COMMENTARIES

on the

REVISED PENAL CODE

of the PHILIPPINES

by

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of the Philippine and United States
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PUBLISHERS' NOTE

After the lapse of more than a decade since its last revision in 1946, the publishers succeeded in persuading the author to revise and republish his famous "COMMENTARIES ON THE REVISED PENAL CODE" It is indeed a pity, that this work, which is universally recognized as "a permanent monument of our legal system" should disappear from our legal bibliography. So, the publishers take great pride in presenting this latest edition of the work of that well-known criminologist, jurist, and law professor — Judge Guillermo B. Guevara —, and it is hoped that this republication would be welcomed by both the Bench and the Bar as a significant contribution in the preservation and development of Philippine jurisprudence.

THE PUBLISHERS

Manila, April 17, 1957

Extracts from the

FOREWORD TO THE FOURTH EDITION

(Sept. 30, 1946)

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Since the publication of the first edition of this book fifteen years ago, it has been of great use to the bar and the bench in applying and enforcing the Penal Code of the Philippines. The book has become a permanent monument of our legal system. It is an up-to-date exposition of Philippine Criminal Law and a useful source of information on criminal science.

Judge Guevara's comments on the faulty translation from the Spanish original of some articles of the Code, particularly Article 3 (definition of felony), Article 246 (definition of parricide), and Article 353 (definition of libel), are opportune. Indeed, the "Commentaries" constitute a valuable contribution to the study of our criminal law.

* * * *

ROMAN OZAETA
Secretary of Justice

EXPLANATORY NOTES ON THE REVISED PENAL CODE[1]

For many years since the change of sovereignty in this country, public opinion has been clamoring for an amendment of the Penal Code which has been in force since the year 1887. Heeding such a demand, the legislative branch of the government twenty years ago entrusted the task of preparing a new code, first to a committee composed of eminent lawyers and judges, headed by the reputed criminalist, the Hon. Florentino Torres; and several years later, to the defunct Code Committee composed of outstanding authorities on the law. But the drafts prepared by these jurists were never converted into law, and so about three years ago, the Acting Secretary of Justice, Hon. Luis P. Torres, created another committee of lawyers and professors, presided over by Judge Anacleto Diaz, to draft a new Penal Code. The new committee finished its task in ten months, and in 1928, one of its members presented to this House, Bill No. 577 which embodied the complete and concrete result of the Diaz Committee. After undergoing substantial changes consisting of additions and suppressions made by your committee on the Revision of Codes, the said bill later became Bill No. 3366, which the same Committee on the Revision of Codes now submits for your consideration, together with additional amendments approved after further study, with the cooperation of the Judiciary Committee of the Senate and of the chairman of the Diaz Committee, and with the suggestions and observations of practising attorneys, judges, justices, government officials, and members of the Senate and of this House of Representatives, all of whom have shown interest in the measure.

It can, therefore, be said that this Bill, as it is now presented, is not the exclusive work of any particular one. It is the result of the enthusiastic cooperation of the various elements that compose the legal profession with the cooperation of the judicial, legislative and executive branches of the government.

Your Committee has tried to retain such provisions of the present Code as are still applicable, and to suppress those which, corresponding to the peculiar political make-up of the past sover-

[1] Speech delivered by the then Representative Quintin Paredes on the floor of the House of Representatives on October 31, 1930, as sponsor of House Bill No 3366, providing for the Revised Penal Code. Translated from the original Spanish into English by the author, and published for the first time in English in the 3rd Edition of this book.

eignty and to certain principles and theories dominating during the period of its change of conditions. To adjust the present Code to the new order of things brought about by democratic doctrines, which have greatly influenced our mode of living and our customs, has been the principal aim of the Committee.

Legal provisions of penal character, which are provided for in extensive and complete laws of civil and administrative nature, have not been incorporated in the proposed measure so as not to destroy the completeness of the respective laws in which they are found. But such legal provisions which tend to abolish or substitute parts of the Code, such for instance as those penal provisions contained in special laws that are entirely and exclusively penal in nature, have been incorporated therein.

Book Three which treats of misdemeanors has been suppressed. In conformity with the opinion now generally accepted that legislation on the subject matter covered by Book Three belongs to local governments to which the State may delegate its police power, misdemeanors of some importance are considered in the Bill as light felonies and their repressions are provided for in Book Two which treats of crimes according to their form and nature.

Finally, amendments consisting of substitutions and additions of words and phrases have been made in the Code for the purpose of better clarifying the text in certain cases, and in other cases, due to the necessity of inserting the provisions of any special law that amends the substance, and in still other cases, to the convenience of harmonizing the article or articles to judicial interpretations. In line with this tendency to clarify, the different articles have been simplified and coordinated, either by grouping under one article matters, closely akin and related to each other or by transfering them to their proper places.

In incorporating in the Bill the special laws which punish certain crimes, the principle of uniformity demands that provisions drafted under casuistic principles be condensed and that their respective penalties of imprisonment be amended so as to adjust them to the system of penalties established in the proposed measure. Thus, the different forms of jail term in imprisonment in the Bill by the penalties of **reclusión, prisión** or **arresto,** in their different periods, as the case may be. But in the changes effected, the duration of the original penalties provided for in the special laws have been followed, as much as possible, in proportion to the general system of penalties.

Outside of the foregoing, no other innovations have been made. The Committee does not, therefore, pretend that it has undertaken the codification of all penal laws, much less produced a modern

code or one of advance theories. What the Committee did was merely to revise the Penal Code and the laws related to the latter, for which reason this Bill is termed "Revised Penal Code."

BOOK ONE

The applicable penalties have been simplified, reducing the complex mechanism of thirty penalties of the present Code to those which are practically applied at present; that is to say, suppressing the penalties of **cadena** and **presidio**, which now have nominal existence, as well as those of **relegación**, **confinamiento**, and **extrañamiento**, and the accessory penalties of **degradación** and **sujeción a la vigilancia de la autoridad**, which being applicable principally to crimes which depended for their existence on the political make-up, principles and conditions predominating at the time of the promulgation of the old Code, have been suppressed from the Bill. Only penalties of actual application have been retained, to wit: death, **reclusión**, **prisión**, **arresto**, **destierro**, and fine, with their respective accessory penalties. Consequently, all provisions on the duration, effects, and application of the penalties abolished have likewise been eliminated. Provisions of the Code relating to the execution of the death penalty have been substituted by provisions of special laws, and a general provision (Art. 78) has been inserted to the effect that the government of penal institutions shall be governed by regulations prescribed in special laws relating to the same, because penal institutions being subject of experiment in criminal science, it has been thought convenient to leave them to separate legislations that may be amended without the great difficulties usually met in amending a Code.

Aside from this reduction of penalties as required by circumstances, no other innovation of importance has been made in Book One of the Code.

The preliminary title, which treats of the application of the penal law to acts committed in the air, at sea, and even on foreign soil when such acts affect the political or economic life of the nation (Art. 2), does not constitute a novelty of importance as the reason for its existence is obvious. It originated from the Correctional Code—many provisions of which have been inserted in the Revised Penal Code—and from the more extensive preliminary title of the work of Silvela, which was adopted, according to our understanding, in the Code of Maruecos, and in the original draft of the German Penal Code of 1913.

