation, fire, poison, or explosion qualifies it to murder (*Art. 248, par. 3*).

INUNDATION

It refers to the use of water or causing the water to flood in the commission of the offense.

NOTE: The use of the foregoing circumstances should *purposely adopted* as a means to the end of the criminal design (*US v Burns, 41 Phil. 418*).

PAR. 12 ***By means of inundation, fire, etc.***	**PAR. 7** ***On the occasion of conflagration, etc.***
The crime is committed *by means* of any such acts involving great waste or ruin.	The crime is committed *on the occasion* of a calamity or misfortune.

Rules as to the use of *Fire* and *Explosion*

ACT OF THE ACCUSED	CRIME COMMITTED
Intent was only to burn or destroy by means of explosive but somebody died;	Simple arson but with a specific penalty (*see Art. 326*);
If fire or explosive was used as a means to kill;	Murder
If fire or explosive was used to conceal the killing.	Separate crimes of arson and murder/homicide.

NOTE: Under *Sec. 2 of RA 8294*, "When a person commits any of the crimes defined in the RPC or special laws with the use of the aforementioned explosives, detonation agents or incendiary devices, which results in the death of any person/s, the use of such explosives, detonation agents or incendiary devices shall be considered as an aggravating circumstance."

Par. 13 – That the act be committed with evident premeditation.

BASIS: *Ways* of committing the crime, because evident premeditation implies a *deliberate planning* of the act before executing it (*REYES, 400*).

NOTE: Evident premeditation indicates a stubborn adherence to a decision to commit a felony. It implies a deliberate planning of the act before executing it. (*BOADO, 185*).

REQUISITES [POS]

1. Previous decision by the accused to commit the crime;
2. Overt acts manifestly indication that the accused clung to his determination;
3. A sufficient lapse of time between the decision to commit the crime and its actual execution sufficient to allow the accused to reflect upon the consequences of his acts (*People v Logarto, GR No. 65883 [1991]*).

ESSENCE OF PREMEDITATION

That the execution of the criminal act *must be preceded by cool thought* and *reflection* upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a *calm judgment* (*People v Durante, 53 Phil. 363*).

NOTE: There must be sufficient time between the outward act and the actual commission of the crime.

RELATIONSHIP WITH CONSPIRACY

Evident premeditation is presumed to exist when conspiracy is directly established (*People v Sapigao, GR No. 144975 [2003]*).

But in *implied conspiracy*, it may not be appreciated, in the absence of proof as to how and when the plan to kill the victim was hatched or what time elapsed before it was carried out, so that it cannot be determined if the accused had sufficient time between its inception and its fulfilment dispassionately to consider and accept the consequences (*BOADO, 187-188*).

NOTE: Premeditation is absorbed by reward or promise but only insofar as the inducer is concerned since he obviously reflected thereon in planning the crime but not the person induced since one can be a principal by direct participation without the benefit of due reflection (*US v Manalinde, GR No. 5292 [1909]*).

NECESSITY OF THE SECOND REQUISITE

The premeditation must be based upon *external acts* and not presumed from mere lapse of time (*US v Ricafort, 1 Phil. 173*).

The criminal intent evident from outward acts must be notorious and manifest, and the purpose and determination must be plain and have been adopted after mature consideration on the part of the persons who conceived and resolved upon the perpetration of the crime, as a result of deliberation, meditation and reflection before commission (*People v Zapatero, GR No. L-31960 [1974]*).

NOTE: Mere threats without the second element do not show evident premeditation (*REYES, 406*). Thus, the statement of the accused that when he heard that the deceased had escaped he prepared to kill him is nothing but an *expression of his own determination* to commit the crime (*People v Carillo, 77 Phil. 572*).

WHEN SECOND REQUISITE EXISTS

1. The crime was carefully planned;
2. The offenders previously prepared the means which they considered adequate to carry it out (*US v Cornejo, 28 Phil. 457*);
3. A grave was prepared at an isolated place in the fields for the reception of the body of the person whom the criminal intended to kill (*US v Arreglado, 13 Phil. 660*).

SUFFICIENT LAPSE OF TIME

It must be long enough for meditation and reflection and to allow his conscience to overcome the resolution of his will had he desired to hearken to his warnings (*US v Gil, 13 Phil. 530*).

The offender must have an opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what he planned to do, an interval long enough for his conscience and better judgment to overcome his evil desire and scheme (*People v Mendoza, 91 Phil. 58*).

EVIDENT PREMEDITATION IS NOT APPLICABLE IN

1. Error in personae;

   Except: If there was a general plan to kill *any person* to commit the crime premeditated (*People v Mabug-at, GR No. L-25459 [1926], US v Rodriguez, 19 Phil. 150, US v Manalinde, 14 Phil. 77*).