The old concepts of **"dolo"** and **"culpa"** (Art. 3) have likewise been adopted from the Correctional Code, resulting in the

classification of felonies into intentional or malicious and culpable or those resulting from imprudence, negligence, lack of foresight, or lack of skill, in line with the old draft of the Spanish Penal Code of 1928.

Based also on the same origin, the Revised Penal Code divides extenuating circumstances into justifying circumstances (Art. 11) and exempting circumstances (Art. 12), neither of which is new but both of which belong to one group, distinct and separate from the alternative circumstances of intoxication, relationship, and education. This arrangement gives the Revised Penal Code an orderly aspect, without altering its substance or contents.

To the aggravating circumstances have been added some which are necessary by reason of modern developments, such as the use of motor vehicles, airships, or seeking the aid of persons under fifteen years of age in the commission of a crime (Art. 14, No. 20). The special aggravating circumstance of habitual delinquency (Art. 62) is not new; it is provided for in special laws now in force. And abuse of confidence or obvious ungratefulness (Art. 14, No. 4) is an aggravating circumstance that justifies itself.

Various mitigating circumstances, such as deafmuteness, illness (Art. 13, Nos. 8 and 9), hunger of the offender with the insignificant value of the thing stolen (Art. 309, No. 8), and the voluntary confession of the accused before the presentation of the evidence for the prosecution (Art. 13, No. 7) have been added to the project, its addition being, among others, for humanitarian purposes, and for the improvement of present practices. Likewise, the suspension of sentence in the case of minor delinquents (Art. 80) is not new because it is already provided for in special laws. The abandonment, under certain circumstances, of the person guilty of adultery by the offended spouse, if not a sufficient justifying circumstance, is really a mitigating circumstance as provided for in the Bill (Art. 333), and should be supplemented by a pardon as is being done at present to lessen the severity of the law. As a reward for loyalty, the Revised Penal Code grants a deduction of the period of the sentence, as is being done in a neighboring country, to any prisoner who, having evaded the service of his sentence on the occasion of certain calamity or mutiny in which he has not participated, gives himself up to the authorities within forty-eight hours following the issuance of a proclamation requiring him to return.

One of the innovations introduced in the plan in line with the new theories of criminal law is the so-called impossible crime (Art. 4), which is characterized by the inherent impossibility of its accomplishment or the employment of inadequate or ineffectual

means. This principle as embodied in the Revised Penal Code is not, however, new, for the Supreme Court of Spain has declared that crimes of this nature should be punished as frustrations of the crimes intended to be committed or as consummated offenses. In the proposed measure, an impossible crime is penalized by a definite penalty less than that corresponding to that of the intended crime, if consummated (Art. 59).

BOOK TWO

With respect to Book Two of the Code, the suppression of all the crimes of **lese majeste** and all the provisions relating thereto was imperative, for which reason the Committee has done away with them.

The severity which the Courts have observed of the penalties prescribed for offenses against authority has been mitigated by the reduction by one degree of the penalty for assault against authority; the lack of uniformity followed by our Courts in prescribing penalties for perjury has led to the systematizing of the penalties for false testimony in accordance with the gravity or importance of the effects (Arts. 180-184); while the lack of proportions between the penalty imposed and the damage caused in cases of malversation, theft and **estafa**, has made necessary the adoption of graduated penalties according to the value of the object of the crime (Arts. 217, 309, 315). These penalties range from **arresto mayor** to **reclusión temporal**. To insure honesty and integrity in the performance of public duties, the proposed Revised Penal Code has imposed the penalty of **prisión** to certain acts of abuse or infidelity on the part of public officers, which acts are now penalized by the present Code by mere disqualification, suspension or fine. Bribery (Arts. 210-212), violation of the constitutional rights of the individual (Chap. 1, Title 2, Book II), dereliction of duty (Arts. 204-209), revelation of secrets (Arts. 229-230), disobedience and refusal of assistanse (Arts. 231-234), illegal exactions (Art. 213), usurpations and unlawful appointments (Arts. 239-244), abuses against chastity (Art. 245), and the commission of prohibited transactions to public officials and employees (Art. 215),—all these crimes carry with them more severe penalties than those actually imposed in the present Code.

In consonance with the civil law which provides for the presumption of death after an absence of a certain number of years, the Revised Penal Code considers judicial declaration of presumed death, like annulment or dissolution of marriage, as a justification for bigamy (Art. 349). In order to place the wife on equal footing with her husband as regards her right to demand faith-

fulness from him and to the special extenuating circumstance when she surprises him in the act of infidelity, a new kind of criminal responsibility by concubinage has been introduced (Art. 334) and the benefits of the special extenuating circumstance which the law gives (Art. 247) to a married person who surprises his spouse in the act of infidelity have been extended to the wife, maintaining, however, certain differences in the penalty according to the nature of the consequences due to sex.

To protect the family at the same time, it has been deemed wise for obvious reasons, although the penalties prescribed by the present Code for the offenses of adultery, rape, seduction, and abduction have been maintained, to make the consent of the offended party in adultery and concubinage a bar to any criminal prosecution (Art. 344). Likewise, marriage of the offender with the offended party extinguishes the criminal action or remits the penalty already imposed.

To prevent reprehensible tendencies, duelling is considered as an offense and is punishable, even if no physical injuries have been inflicted. If physical injuries are inflicted, the penalties to be imposed are those according to the nature of the injuries (Art. 260). White slave trade is specifically made punishable (Art. 341); so is the act of incriminating innocent persons or intriguing against honor (Arts. 363 and 364); as well as the publication of act connected with the private life of another and offensive to the honor, virtue and reputation of said person, even though said publication be made under the pretext that it is done so in the course of official proceedings (Art. 357).

Finally, in response to public demand, a special penalty has been provided for those who, in violation of the Automobile Law, cause death or injuries to others through reckless imprudence.

RECOMMENDATIONS

We believe that the revision of the present Penal Code as embodied in the proposed law perfectly suits actual realities and satisfies our present day needs. We do not overlook the fact that to some, in order to keep up with the trend of the time, the aim should be to promulgate an entirely new penal code based on the latest progress of criminal science. Certainly, during the last twenty years not so many countries have reformed their penal codes or have adopted new codes based on new principles. It will be observed that some of the doctrines which have just been enunciated are already applied in the Code itself and in the special laws which have been incorporated therein, such as those regarding habitual delinquency, juvenile delinquency, and

the deduction of sentence for good behavior. With respect to advanced and radical theories, the results of their application still remain to be seen. Like any new thing, these theories, during their stage of experimentation, may be subjected to amendments and corrections. A well-known author has said that not long ago in Peru, a Penal Code was approved in which was crystalized the glaring penal doctrines of the time. Not long after its approval, however, it had to be changed, "for being too radical." What is advisable, is to adopt an attitude of patient waiting. If we desire to put into practice some of these doctrines, we should enact special laws which, in case of any defects, may be amended or repealed without affecting the whole legal body of jurisprudence, which should be of some permanent character. In the meantime, the present Code, although old and weak, may well continue to satisfy the essential ends of criminal justice and to efficiently fulfill its two-fold purpose of prevention and expression of crimes, by means of timely insertions and suppressions of certain provisions, without affecting its internal structure. Paraphrasing an illustrious writer, permit me to conclude by saying: "This Revised Penal Code is modest, but it is practical and is ours."

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THE REVISED PENAL CODE

BOOK ONE

GENERAL PROVISIONS REGARDING THE DATE OF ENFORCEMENT AND APPLICATION OF THE PROVISIONS OF THIS CODE, AND REGARDING THE OFFENSES, THE PERSONS LIABLE AND THE PENALTIES

PRELIMINARY TITLE

Date of effectiveness and application of the provisions of this Code

Article 1. TIME WHEN ACT TAKES EFFECT.— This Code shall take effect on the first day of January, nineteen hundred and thirty-two.

DATES OF ENACTMENT AND EFFECTIVITY OF THE CODE.—This Code was enacted by the Philippine Legislature and approved by His Excellency, Dwight F. Davis, then Governor General of the Philippines, on December 8, 1930. As a law of exceptional importance, it did not take effect at the beginning of the fifteenth day after the completion of its publication in the Official Gazette, as provided for in Section 11 of the Administrative Code, but one year and twenty-two days after the approval of the Code by His Excellency, the Governor General. The purpose of the long interval between the passage of the statute and its effectivity was to enable the public, in general, and the bench and the bar, in particular, to get acquainted with the many new important provisions of the Code.

COMPOSITION AND POWERS OF THE CODE COMMITTEE. —The present Code, known also as Act No. 3815 of the Philippine Legislature, is a compilation and revision of the penal laws in force in the country, without radical changes in its structure. This was done by a committee created by Administrative Order No. 94 of the Department of Justice dated October 18, 1927 and composed of: the late Hon. Anacleto Diaz, ex-Provincial Fiscal, former

Prosecuting Attorney of the City of Manila, and Associate Justice of the Supreme Court, Chairman; Hon. Quintin Paredes, ex-City Fiscal, ex-Attorney General, former Secretary of Justice, ex-Resident Commissioner from the Philippines, Senator and practising attorney; Hon. Guillermo B. Guevara, former Judge of the Court of First Instance, Fiscal of the City of Manila, member of the Code Commission, Professor of Law, now practising attorney; Hon. Alex. Reyes, former Solicitor General, ex-Justice of the Court of Appeals and Justice of the Supreme Court; and Hon. Mariano H. de Joya, ex-Provincial Fiscal, ex-Assistant Fiscal of Manila, ex-Judge of the Court of First Instance, and practising attorney, members.

The powers of the committee were well-defined, being limited, according to the language of said administrative order, to preparing "a revised draft of the Penal Code, taking into consideration the following: (1) The penal legislation found in our statute books amending, or in some manner affecting, the provisions of the Penal Code, with a view to incorporating them in the draft; (2) the rulings laid down by the Supreme Court in its decisions applying, interpreting, or otherwise discussing the provisions of the Penal Code; and (3) the present conditions of these Islands, social and otherwise."

THEORY TO WHICH THE CODE BELONGS.—Thus, the committee did not consider itself empowered to present a draft of a Penal Code which could be in harmony with the trend of the **positivist school** or of modern criminology. This Revised Penal Code, therefore, continues, like the old Penal Code, to be based on the principles of the old or **classical school,** although many provisions of eminently positivistic tendencies (those having reference to the punishment of impossible crimes, juvenile delinquency, etc.) were incorporated in the present Code.

Art. 2. APPLICATION OF ITS PROVISIONS.—Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:[1]

In accordance with the provisions of this article, territory of the Philippine Archipelago is understood to be not only the land included within its frontiers but also:

[1] Same as Article 2 of the proposed Correctional Code of 1916.

(a) **Its atmosphere or air space.** There are three theories concerning what should be the limits of the air space. One upholds the absolute freedom of the air; that the air space, saving the rights of ownership and the preservation of the subjacent State, is completely free. Another divides the air space into two zones: one **territorial** which would be under the law of the subjacent State, and the other **free**, beyond the reach of the law. The third theory, which seems to be more rational, holds that the sovereignty of the subjacent State, and therefore its penal laws extend to all the air space which covers its territory, subject to the right of way or easement in favor of foreign air crafts.[2]

(b) The **maritime** zone or territorial sea, that is, that portion of the sea which bathes our shores. In principle, it extended to the maximum reach by cannon shot, following the maxim **"Potestas terrae finitur ubi finitur armorum vis"**; but, at present, the States, in their respective treaties, have fixed its length to three miles from the coast line.[3]

1. Should commit an offense while on a Philippine ship or airship;[4]

Philippine vessels or aircraft, although beyond the territorial sea, that is, beyond three miles from the seashore, are considered part of the national territory, and, therefore, all crimes committed thereon must be tried by the Philippine Courts, in accordance with the provisions of Act 400 of the Philippine Commission. A Philippine vessel must be understood to be that which is registered in the Bureau of Customs.

2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;

These bonds or obligations issued by the State deserve the greatest protection, since their alteration or falsification would endanger the public treasury, to the grave prejudice of the community.

Hence the severity with which the forgers are prosecuted and the war without quarter against them. They may commit the falsification in Hongkong or in Japan, or in any other foreign

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[2] See State Papers, Treaty Series, 1919; Lawrence, The Principles of International Law, 7th Edition, p. 114. In connection with the dominion of the air, see the interesting case of **Smith vs. E. N. Aircraft Co.**, 170 N. E. 385.
[3] Lawrence, The Principles of International Law, 7th Ed., p. 138.
[4] Registration of airship and air commerce is regulated by R. A. No. 776.

country, but that will not save the offenders from prosecution once they are found or are delivered to the jurisdiction of the courts of the country.

3. Should be liable for acts connected with the introduction into these Islands of the obligations and securities mentioned in the preceding number;

This paragraph has for its purpose to extend the exterritoriality of the Penal Code not only to the principals of the crime of falsification of coins of legal tender or of obligations of the Philippine Government but also to persons who introduce them into the Philippines, for the reason that the latter are just as dangerous as the former.

4. While being public officers or employees, should commit an offense in the exercise of their functions; or

This is a new provision which is not found either in the proposed Correctional Code of 1916 or in the Spanish Penal Code of 1928.

A public officer, for example, who is abroad in the performance of his duties and accepts bribes or reveals State secrets confided to him by virtue of his position, may be tried in this country according to the provisions of this paragraph. The reason for this provision is quite obvious. A public officer, being the repository of the public trust, would certainly find a foreign land propitious to the execution of some offense to the detriment of public interest, and the fact that he made the criminal attempt outside the national frontiers must not constitute a bar to his prosecution before the courts of this country, upon which devolves the duty of punishing criminal acts committed by its officers, wherever they may be found.

5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.

Hence, a conspiracy planned in Japan or in any other foreign country in order to commit treason, or to provoke war in the Philippines, may be tried by our courts, in accordance with the provisions of this paragraph. There is no gainsaying that national safety requires that its penal laws be enforced upon those who, being in duty bound to uphold said laws, choose to break them.

Piracy is a crime against mankind, and as such may be punished by any civilized government. Such is the reason for the exterritoriality of this Code in the punishment of this crime.

TITLE ONE

Felonies and circumstances which affect criminal liability

CHAPTER ONE

FELONIES

Art. 3. DEFINITION.—Acts and omissions punishable by law are felonies (delitos).