2. Aberration ictus;
3. When there is the mitigating circumstance of immediate vindication of a relative for a grave offense.

NOTE: Evident premeditation, while *inherent in robbery*, may be aggravating in *robbery with homicide* if the premeditation *included the killing of the victim* (*People v Valeriano, 90 Phil. 15*).

People v. Bibat
GR No. 124319, 13 May 1998

FACTS: At around 1:30 pm, Bibat stabbed to death one Lloyd del Rosario as the latter was on his way to school waiting for a ride. The suspect fled while the victim was brought to the hospital where he was pronounced dead on arrival. A witness testified that the accused and several others often met in Robles' house. In one of their meetings, the accused and his companions hid some guns and "tusok" in the house. Also, other witnesses saw the accused at around 11:30 am with some companions and heard the plan to kill someone.

HELD: There is evident premeditation determination because the 3 requisites are present. There was evident premeditation where 2 hours had elapsed from the time the accused clung to his determination to kill the victim up to the actual perpetration of the crime.

People v Ilaoa
GR No. 94308, 16 June 1994

FACTS: The 5 accused were charged for the gruesome murder of Nestor de Loyola. The conviction was based on the following circumstances: 1) The deceased was seen on the night before the killing in a drinking session with some of the accused; 2) The drunken voices accused Ruben and Nestor were later heard and Nestor was then seen being kicked and mauled by the 5 accused; 3) some of the accused borrowed the tricycle of Alex at about 2 a.m.; 4) blood was found in Ruben's shirt.

HELD: Evident premeditation cannot be considered. There is nothing in the records to show that appellant, prior to the night in question, resolved to kill Nestor, nor is there proof to show that such killing was the result of meditation, calculation or resolution on his part. On the contrary, the evidence tends to show that the series of circumstances which culminated in the killing constitutes an unbroken chain of events with no interval of time separating them for calculation and meditation.

Par. 14 – That craft, fraud, or disguise be employed.

BASIS: *Means* employed in the commission of the crime (*REYES, 414*).

NOTE: These circumstances are *not aggravating* if they *did not facilitate* the commission of the crime or *not taken advantage of* by the offender in the course of the assault. If they were used to insure the commission of the crime against persons without risk to offender, they are absorbed by treachery (*BOADO, 188*).

CRAFT (*Astucia*)

Involves the use of intellectual trickery or cunning on the part of the accused. It is not attendant where the accused was practically in an stupor when the crime was committed (*People v Juliano, GR No. L-33053 [1980]*).

It is a chicanery resorted to by the accused to aid in the execution of his criminal design (*REYES, 415*).

Illustration:

Craft was present when A asked permission from his Chinese employer B to go home to Pangasinan at 4pm but went back at 10pm pretending that he has failed to take a ride to Pangasinan. The unsuspecting B opened the door and thereafter, A and his cohorts perpetrated robbery with homicide (*People v Revotoc, GR No. L-37425 [1981]*).

WHEN NOT AGGRAVATING

Where craft partakes of an element of the offense, the same may not be appreciated independently for the purpose of aggravation (*REYES, 417*). Thus, there is no craft where the accused came out from behind a patch of bamboo trees, did not camouflage their hostile intentions at the incipiency of the attack, as they announced their presence at the scene of the crime with shouts and gunshots (*People v Cunanan, GR No. L-30103 [1977]*).

FRAUD (*Fraude*)

Insidious words or machinations used to induce the victim to act in a manner which would enable the offender to carry out his design (*REYES, 417*)

Illustration:

Where the defendants, upon the pretext of wanting to buy a bottle of wine, induced the victim to go down to the lower story of his dwelling where the wine was stored, entered it when the door was opened to him, and there commenced the assault which ended in his death (*US v Bundal, 3 Phil. 89*).

<table>
<tr><th>FRAUD
Fraude</th><th>CRAFT
Astucia</th></tr>
<tr><td>Where there is a direct inducement by insidious words or machinations, fraud us present;</td><td>The act of the accused done in order not to arouse the suspicion of the victim constitutes craft;</td></tr>
<tr><td colspan="2">This is characterized by the intellectual or mental rather than the physical means to which the criminal resorts to carry out his design;</td></tr>
<tr><td colspan="2">When the offender was able to perpetrate his criminal design through the use of trickery or deceit.</td></tr>
</table>

REYES, 418-419

NOTE: According to Justice Regalado, the fine distinction between *craft* and *fraud* would not really be called for as the terms in Art. 14 are variants of means employed to deceive the victim and if all are present in the same case, they shall be applied as a single aggravating circumstance (*People v Lab-eo, GR No. 133438 [2002]*).

NOTE: Craft and fraud may be absorbed in treachery if they have been deliberately adopted as the means methods or forms for the treacherous strategy or they may co-exist independently (*Id.*).

NOTE: Fraud is inherent in estafa.