Felonies are committed not only by means of deceit[1] (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 lack of skill.[2]

DIFFERENCE BETWEEN THE PROVISIONS OF THE OLD AND NEW CODES.—It must be noticed that the adjective **voluntary** is suppressed in the definition of felony. But this omission is justified, if account is taken of the fact that the article upon which we are now commenting classifies felonies into intentional felonies (**delitos dolosos**) and culpable felonies (**delitos culposos**), and defines **dolus** as the act done with **deliberate intent.** If in order to commit an intentional felony (**delito doloso**) it is necessary to act with **deliberate intent,** it must follow that the act necessarily is **voluntary,** because there can be no **deliberate intent** where there is no freedom, intelligence, or intent.

ELEMENTS OF FELONY.—Hence, notwithstanding the change in the phraseology, a felony, as defined by this article, continues

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[1] The word **dolo** in the Spanish text of this article has been erroneously translated in English into the word "deceit." According to Wharton's Criminal Law, Vol. 1, page 180, dolus is equivalent to malice, which is the intent to do injury to another.

So, in our opinion, the following is the correct translation of Art. 3 of the present Revised Penal Code:

> Art. 3. Definition: Acts and omissions punishable by law are felonies (**delitos**).
>
> Felonies are committed not only by **dolus** or malice, but also by **culpa** or negligence.
>
> There is **dolus** when the act is performed with deliberate intent; and there is **culpa** or negligence when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

[2] This article is a merger of articles 4 and 5 of the proposed Correctional Code of 1916.

to contain three elements, to wit: (a) that there be an **act** or **omission**; (b) that this act or omission be **voluntary**; and (c) that there be a **penalty** prescribed by law.

ACT OR OMISSION.—**Act** is understood to mean any bodily movement tending to produce some effect in the external world, it being unnecessary that the same be actually produced, as the possibility of its production is sufficient. The act must be external, because internal acts are beyond the sphere of penal law. Hence, a criminal thought or mere intention, no matter how immoral it may be, will never constitute a felony.[3]

Omission means inaction, the non-performance of a positive act which one is in duty bound to do. In order to be punishable or intentional (**doloso**) it is necessary that the omission be deliberate or voluntary; because if it is involuntary, it might constitute culpable felony (**delito culposo**), or a criminal negligence as defined in article 365 of this Code.[4]

WILFULNESS OR VOLUNTARINESS.—A felonious or criminal act is presumed to have been done voluntarily, unless the contrary appears,[5] because of the moral presumption that freedom and intelligence constitute the normal condition of a person, and this moral presumption is also a legal one.[6]

The presumption of a free act is destroyed by evidence that there was force or intimidation. For this reason, one impelled by an irresistible force or by an uncontrollable fear is exempt from criminal liability.[7]

The presumption that an act is done voluntarily may be rebutted by proof of insanity, infancy, or excusable mistake,[8] or by proof that the act was purely accidental.[9]

EFFECT OF MISTAKE OF FACTS.—In the case of **United States vs. Ah Chong**, 15 Phil. 488, it was held that one who, by reason of mistake as to the facts, does an act which would exempt him from criminal liability if the facts were as they were conceived by him to be (though in any other case the act would constitute a felony) cannot be held criminally liable.

MALICIOUS INTENT; WHEN INDISPENSABLE AND WHEN NOT.—Criminal or malicious intent constitutes an essen-

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[3] Dec. Sup. Ct. of Spain of February 1, 1901.
[4] See notes and comments on Art. 365, infra.
[5] U. S. vs. Gloria, 3 Phil. 333.
[6] People vs. Sia Teb Ban, 54 Phil. 52.
[7] Art. 12, pars. 5 and 6, **infra**; U. S. vs. Felipe, 5 Phil. 333.
[8] Art. 12, par. 1, **infra**; People vs. Bascos, 44 Phil. 204; U. S. vs. Peñalosa, 1 Phil. 109; U. S. vs. Catolico, 18 Phil. 504; U. S. vs. San Juan, 25 Phil. 513.
[9] Art. 12, par. 4, **infra**; U. S. vs. Tañedo, 15 Phil. 196.

tial element of every felony, due to the maxim "**actus non facit reum nisi mens sit rea,**" that is, that the intent and the act must concur to constitute the crime.

Thus, where it appears that the defendant, without any apparent motive, attacked and killed his wife whom he loved, and that the attack was made under the impression that the defendant was being surrounded by several enemies, the act is certainly involuntary, because of lack of malicious intent.[10]

A certain priest in Jaro was accused of demolishing a wall and of stealing the stones of which it was made. The accused admitted that the wall was demolished under his direction, but he alleged that he did it in good faith and under the belief that the wall and the stones belonged to the College of the Sisters of Mercy administered by him. Apparently, the accused did not obtain any personal benefit from the stones in question. It was held that under such facts, the criminal or malicious intention of the accused had not been established, and he was, therefore, acquitted.[11]

There are certain cases, however, where the criminal or malicious intention is unnecessary, as, for example, where the commission of a prohibited act is prescribed for reasons of public policy. Thus, if a law prohibits and punishes the granting of loans to any member of the board of directors of a Government bank, the allegations that he acted in good faith, that he had been misled by the rulings of the auditor, and that, finally, the bank did not suffer any loss or damage because of the loan, would not be a defense for a member of the board who granted a loan to himself. The mere execution of a prohibited act is in itself sufficient to constitute a crime.[12]

The last requisite required by this article in order that there be a felony is that the act be punishable by law. This requisite is ascribed to the old maxim, "**nullum crimen, nulla poena sine lege**"; that is, there is no crime where there is no law punishing it.[13]

Art. 4. CRIMINAL LIABILITY.—Criminal liability shall be incurred:

1. By any person committing a felony (delito)

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[10] People vs. Taneo, 58 Phil. 255.
[11] U. S. vs. Viera, 1 Phil. 584.
[12] People vs. Concepcion, 44 Phil. 126.
[13] Duty of court in connection with acts which should be repressed but are not punishable by law. (See Art. 5, R. P. C.)

although the wrongful act done be different from that which he intended;[14]

WHEN A PERSON IS LIABLE FOR ALL THE CONSEQUENCES OF HIS FELONIOUS ACT.—In order that a person may be criminally liable for a felony different from that which he proposed to commit, it is indispensable that the two following requisites be present, to wit: (a) that a felony was committed; and (b) that the wrong done to the aggrieved person be the direct consequence of the crime committed by the offender. Thus, if one intended to kill the President of the Philippines and threw a hand grenade at him, but someone, to protect the intended victim kicked the grenade and it exploded at another place, killing and injuring other persons, the accused is guilty of the complex crime of murder and multiple attempted murder.[15] Also, if one tries to kill A but by mistake kills B, he is liable just the same for the crime he committed;[16] or if one inflicts upon another slight physical injuries which later on degenerate into serious physical injuries without fault or negligence on the part of the injured person, the former will be liable for the latter crime, that is, for serious physical injuries.[17] The same principle applies if death results therefrom.[18]

And again, if in the course of a fight, one of the combatants in his desire to wound his adversary accidentally wounded a girl who was behind the latter, the girl dying because of the injuries, the actor could not escape responsibility for homicide.[19]

EXCEPTIONS TO THE RULE.—On the other hand, if, in struggling with another, who sought to wrench away his bolo, the defendant accidentally wounded a bystander, who died in consequence, the actor could not be held responsible for the death of the victim, for the reason that the initial action of the doer, i. e., his effort to retain his bolo, was not unlawful.[20]

Likewise, one cannot be held liable for a felony different from that which he proposed to commit when the injury suffered by the offended party is due to some cause or accident wholly extraneous to the fact constituting the felony, or is due to the inexcusable negligence or deliberate conduct of the aggrieved

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[14] Same as paragraph 2 of article 1 of the old Penal Code.
[15] People vs. Guillen, 47 O. G. 3433 (1951)
[16] U. S. vs. Maisa, 8 Phil. 597; U. S. vs. Diana, 32 Phil. 344; and U. S. vs. Mendieta, 34 Phil. 242.
[17] U. S. vs. Baoit, 15 Phil. 338; U. S. vs. Brobst, 14 Phil. 310 and U. S. vs. Mallari, 29 Phil. 14.
[18] People vs. Sia Bonkia, 60 Phil. 1; People vs. Reyes, 61 Phil. 341.
[19] People vs. Vagallon, 47 Phil. 332.
[20] People vs. Bindoy, 56 Phil. 16.

person. For example, if A and B engage in a fight, and B, because he is suffering from heart disease, dies during the fight, A cannot be held guilty of homicide for the death of B, for the reason that the death of the latter was not directly caused by the act of A. Or if slight physical injuries be inflicted upon B, and the latter deliberately immerses his body in a contaminated cesspool, and as a consequence of this act his injuries became infected and became serious, A cannot be held liable for the crime of serious physical injuries.[21]

It has been uniformly held by different courts that a defendant is not criminally liable for the consequences of an erroneous or improper medical treatment. Viada quotes the following case decided by the Supreme Court of Spain: **"Question 24.—If** in the verdict it is stated that the wounds inflicted upon the deceased by the defendant would have healed, with the loss of the arm, had it not been for complications due to mistakes committed by the doctor in the surgical operation and treatment: Is the crime homicide? It was so held by the **Audiencia** of Jaen; but upon appeal taken by the accused the Supreme Court only found him guilty of the crime of serious physical injuries:

'Whereas, although as this court has repeatedly held, a person is liable for all justiciable acts contrary to law and for all the consequences thereof, having inflicted physical injuries from which or from whose direct or immediate consequences death results, either incidentally or accidentally, the offender must answer for the ultimate result of his act, i. e., for the death resulting from the injury he inflicted,—yet this principle is not applicable where it clearly appears that the injury would not have caused death, in the ordinary course of events, but would have healed in so many days, and where it is shown beyond all doubt that the death is due to the malicious or careless acts of the injured person or a third person, because it is a wise and equitable principle universally recognized and constantly applied, that one is only accountable for his own acts and their natural or logical consequences, and not for those which bear no relation to the initial cause and are due to the carelessness, fault, or lack of skill of another, whether it be the injured man himself or a third person; Whereas the proper jury having found upon the strength of the evidence before it, that the wound inflicted by the appellant Jeronimo Navarro upon Bartolome Martinez could have healed, with the loss of an arm, had it not been for certain complications due to the mistakes committed by the doctor in the surgical opera-

[21] U. S. vs. De los Santos, G. R. No. 13309; Dec. Sup. Ct. of Spain, May 13, 1882.

tion and the treatment thereof, it is obvious that following the doctrines set forth in the foregoing reasonings, the appellant should not have been convicted of the crime of homicide, but merely of serious physical injuries with the loss of a principal member, this being the only consequences imputable to him in view of his act, inasmuch as the death was due wholly to another person's carelessness or lack of skill, etc.' "[22]

But the fact that the deceased had delicate constitution and suffered from incipient tuberculosis, does not affect the criminal liability of the defendant who gave him a severe blow, from the effects of which he died; for, even if his weakened condition rendered the blow more fatal, the efficient cause of the death remains the same.[23]

The rule enunciated here is not applicable to the case of one who, in trying to commit homicide, by mistake commits parricide (that is, kills his own father when his intention was to kill a stranger), for the reason that such a case is specially provided for in article 49 of this Code.

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

IMPOSSIBLE CRIME.—This paragraph constitutes a real innovation and has for its purpose to include in the Code the so-called impossible crimes, that is, those acts which although done with evil intent do not produce the injury which the culprit desired to inflict, due to the ineffectiveness of the means employed, or to the absence of a real objective, or to the impossibility of the ends.

EXAMPLES OF IMPOSSIBLE CRIME.—In accordance with the old Code and the decisions construing it, the impossible crime, that is, when the act committed by the offender cannot constitute a crime, either because the means employed are inadequate (as when one tries to kill another by putting in his soup a substance which he believes to be arsenic when in fact it was common salt), or because of the impossibility of the end in view (as when one tries to murder a corpse), was not punishable, neither as attempted nor as frustrated offense.[24]

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[22] Viada, Vol. 5, p. 81, 5th ed. (Decision of April 2, 1903, Gazette of May 23rd).
[23] People vs. Ilustre, 54 Phil. 594.
[24] Dec. Sup. Ct. of Spain, Nov. 26, 1879; 21 Jur. Crim. 343.

With this innovation brought about by the second paragraph of this article, deeds like these are now punishable and subject to the penal sanction of article 59 of this Code.

Art. 5. DUTY OF THE COURT IN CONNECTION WITH ACTS WHICH SHOULD BE REPRESSED BUT WHICH ARE NOT COVERED BY THE LAW, AND IN CASES OF EXCESSIVE PENALTIES. — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made 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.[25]

No matter how reprehensible an act is, if the law-making body does not deem it necessary to prohibit its perpetration with penal sanction, the Court of justice will be entirely powerless to punish such act.

Under the provisions of the second paragraph of this article the Court cannot suspend the execution of a sentence on the ground that the strict enforcement of the provisions of this Code would cause excessive or harsh penalty. All that the Court could do in such eventuality is to report the matter to the Chief Executive with a recommendation for an amendment or modification of the legal provisions which it believes to be harsh, or for pardon of the offender.

Art. 6. CONSUMMATED, FRUSTRATED, AND ATTEMPTED FELONIES.—Consummated felonies, as

[25] Same as article 2 of the old Penal Code.