DISGUISE (*Disfraz*)

Resorting to any device to conceal identity (*REYES, 419*)

NOTE: The test of disguise is whether the device or contrivance resorted to by the offender was intended to or did make identification more difficult, such as the use of a mask or false hair or beard. Disguise contemplates a superficial but somewhat effective dissembling to avoid identification (*People v Reyes, GR No. 118649 [1998]*).

NOTE: If, in spite of the disguise, the offender was recognized, it cannot be aggravating (*BOADO, 188*).

People v Empacris
GR No. 95756, 14 May 1993

FACTS: Empacis et al. held-up the store of Fidel and his wife. As Fidel was about to give the money, he decided to fight. He was stabbed several times which resulted to his death. Empacis was stabbed by the son of Fidel. When he went to a clinic for treatment, he was arrested.

HELD: Langomes and Empacis pretended to be bona fide customers of the victim's store and on this pretext gained entry into the latter's store and into another part of his dwelling. Thus, there AC of craft was taken into consideration.

Par. 15 – That advantage be taken of superior strength, or means be employed to weaken the defense.

BASIS: Greater criminal perversity (*AMURAO, 583*).

"TO TAKE ADVANTAGE OF SUPERIOR STRENGTH"

To use purposely excessive force out of proportion to the means of defense available to the person attacked (*People v Cabiling, GR No. L-38091 [1976]*).

WHEN IS THERE ABUSE OF SUPERIOR STRENGTH?

Where the offenders *intentionally* and purposely employ excessive force out of proportion to the means of defense available to the offended party (*BOADO, 188*). It depends upon the age, size and strength of the parties. There must be a *notorious inequality of forces* between the victim and the aggressor (*People v Carpio, GR Nos. 82815-16 [1990]*).

EXAMPLES OF ABUSE OF SUPERIOR STRENGTH

1. The aggressors, who were all armed, first hit the legs of their unarmed victim, causing the latter to fall kneeling; then, stabbed him above the knee; and, having *deprived him of his means to stand or run,* took turns in inflicting mortal wounds on him (*People v Apelado, GR No. 114937 [1999]*);
2. An attack by a man with a *deadly weapon upon an unarmed and defenseless woman* is abuse of superior strength which his sex and weapon afforded him (*People v Olivio, GR No. 130335 [2001]*);
3. When the offender uses a weapon which is out of proportion to the defense available to the offended party (*People v Padilla, GR No. 75508 [1994]*).

NO ADVANTAGE OF SUPERIOR STRENGTH IN

1. One who attacks another with *passion and obfuscation* does not take advantage of his superior strength;
2. When a quarrel arose unexpectedly and the fatal blow was struck at a time when the aggressor and his victim were *engaged against each other* as man to man (*REYES, 421*);
3. If all the accused delivered blows upon the victim, but the attack was made on the victim *alternately*, one after the other (*People v Narciso, GR No. L-24484 [1968]*);
4. *Parricide against the wife* (*People v Galapia, GR Nos. L-39303-05 [1978]*);
5. Where 3 persons armed with bolos attacked another who was armed with a revolver, it was held that the *strength is almost balanced* (*People v Antonio, 73 Phil. 421*);
6. The accused *did not cooperate* in such a way as to secure advantage from their combined strength. *Numerical* superior does not always mean abuse of superiority (*People v Ybañez, Jr., GR No. L-30421 [1974]*).

NOTE: Abuse of superior strength is *inherent* in the crime of parricide where the husband kills the wife (*People v Galapia, GR Nos. L-39305-05 [1978]*).

EVIDENCE OF RELATIVE PHYSICAL STRENGTH

But the mere fact that one person was attacked by two aggressors does not constitute abuse of superior strength, if the relative physical strength of the parties does not appear. There must be evidence that the accused were physically stronger and that they abused such superiority (*People v Bustos, 51 Phil. 385*).

The mere fact of there being a superiority of numbers is not sufficient to bring the case within aggravating circumstance (*People v Maloloy-on, GR No. 85246 [1990]*).

PRINCIPALS BY DIRECT PARTICIPATION

When there are several offenders participating in the crime, they must all be principals by direct participation and their attack against the victim must be concerted and intended to be so (*Lumiguis v People, GR No. L-20338 [1967]*).

There is no abuse of superior strength wen one acted as principal and the other two as accomplices. It must appear that the accused *cooperated together* in some way designed to weaken the defense (*People v Cortez, 55 Phil. 143*).

NOTE: Like nighttime, superior strength is *absorbed and inherent* in treachery (*US v Abalinde, 1 Phil. 568*).

NOTE: Although the commission of the crime of *coercion* or *forcible abduction* presupposes superiority of force on the part of the offenders, yet *when the strength availed of is greatly in excess of that required for the realization of the offense,* abuse of superior strength should be considered for the purpose of increasing the penalty (*People v Dayug, 49 Phil. 423*).