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

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

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[26]

CONSUMMATED CRIME.—An offense is consummated when it contains all the elements for its execution and accomplishment. For example, in homicide the crime is consummated if the victim dies;[27] in theft, when the thief is able to take or get hold of the thing;[28] in arson, when the offender is able to set on fire the house or building which he sought to destroy, no matter what the amount or extent of the damage may be, provided such damage be capable of being pecuniarily estimated.[29]

ATTEMPTED CRIME.—In order that there may be an attempt, it is necessary, according to this article, that the offender commence directly by overt acts the execution of the crime; and in order that the execution of the crime be considered commenced, it is necessary that it be manifested by certain external acts which have direct connection with the crime. Thus, the mere fact that a certain person attempts to make an opening by means of an iron bar on the wall of another's house is not sufficient to justify the inference that the doer's intention was to rob, in the absence of additional evidence indicating such intention.[30] Or supposing a person plans to murder another and purchases poison from the drug store to carry out his design. From this act alone, the existence of the attempted crime of murder cannot be established because, although the commencement of the execution of the crime

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[26] Similar to Art. 3 of the old Penal Code.
[27] U. S. vs. Catigbac, 4 Phil. 259.
[28] U. S. vs. Adiao, 38 Phil. 754.
[29] U. S. vs. Po Chengco, 23 Phil. 487; U. S. vs. Go Foo Suy et al., 25 Phil. 187.
[30] People vs. Lamahang, 61 Phil. 703.

is clearly shown by the **external** act of the offender of going to the drug store and purchasing the poison, such act does not as yet have a **direct** connection with the crime. He may allege that the poison bought by him was intended for some different purpose. But if the offender, following his criminal design, pours the poison into the soup intended for his victim, he evidently commences the execution of the crime by an **external** act which has **direct** connection with the crime of murder, because the necessary and logical result of his acts in this case cannot be other than the poisoning of the person for whom the soup was intended.

The other circumstance which this article requires so that there may be an attempt to commit a crime is that the offender failed to do all the acts of execution by reason of cause or accident **other** than his own spontaneous desistance. In case of an attempt, the offender **never goes beyond the subjective phase of the crime.** He is interrupted and compelled to desist by the intervention of external causes before passing the subjective phase. Therefore, if the offender begins the execution of the act and thru fear or remorse desists from continuing his criminal purpose, there would be no attempted crime. For example, in the illustration given above, if at the very moment the person for whom the poison is intended brings to his lips the poison, and the offender, thru fear or remorse, takes it away and confesses his crime, the circumstance which prevented the consummation of the crime came entirely from the will and volition of the offender; thus, his acts are not punishable. It is a sort of reward granted by law to those who, having one foot on the verge of crime, heed the call of their conscience and return to the path of righteousness.[31]

FRUSTRATED CRIME.—In order that there be a frustrated offense, it is necessary, as stated in the article itself, that the offender perform all the acts of execution which should produce the offense as a consequence, that is, that he completely executes all the external acts without, however, producing the material evil which he proposed to commit. In the case of frustrated offenses **the subjective phase has been completely passed.** Subjectively, the crime is complete. Nothing interrupted the offender while he was passing thru the subjective phase. However, the offense was not consummated because causes independent of the will of the offender intervened. He did all that was necessary to commit the crime. If the crime was not produced as a consequence, it was due to something which was beyond his power. For example, the offender pours the poison in his victim's soup, but the intended

[31] U. S. vs. Simeon, 3 Phil. 688; U. S. vs. Bien, 20 Phil. 354; U. S. vs. Eduave, 36 Phil. 209; Viada, 1 Cod. Pen., 35-36.

victim does not die because of the timely intervention of a physician.[32]

The **subjective phase** consists of that portion of the acts constituting the offense included between the act which begins the commission of the crime and the last act performed by the offender which, with the prior one, should result in the consummated offense. From this time, the **objective phase** begins. It may likewise be said that the subjective phase is that period which includes the offender's acts over which he has control; that interval between the time the offender begins the commission of the crime and that when he voluntarily desists from continuing. If between these two periods, the offender is stopped by any cause other than his own voluntary desistance, the subjective phase has not been passed, and the act is a mere attempt. If he is not so stopped and continues until he performs the last act, then the offense is frustrated.[33]

If the subjective phase of the crime already has been passed but prevention of the consummation of the offense is due to the perpetrator's own and exclusive will, will frustrated crime exist? For instance: A doctor conceived the idea of killing his wife, and to carry out his plan mixed arsenic in the soup of his victim. Immediately after the victim took the poisonous food, the offender suddenly felt such a twinge of conscience that he himself washed out the stomach of the victim and administered to her the adequate antidote. The victim was saved by the offender himself. Would this be a frustrated parricide? Certainly not; for even though the subjective phase of the crime had already been passed, the second and most important requisite of a frustrated crime, i. e., that the **cause** which prevented the consummation of the offense be **independent** of the will of the perpetrator, was lacking.

The following was held to be a frustrated crime: While M one evening was seated on a chair in a provincial store, with his back towards the window, B from the window struck with a knife at M, but the knife lodged in the back of the chair on which M was seated, causing M to fall from the chair, but not injuring him. The attendant circumstances established that murder was in the heart and mind of the aggressor; and that being the case, the crime committed was frustrated, and not attempted murder. The author performed all the acts of execution. The cause resulting in the failure of the attack arose by reason of forces independent

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[32] See U. S. vs. Marasigan, 11 Phil. 27; U. S. vs. Sanchez, 20 Phil. 427; U. S. vs. Eduave, 36 Phil. 209; U. S. vs. Valdez, 39 Phil. 240; People vs. Pacubas, 64 Phil. 614.

[33] U. S. vs. Eduave, 36 Phil. 209.

of the will of the perpetrator. What is known as the subjective phase of the criminal act has passed.[34]

Art. 7. WHEN LIGHT FELONIES ARE PUNISHABLE.—Light felonies are punishable only when they have been consummated, with the exception of those committed against persons or property.

According to this Code, there are few light felonies. There can be mentioned those defined and penalized in articles 195 (gambling), 197 (betting in sports contests), 199 (illegal cock-fighting), 266 (slight physical injuries), 309, par. 7 (theft in which the amount involved is insignificant), 328 (malicious mischief), 329, par. 3 (simple imprudence), and 364 (intrigues against honor).

Art. 8. CONSPIRACY AND PROPOSAL TO COMMIT FELONY.—Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty 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.[35]

In order that there may be **conspiracy**,[36] two requisites are necessary, viz: (a) determination or decision to act, that is, a definite purpose to commit the crime, and (b) agreement or meeting of the minds of two or more persons.

In order that there may be a **proposal**, two requisites are likewise necessary: (a) determination to commit the crime, and (b) the proposal of its execution to other persons. Hence, a proposal to commit a crime cannot exist if the person making the proposal is not willing to commit it.

One who offers money to a public officer to induce him not to perform the duties pertaining to his office not only proposes the commission of a crime but also is liable for attempted bribery.[37]

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[34] People vs. Borinaga, 55 Phil. 433.
[35] Identical to Art. 4 of the old Penal Code.
[36] See People vs. Ampan et al., 60 Phil. 346.
[37] U. S. vs. Gloria, 4 Phil. 341.

There are only three cases where the Code punishes the mere proposal or conspiracy to commit a crime, to wit: in treason (Art. 115, **infra**), rebellion or insurrection (Art. 136, **infra**), and sedition (Art. 141, **infra**).

Art. 9. GRAVE FELONIES, LESS GRAVE FELONIES AND LIGHT FELONIES.—Grave felonies are those to which the law attaches the capital punishment or penalties which in any of their periods 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.**

The tripartite division of felonies made by this article is the same classification made by article 6 of the old Code; however, instead of **grave felonies, less grave felonies,** and **misdemeanors** as classified of old, we now have **grave felonies, less grave felonies,** and **light felonies.**

Art. 10. OFFENSES NOT SUBJECT TO THE PROVISIONS OF THE CODE.—Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.[38]

A "special law" was defined in **U. S. vs. Serapio,** 23 Phil. 584, as a penal law which punishes acts not defined and penalized by the Penal Code.

By virtue of the provisions of this article, it was held by the Supreme Court that the attempted or frustrated offenses penalized by Acts of the Philippine Commission, as, for example, the Municipal Code,[39] are not punishable.

Some provisions of the Penal Code (by virtue of the second

[38] Taken from article 7 of the old Code, and from article 4 of the Penal Code of Spain of 1928.
[39] U. S. vs. Lopez Basa, 8 Phil. 89.

sentence of this article), are applicable to special laws. In fact the Supreme Court has extended some provisions of the old Penal Code to special penal laws; such as for example, the provisions of article 22 with reference to the retroactivity of penal laws if they favor the accused;[40] those of article 16 with reference to participation of an accomplice in the commission of the crime;[41] those of article 45 with reference to the confiscation of the instruments used in the commission of the crime;[42] articles 100 and 39 with reference to a person found guilty of violation of the Revised Motor Vehicle Law.[43]

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[40] People vs. Parel, 44 Phil. 437.
[41] U. S. vs. Ponte, 20 Phil. 379.
[42] U. S. vs. Bruhez, 28 Phil. 305.
[43] People vs. Moreno, 60 Phil. 712.

CHAPTER TWO

JUSTIFYING CIRCUMSTANCES AND CIRCUMSTANCES WHICH EXEMPT FROM CRIMINAL LIABILITY

Art. 11. JUSTIFYING CIRCUMSTANCES.—The following do not incur any criminal liability:

IMPROVEMENT ON THE OLD CODE.—One of the most striking innovations of the Revised Penal Code along scientific lines is, undoubtedly, the division which it makes of the exempting circumstances originally provided for in article 8 of the old Penal Code into two classes—**justifying** circumstances (article 11) and **exempting** circumstances (article 12).

The old Penal Code grouped these circumstances in a single article (article 8) and committed a scientific error in providing that the persons enumerated therein were "exempt" from criminal liability.

DISTINCTION BETWEEN JUSTIFYING AND EXEMPTING CIRCUMSTANCES.—There exists a marked difference, both by their nature and by their effects, between a justifying circumstance and one of exemption. A person who acts by virtue of a justifying circumstance (**self-defense, defense of a relative, defense of a stranger, state of necessity, fulfillment of a duty, and obedience due another**) commits no crime in the eyes of the law, because there is nothing unlawful in the act or conduct of the actor; in other words, the act of such a person is in itself both just and lawful. For this reason, a person acting under any of the justifying circumstance above enumerated (except Art. 11, No. 4) is exempt from both criminal and civil liability (See article 101, **infra**). On the other hand, one who acts by virtue of an exempting circumstance is not exempted from civil liability (article 101).

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:[1]

GROUNDS OR REASONS FOR SELF-DEFENSE.—From ancient time, self-defense has always been an exemption from criminal liability.

Penal law makes self-defense lawful, for the reason that it

[1] Same as article 8, paragraph 4, of the old Penal Code.

would be quite impossible for the State in all cases to prevent aggression upon its citizens and offer protection to the person unjustly attacked. On the other hand, it is to be expected that a person would not succumb to an unlawful aggression without offering any resistance.

But the justifying circumstance of self-defense must be duly proven.[2]

WHAT RIGHTS ARE INCLUDED IN SELF-DEFENSE.—Self-defense includes not only the defense of the person or body of the one assaulted but also that of his rights, that is, those rights the enjoyment of which is protected by law, like right to property and right to honor.

It was, however, intimated in a decision of the Supreme Court of Spain that the defense of the right to property is not unlimited, because it was held that such a defense is allowed only when there is an assault upon the person entrusted with the protection of that property.[3] But the rights to chastity, to honor, and to the inviolability of the dwelling are within the privilege of self-defense.[4]

First. Unlawful aggression;

This is the first requisite of self-defense. It requires that there be an actual or physical aggression upon a person, and at least a threat to inflict real injury, as, for example, when one aims a revolver at another with the intention of shooting him; or when one is assaulted in his own home, etc.[5] The mere invasion of a right, unless accompanied by an assault, will not give rise to self-defense.[6] For this reason, an insult cannot be considered an unlawful aggression.[7] On the other hand, a slap on the face is an unlawful aggression.[8]

The act of a person in retreating two steps and placing his hand in his pocket with a motion indicating his purpose to commit an assault with a weapon is aggressive, because the movements and motions, revealed clearly by external acts, show the commencement of an unlawful aggression which the accused was justified to prevent by preparing himself to repel it.[9]

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[2] People vs. Salahudin et al., 51 Phil. 840; People vs. Ansoyon, 75 Phil. 772.
[3] Dec. of May 7, 1913, 90 Jur. Crim. 551.
[4] Dec. of November 26, 1886, 37 Jur. Crim. 476; Dec. of June 3, 1901, 66 Jur. Crim. 359; Dec. of January 20, 1894, 52 Jur. Crim. 33. See People vs. Luague et al., 62 Phil. 504.
[5] Decs. of September 29, 1905, 75 Jur. Crim. 131, and March 7, 1921, 106 Jur. Crim. 178.
[6] Dec. of September 29, 1905, 75 Jur. Crim. 131.
[7] U. S. vs. Carrero, 9 Phil. 544.
[8] Dec. of March 8, 1887, 38 Jur. Crim. 380.
[9] Dec. of June 26, 1891, 46 Jur. Crim. 863.

The act of opening a knife and making a motion as if to make an attack constitutes a real aggression.[10]

The attempt to attack with a club, accompanied by insulting words, constitutes a real aggression, because the use of a cane or walking stick is a means to wound, ill-treat, and even inflict untold damage to the person against whom it is used, and the latter is therefore justified in repelling such display of force.[11]

Furthermore, not only the actual assault upon a person but also the intent to commit the assault when it is of such a nature that it places in imminent danger the life of the person assaulted, is also an unlawful aggression. Thus, one who brandishes a knife and raises it during a dispute with another, indicates an aggressive attitude which involves a real and immediate danger to said person, justifying the latter to adopt an offensive attitude.[12]

The act done by a wounded person in raising a club which he then held in his hands, and advancing towards the accused with an attitude of hitting him, constituted a real unlawful aggression giving rise to a real and actual danger the consequences of which were not easy to foresee and which, once they took place, would result in untold injury.[13]

However, in the case of a preconcerted quarrel there can be no unlawful aggression. So, he who agrees with another to engage in a fight, cannot plead self-defense.[14] For example, if A and B agreed to fight and they in fact engaged in a fight, neither of them can allege that he was unlawfully assaulted. In other words, it is immaterial that the first blow was given by A or B; and if A kills B under such circumstances, he will be liable for homicide, no matter whether or not B gave the first blow.[15]

Second. Reasonable necessity of the means employed to prevent or repel it;

It must be borne in mind that the reasonable necessity of the means employed referred to in this requisite is not absolute, since it must be assumed that one who is assaulted cannot have sufficient tranquility of mind to think, to calculate, and to make comparisons which can be easily made in the calmness of his home. For this reason, the Supreme Court of Spain held that it is not the indis-