ABSUSE OF SUPERIORITY IS AGGRAVATING IN

1. Illegal detention (*Arts. 267 and 268*);
2. Robbery with rape (*People v Macaya, 85 Phil. 540*);
3. Multiple rape (*US v Camiloy, 36 Phil. 757*);
4. Robbery with homicide (*People v Boyles, GR No. L-15308 [1964]*).

EN CUADRILLA	ABUSE OF SUPERIOR STRENGTH
Appreciated when the offense is committed by more than three (*at least 4*) armed malefactors regardless of the comparative strength of the victim/s.	The gravamen of abuse of superiority is the taking advantage by the culprits of their collective strength to overpower their relatively weaker victim/s. What is taken into account is not the number of aggressors nor the fact that they are armed but their relative physical strength *vis-à-vis* the offended party.

People v Apduhan, Jr., GR No. L-19491 [1968]

NOTE: Abuse of superior strength absorbs *cuadrilla*. It is reasonable to hold that band should not be treated as an aggravating circumstance separate and distinct from abuse of superior strength. The 2 circumstances have the same essence which is the utilization of the combined strength of the assailants to overpower the victim and consummate the killing (*People v Medrana, GR No. L-31971 [1981]*).

EXAMPLES OF "MEANS EMPLOYED TO WEAKNE DEFENSE"

1. Where one, struggling with another, suddenly *throws a cloak over the head* of his opponent and while in this situation he wounds or kills him (*US v Devela, GR No. 1542 [1904]*);
2. One who, while fighting with another, suddenly *casts sand or dirt upon the latter's eyes* and then wounds or kills him (*People v Siaotong, GR No. L-9242 [1957]*);
3. When the offender, who had the intention to kill the victim, *made the deceased intoxicated*, thereby materially weaking the latter's resisting power (*People v Ducusin, 53 Phil. 280*).

NOTE: If in his intoxicated state, it was *impossible* for the victim to *put up any sort of resistance* at the time he was attacked, treachery may be considered (*Id.*).

NOTE: This circumstance is applicable only to crimes against persons, and sometimes against person and property, treachery may be considered (*Id.*).

Par. 16 – That the act be committed with treachery (alevosia).

There is treachery when the offender commits any of the crimes against the person, employing

means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might take.

BASIS: *Means* and *ways* employed in the commission of the crime (*REYES, 431*).

TREACHERY

It means that the offended party was not given opportunity to make a defense (*People v Tiozon, GR No. 89823 [1991]*).

The attack was sudden, unexpected, without warning, and without giving the victim an opportunity to defend himself or repel the aggression, as, in fact, the deceased did not sense any danger that he would be shot by the assailant as there was no grudge or misunderstanding between them (*People v Rey, GR No. 80089 [1989]*).

RULES REGARDING TREACHER (*REYES, 432*)

1. Applicable only to crimes against persons;
2. Means, methods or forms need not insure accomplishment of crime, as the law says, "to insure its execution only."
3. The mode of attack be consciously adopted;
4. Treachery cannot be presumed. It must be proved by clear and convincing evidence

ADDITIONAL RULES

1. When the aggression is continuous, treachery must be present in the *beginning* of the assault (*People v Manalad, GR No. 128593 [2002]*);
2. When the assault was not continuous, in that instance there was an interruption, it is sufficient that treachery was present at the moment the fatal blow was given (*US v Baluyot, 40 Phil. 385*).

MEANS TO INSURE ITS EXECUTION

It is sufficient that the treacherous means insure its execution only. So it has been held that where the accused attacked the offended party unexpectedly and the wounds inflicted by him upon the latter would have caused death had not the weapon whereby the same were inflicted met with an obstacle, such as the ribs or bullet-proof vest, which prevented its penetrating the lungs and kidneys, *alevosia* is present and the defendant is guilty of *frustrated murder* (*People v Reyes, 47 Phil. 635*).

NOTE: Treachery is taken into account even if the crime against the person is complexed with another felony involving a different classification in the Code (*People v Abdul, GR No. 128074 [1999]*).

REQUISITES

1. That at the time of the attack, the victim was *not in a position to defend himself*;
2. That the offender *consciously adopted the particular means, methods and form* of attack employed by him (*ESTRADA, 162*).

NATURE OF TREACHERY

It is a *special aggravating* circumstance for it only applies to crimes against persons. It is a *specific aggravating* circumstance in serious physical injuries. It is *a generic aggravating* circumstance for crimes other than *killing* where it serves as a *qualifying circumstance* (*BOADO, 195*).

NOTE: The test of treachery is not only the relative position of the parties but, more specifically, whether or not the victim was forewarned or afforded the opportunity to make a defense or to ward of the attack (*Id., 163*).

NOTE: The suddenness of attack does not, of itself, suffice to support a finding of *alevosia*, even if the purpose was to kill, so long as *the decision was made all of a sudden* and the *victim's helpless position was accidental* (*People v Real, 10 CA Rep. 668*).

ESSENCE OF TREACHERY

The *swiftness* and the *unexpectedness* of attack upon the unsuspecting and unarmed victim, who does not give the slightest provocation. Even if the assault was frontal, it was sudden or totally unexpected, thus giving the victim no opportunity at all to defend himself or to retaliate, it definitely points to the presence of treachery (*People v Rebamontan, GR No. 125318 [1999]*).

The *mode of attack* must be *planned* by the offender, and must *not spring from the unexpected turn of events*. While the attack on the deceased was sudden and unexpected, there is *no showing that appellant consciously adopted his mode of attack in order to insure the execution of the crime* without risk to himself (*People v Flores, GR No. 137497 [2004]*).

NOTE: The mode of attack must be consciously adopted. This means that:

1. The accused made some *preparation* to kill the deceased in such a manner as to *insure the execution of the crime* or to *make it hard for the victim to defend* himself (*People v Tumaob, 83 Phil. 738*);
2. The *mode of attack must be thought of* by the offender, and must *not spring form the unexpected turn of events* (*People v Flores, GR No. 137497 [2004]*).

NOTE: When there is nothing in the record that the ac

GENERAL RULE:
Treachery cannot be presumed

The qualifying circumstance of treachery may *not be simply deduced form presumption* as it is necessary that the existence of this qualifying or aggravating circumstance should be proven *as fully as the crime itself* in order to aggravate the liability or penalty incurred by the culprit (*People v Ardisa, GR No. L-29351 [1974]*).

Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, it can *in no way* be established from mere suppositions that the accused perpetrated the killing with treachery (*US v Perdon, 4 Phil. 141*).

EXCEPTION:

Treachery must be appreciated in the killing of a child even if the manner of attack is not shown (*People v Rebucan, GR No. 182551 [2011]*).

NOTE: Treachery must be proved as convincingly as the crime itself (*BOADO, 195*).

RULES WHEN THE ATTACK IS FRONTAL
General Rule:

If the attack is frontal, there is *no treachery* as the mode of attack does not include any risk to the offender arising from the defense which the victim may make (*People v Alfron, GR No. 126028 [2003]*).

Exception:

When the attack, although frontal, is *sudden and unexpected* and perpetrated in such a way to especially *insure its execution without risk to the offender*, and when the victim would be *in no position to repel the attack or avoid it*, then there is treachery (*Id.*).

THERE IS TREACHERY EVEN IF

1. The victim was not predetermined but there was a *generic intent* to a treacherously kill any first two persons belonging to a class (*US v Manalinde, 14 Phil. 77*);
2. There was *aberration ictus* (*ESTRADA, 166*);
3. There was *error in personae* (*Id.*);
4. If the victim was forewarned of the danger to his person but the execution of the attack made it impossible for the victim to defend himself or to retaliate (*People v Villonez, GR No. 122976 [1998]*).

NOT APPLICABLE IN

- Cases involving accidents, accidental meetings, chance encounters, spurs of the moments, or on-the-spot decisions to commit the crime (*People v Calinawan, 83 Phil. 647*);
- Cases attendant of *negligence* or *carelessness;*
- Cases attendant of *passion* or *obfuscation* or those with *sufficient provocation* (*People v Pansensoy, GR No. 140634 [2002]*);
- Cannot be considered as to the *principal by induction*;

  Except: when it is shown that the principal by induction directed or induced the killer of the deceased to adopt the means or methods actually used by the latter in accomplishing the murder (*US v Gamao, 23 Phil. 81*).

- In cases when there is *no witness* or witness did not see how it all began (*People Lug-aw, GR No. 85735 [1994]*).

  Except: when the victim was tied elbow to elbow, etc., treachery may be considered.

- The attack was *frontal* indicating that the victim was not totally without opportunity to defend himself.

  Except: when the attack was so sudden, deliberate and unexpected and consciously adopted, or if the victim was forced into a position where he is defenseless.

TEST IN TREACHERY

- Is the attack sudden and unexpected?
- Was the victim given an opportunity for defense?
- Was the means employed deliberate and consciously adopted?

TREACHERY ABSORBS [CAN D ACE]

1. Craft (*except when craft was employed not with a view to making treachery more effective*);
2. Abuse of superior strength;
3. Nighttime;
4. Disregard of age and sex;
5. Aid of armed men;
6. En cuadrilla;
7. Employing means to weaken the defense.

NOTE: Treachery, evident premeditation and use of superior strength are absorbed in treason by killings (*People v Racaza, 82 Phil. 623*).

NOTE: Treachery is inherent in murder by poisoning (*People v Caliso, 58 Phil 283*).

NOTE: The presence of treachery, though, should not result in qualifying the offense to murder form the *special complex crime of robbery with homicide*, for the correct rules is that *when it obtains in the special complex crime, such treachery is to be regarded as a generic aggravating circumstance*, robbery with homicide, being a case of composite crime with its own definition and special penalty in the RPC (*People v Cando, GR No. 128114 [2000]*).

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

Illustration:

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

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

Illustration:

Same facts above. But when A stabbed B, B was still able to put up some fight against A but eventually, B died, then the attendant circumstance is no longer treachery but means employed to weaken the defense.

Illustration:

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

US v Balagtas
19 Phil. 164

FACTS: The accused knocked down the victim, striking him while on the ground. Then, the accused threw him into the water, face downward, while he was still alive in a helpless and defenseless condition.

HELD: The knocking down of the victim, striking him on the ground, and throwing him into the water constituted one and the same attack. One *continuous* attack cannot be broken upon into 2 or more parts and made to constitute separate, distinct and independent attacks so that treachery may be injected therein. No treachery at the inception of the attack.

People v Sangalang
GR No. L-32914, 30 Aug. 1974

FACTS: Cortez left his nipa hut to gather tuba from a coconut tree nearby. While he was on top of the tree, he was struck by a volley of shots and he fell to the ground at the base of the coconut tree. The accused and his companions shot Cortez several times which resulted to his death.

HELD: The victim was shot while he was gathering tuba on top of a coconut tree. He was unarmed and defenseless. He was not expecting to be assaulted. He did not give immediate provocation. The deliberate, surprise attack shows that Sangalang and his companions employed a mode of execution which insured the killing without any risk to them arising from any defense which the victim could have made. The killing can be categorized as murder because of the qualifying circumstance of treachery.

People v Castillo
GR No. 120282, 20 Apr. 1998

FACTS: Velasco was sitting outside the pubhouse talking with his co-worker, Dorie, when one of the customers named Tony went out of the pubhouse. Then, Castillo suddenly appeared and, without warning, stabbed Tony with a fan knife on his left chest. Tony pleaded for help but accused stabbed him once more. Velasco placed a chair between Tony and the accused to stop the latter. Tony ran away but was pursued by the accused. Tony died and his body was found outside the fence of Iglesia ni Cristo Compound.

HELD: The killing was qualified by treachery. Treachery is committed when two conditions concur, namely, that the person attacked had no opportunity to defend himself and that such means, method, and forms of execution were deliberately and consciously adopted by the accused without danger to his person. These requisites were evidently present in this case when the accused appeared from nowhere and swiftly stabbed the victim just as he was bidding goodbye to his friend, Velasco. Said action rendered it difficult for the victim to defend himself. The presence of "defense wounds" does not negate treachery because, as testified to by

Velasco, the first stab, fatal as it was, was inflicted on the chest. The incised wounds in the arms were inflicted when the victim was already rendered defenseless.

Par. 17 – That means be employed or circumstances brought about which add ignominy to the natural effects of the act.

BASIS: *Means* employed (*REYES, 468*).

IGNOMINY (*Ignominia*)

It is a circumstance pertaining to the moral order, which *adds disgrace and obloquy to the material injury* caused by the crime (*People v Acaya, GR No. L-72998 [1988]*).

NOTE: Ignominy is inherent in liber and acts of lasciviousness.

MEANING OF "WHICH ADD IGNOMINY TO THE NATURAL EFFECTS OF THE ACT"

It means adding mental torture or insult to the injury. The means employed or the circumstances brought about must tend to make the effects of the crime more humiliating to victim or to put the offended party to shame, or add to his moral suffering (*People v Carmina, GR No. 81404 [1991]*).

Thus it is incorrect to appreciate ignominy where the victim was already dead when his body was dismembered, for such act may not be considered to have added to the victim's moral suffering or humiliation (*People v Balondo, GR No. L-27401 [1987]*).

EXAMPLES OF IGNOMINY

1. When the accused raped a woman after winding cogon grass around her genital organ (*People v Torrefiel, CA., 45 OG 803*);
2. When the accused, in raping the victim, used also dog style of sexual intercourse (*People v Saylan, GR No. L-36941, 29 June 1984*);
3. When the accused, before killing the deceased, forced the victim to kneel in front of his house servants drawn up in line before him (*US v De Leon, 1 Phil 163, 164*);
4. Where the accused raped a married woman in the presence of her husband (*US v Iglesia, 21 Phil. 55*).

APPLICABLE TO (*REYES, 468*)

1. Crimes against chastity;
2. Less serious physical injuries;
3. Light or grave coercion;
4. Murder.

NOTE: *Rape* committed on the occasion of *robbery with homicide increases the moral evil of the crime*, and it is incorrect to say that there is no law which considers rape as an aggravating circumstance simply because it is not specifically enumerated in Art. 14 as an aggravating circumstance (*Id., 471*).

NOTE: *Rape*, *wanton robbery* for personal gain, and *other forms of cruelties* are condemned and their perpetration will be regarded as aggravating circumstances of ignominy and of deliberately *augmenting unnecessary wrongs* to the main criminal objective under pars. 17 and 21 of Art. 14 (*People v Racaza, 82 Phil. 623*).

NOTE: 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 murder, because it was unnecessary to the commission thereof and was a manifest outrage on the victim's person (*People v Laspardas, GR No. L-46146 [1979]*).

Par. 18 – That the crime be committed after an unlawful entry.

There is an unlawful entry when an entrance is effected by a way not intended for the purpose.

BASIS: *Means* and *ways* employed to commit the crime (*REYES, 471*).

NOTE: This circumstance may also be referred to as ***escalamiento***.

NOTE: It is the entrance that is essential and not the escape in order to appreciate unlawful entry.

NOTE: It qualifies the crime of theft to robbery (*BOADO, 197*).

REASON FOR AGGRAVATION

One who acts, not respecting the walls erected by men to guard their property and provide for their personal safety, shows a greater perversity, a greater audacity; hence, the law punishes him with more severity (*Id., 472*).

***ESCALAMIENTO* IS INHERENT IN**

1. Robbery with force upon things;
2. Trespass to dwelling;
3. Violation of domicile;
4. Evasion of service of sentence, if such evasion or escape shall have taken place by means of unlawful entry.

NOTE: Robbery with violence against or intimidation of persons may be aggravated by *escalamiento* because unlawful entry is not inherent in that particular kind of robbery (*REYES, 472*).

NOTE: Supposing that the window was used to gain entry into the house, can the aggravating circumstance of *escalamiento* be appreciated? ***Yes.***

NOTE: Supposing that the owners of the house commonly use the window as their ordinary means of entry, then the accused enter the house through the door, can *escalamiento* be appreciated? ***Yes.***

Par. 19 – That as means to the commission of a crime, a wall, roof, floor, door or window be broken

BASIS: *Means* and *ways* employed to commit the crime (*Id., 473*).

NOTE: This circumstance is also called ***rompimiento***.

NOTE: This circumstance is aggravating only in those cases where the offender resorted to any of said means to enter the house. The breaking of any of these parts of a house or building must be for the commission of the crime (*ESTRADA, 168*).

"AS MEANS TO THE COMMISSION OF THE CRIME"

If the offender broke a window to enable himself to reach a purse with money on the table near that window, which he took while his body was outside of the building, the crime of theft was attended by this aggravating circumstance. It is not necessary that the offender should have entered the building (*REYES, 473-474*).

WHEN BREAKING OF DOOR OR WINDOW IS LAWFUL

An officer, in order to make an arrest either by virtue of a warrant, or without a warrant as provided in Sec. 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, Rules of Court*).

The officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant to liberate himself or any

person lawfully aiding him when unlawfully detained therein (*Sec. 7, Rule 126, Rules of Court*).

NOTE: *Rompimiento* is aggravating only in those cases where the offender resorted to any of said means *to enter* the house. If the wall, etc., is broken in order to *get out* of the place, it is not an aggravating circumstance (*REYES, 474*).

ROMPIMIENTO **Par. 19**	***ESCALAMIENTO*** **Par. 18**
It involves the breaking of the enumerated parts of the house.	Presupposes that there is no such breaking as by entry through the window.

Par. 20 – That the crime be committed with the aid of persons under fifteen years of age, or by means of motor vehicles, airships, or other similar means.

BASIS: *Means* and *ways* employed to commit the crime (*Id., 475*).

TWO DIFFERENT CIRCUMSTANCES GROUPED IN PAR. 20 AND THEIR PURPOSE

1. *With the aid of persons under 15* – tends to repress, so far as possible, the frequent practice resorted to by professional criminals to avail themselves of minors taking advantage of their irresponsibility (*Id.*);
2. *By means of motor vehicles, airships, or other similar means* – intended to *counteract the great facilities* found by modern criminals in said means to commit crime and flee and abscond once the same is committed (*Id.*).

WHEN USE OF MOTOR VEHICLE IS NOT AGGRAVATING

1. Use as means of escape only;
2. Use was only incidental and not purposely sought to facilitate the commission of the offense (*Id., 476*).

NOTE: Estafa, which is committed by *means of deceit or abuse of confidence*, cannot be committed *by means of motor vehicle* (*People v Bagtas, CA, GR No. 10-823-R [1955]*).

MEANING OF "OR OTHER SIMILAR MEANS"

It should be understood as referring to *motorized vehicles* or other efficient means of transportation similar to automobile or airplane (*Id., 478*). Hence, bicycle is not appreciated.

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

BASIS: *Ways* employed in committing the crime (Id., 479).

CRUELTY

There is cruelty when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary physical pain in the consummation of the criminal act (*People v Dayug, 49 Phil. 423*).

NOTE: This circumstance may also be referred to as ***enseñamiento***.

IN ORDER TO APPRECIATE, IT IS IMPORTANT THAT

- The wrong done was intended to prolong the suffering of the victim, causing him unnecessary moral and physical pain (*People v Llamera, GR Nos. L-21604-6 [1973]*);
- The evidence must show that the sadistic culprit, for his pleasure and satisfaction, caused the victim to suffer slowly and gradually, and inflicted on him unnecessary moral and physical pain (*People v Luna, GR No. L-28812 [1974]*).

REQUISITES

1. That the injury caused be deliberately increased by causing other wrong;
2. That the other wrong be unnecessary for the execution of the purpose of the offender.

CRUELTY IS INHERENT IN

1. Crimes against persons;
2. Mutilation.

NOTE: The number of wounds alone does not show cruelty, it being necessary to show that the accused deliberately and inhumanly increased the sufferings of the victims (*People v Aguinaldo, GR No. 33843 [1931]*).

NO CRUELTY IN THE FOLLOWING

1. If the victim was already dead when the acts of mutilation were being performed, this would also qualify the killing to murder due to outraging of his corpse. But since the victim is already dead, cruelty cannot be appreciated in this case (*People v Balisteros, GR No. 110289 [1994]*);
2. Where the assailant stoned twice the victim, not for the purpose of increasing his sufferings, but to kill him (*US v Gasal, 3 Phil. 354*);
3. Where the victim was buried after being stabbed, not to make him suffer any longer but to conceal his body and the crime itself (*People v Ong, GR No. L-34497 [1975]*);
4. Where the accused kicked the deceased or placed his right foot on the body of the deceased to verify whether the latter was still alive, and not for the purpose of deliberately and inhumanly increasing his sufferings (*People v Mil, GR Nos. L-28104-05 [1979]*).

NOTE: No cruelty when the other wrong was done after the victim was dead (*People v Bersabal, 48 Phil. 439*).

NOTE: Plurality of wounds alone does not show cruelty, it being necessary to show that the accused deliberately and inhumanly increased the sufferings of the victim (*People v Aguinaldo, 55 Phil. 610*).

NOTE: *Rape* committed on the occasion of *robbery with homicide increases the moral evil of the crime*, and it is incorrect to say that there is no law which considers rape as an aggravating circumstance simply because it is not specifically enumerated in Art. 14 as an aggravating circumstance (*People v Basca, 55 OG 797*).

NOTE: *Rape, wanton robbery* for personal gain, and *other forms of cruelties* are condemned and their perpetration will be regarded as aggravating circumstances of ignominy and of deliberately *augmenting unnecessary wrongs* to the main criminal objective under pars. 17 and 21 of Art. 14 (*People v Racaza, 82 Phil. 623*).

NOTE: 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 murder, because it was unnecessary to the commission thereof and was a manifest outrage on the victim's person (*People v Laspardas, GR No. L-46146 [1979]*).

OUTRAGING OR SCOFFING

Outraging or scoffing at the person of the victim or his corpse is a qualifying aggravating circumstance that elevates the killing from homicide to murder (*see Art. 248, par. 6*).

OUTRAGE

Means to subject to gross insult.

SCOFF

Means to show contempt by derisive acts or language.

NOTE: In scoffing, the victim must already be dead when the acts were committed (*AMURAO, 658*).

IGNOMINIA **Par. 1**	*ENSEÑAMIENTO* **Par. 21**
Involves *moral* suffering	Refers to *physical suffering*

Other Aggravating Circumstances

RA 9165 COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002

When a crime is committed by an offender who is under the influence of dangerous drugs, such state shall be considered as a qualifying aggravating circumstance (*People v Belgar, GR No.92155, [1991]*).

ORGANIZED/SYNDICATE CRIME GROUPS

This is a special aggravating circumstance, contemplates of a group purposely formed or organized to engage in criminal activities for gain, not merely the commission of a particular crime by two or more persons who confederated and mutually helped one another in its commission. The existence of a conspiracy does not necessarily imply or carry with it this aggravating circumstance. (*People v. Alberca, GR No. 117106 [1996]*)

NOTE: "xxx xxx xxx The maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicate crime group xxx xxx xxx" (*Art. 62, par. 1(a), last paragraph*).

REQUISITES

1. A group of two or more persons;
2. Collaborating, confederating or mutually helping one another;
3. For the purpose of gain in the commission of a crime.

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"I will continue, Oh my God
to do all my actions for the love of you."
-La Sallian Prayer