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[10] Dec. of October 24, 1895, 55 Jur. Crim. 169.
[11] Dec. of December 11, 1896, 57 Jur. Crim. 397.
[12] Dec. of February 16, 1905, 74 Jur. Crim. 178.
[13] Dec. of May 26, 1905, 74 Jur. Crim. 570.
[14] People vs. Marasigan, 51 Phil. 701. See also People vs. Cabajar, 56 Phil. 83.
[15] U. S. vs. Navarro, 7 Phil. 713; U. S. vs. Cortes, 36 Phil. 837; People vs. Quinto, 55 Phil. 116.

pensable need but the rational necessity which the law requires, and that it is necessary in each particular case to judge the relative necessity, more or less imperative, in accordance with the sound rules of rational logic.[16]

In this jurisdiction, it was held that during an unlawful aggression, in the course of the fight and as long as there is danger to the life or limbs of the one assaulted, the latter is entitled to repel the danger by wounding his adversary and, if necessary, rendering him powerless. The ancient common-law rule in homicide known as "retreat to the wall" has given way to the "stand ground when in the right" rule. If the offender is where he is entitled to be, he is not required by law to step aside when his assailant is rapidly advancing upon him with a deadly weapon.[17]

As regards peace officers, the rule seems to be even more liberal. It was held in **U. S. vs. Mojica**, 42 Phil. 784, that a police officer in the performance of his duties must stand his ground and cannot take refuge in flight when attacked. His duty requires him to overcome his opponent, and the degree of violence which he may exert therefore differs somewhat from that which a private citizen may offer in self-defense. Hence, if a police officer, in the line of his duty, endeavors to quell a disturbance in a public street and is attacked by the deceased who is armed with a knife, and because of the aggression the police officer discharges his revolver against his assailant and fatally wounds him, the police officer should be exempted from criminal liability because the force employed by him under the circumstances is reasonably necessary in the exercise of a legitimate self-defense.

The reasonable necessity of the means employed in the defense, according to the decisions of the courts, is not subordinate to the existence of the injury done but to the imminence and danger of the injury itself.[18] Thus, if a person enters the dwelling of another and attacks one of the inmates thereof, the latter is justified in defending himself with such weapons as are at hand, and if from the defense thus made the aggressor dies, it is attributable to his own wrongful act.[19]

Defendant was walking along a dark street at night with pistol in hand on the lookout for certain individuals who had been making an insulting demonstration in front of his house. The

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[16] Dec. of Sup. Ct. of Spain of April 12, 1884.
[17] Beard vs. U. S., 158 U. S. 550; U. S. vs. Domen, 37 Phil. 57; People vs. Pancho, 56 Phil. 616.
[18] U. S. vs. Paras, 9 Phil. 367.
[19] U. S. vs. Brello, 9 Phil. 424.

deceased, the leader of the party making such demonstration, suddenly emerged from a hiding place near the street after defendant had passed, and approaching defendant from behind, threw his arms around defendant, at the same time attempting to snatch the pistol from defendant's hand. Defendant forcibly broke the hold of the deceased and turned to face him, whereupon a struggle for the possession of the pistol took place, in the course of which the pistol accidentally was discharged by defendant and a wound inflicted upon the deceased which caused his death. The deceased was much stronger than the defendant and was seeking an opportunity to give the latter a beating. There was no provocation on the part of the defendant. **Held:** That in view of the darkness and the surprise which characterized the assault, and in view of the probability that the deceased, by reason of his superior strength, would get control of the pistol and the probability that in this eventuality he would use it against the defendant, the discharge of the pistol by the defendant was a justifiable act of self-defense.[20]

So, also, when the deceased, one dark night, grabbed the defendant from behind without warning and without making himself known, and in the struggle that followed touched her private parts, she being unable to free herself, was justified in making use of the pocket-knife in repelling what she believed to be an attack upon her honor, since she had no other means of defending herself.[21]

When one acts in defense of his person and of his rights, the rational necessity of the means employed in the defense must be determined by its relation to the circumstances of the assault, and the reasonable fear which such assault might have inspired in the mind of the person assaulted. Thus, the command given to the defendant by the deceased in a dark and uninhabited place, for the purpose of playing a practical joke upon him, to "lie down and give me your money," is sufficient ground for the defendant to fear the imminence of a real danger to his life and property and impel him to repel it hurriedly by the first means which occurred to him, that is, by discharging his pistol against the assailant, a means which is the more related to the seriousness and importance of the aggression if it is borne in mind that it is difficult to prove the readiness to repel in some other manner an aggression of such nature, and that a person under such

[20] People vs. Lara, 48 Phil. 153.
[21] People vs. De la Cruz, 61 Phil. 344.

circumstances cannot be required to show sufficient coolness to adopt a less violent means of repelling the attack.[22]

There is reasonable means to prevent or repel an assault when the person assaulted employs adequate and sufficient means to avoid the danger menacing him, and under such critical circumstances, sufficient coolness to choose other means of defense cannot be required of such a person.[23]

Although as a general rule a dagger or a knife is more dangerous than a club, the use of a knife or dagger must be deemed reasonable if it cannot be shown that the person assaulted had other available means and could cooly choose other less deadly weapons to repel the assault.[24]

To use a firearm against a dagger or a knife, in the regular order of things, does not imply any difference between such weapons.[25]

In case of unlawful aggression, there is reasonableness of means employed when the person assaulted uses in self-defense a proper and adequate weapon in order to avoid an unexpected injury, and when in attacking his opponent he does not go beyond the limits of necessity and prudence.[26]

While a man is not, as a rule, justified in taking the life of one who assails him without the use of a dangerous weapon, this rule contemplates the situation where the contending parties are in the open and the person assaulted can exercise the option of retreating. Such rule is not applicable to the case where the person assaulted has no way of escape. In such situation the one who is assaulted can use a weapon in any way reasonably necessary to his protection from the aggressor. Thus, in a case where the deceased was a bully of known violent character and, although himself unarmed, he attempted to take from the accused the bolo, the only means of defense possessed by the latter, the court observed that, under the circumstances, it would have been an act of suicide on the part of the accused to allow the bolo to pass into the hands of his antagonist.[27]

Two persons met in the street. One slapped the face of the other and the latter retaliated by clubbing him and inflicting upon him a less serious physical injury. Convicted as principal

[22] Dec. of Sup. Ct. of Spain of March 17, 1885, 34 Jur. Crim. 508.
[23] Dec. of Sup. Ct. of Spain of July 4, 1887, 59 Jur. Crim. 498.
[24] Dec. of Sup. Ct. of Spain of October 5, 1887, 39 Jur. Crim. 422. See also People vs. Ignacio, 58 Phil. 858.
[25] Dec. of Sup. Ct. of Spain of October 27, 1887, 39 Jur. Crim. 57.
[26] Dec. of Sup. Ct. of Spain of December 30, 1890, 45 Jur. Crim. 790-793.
[27] People vs. Sumicad, 56 Phil. 643.

of this crime, he appealed, and alleged that he acted in self-defense, or that, at least, the majority of the circumstances exempting him from criminal liability were present, and that Article 67 was applicable. The Supreme Court so held, considering that the act of slapping another without any reason whatsoever and without the person slapped having given cause to warrant such an assault, constituted the use of force qualifying an unlawful aggression which justifies the person assaulted to defend himself, and that it not appearing from the record that defendant had given cause for the assault, there can be no doubt that in retaliating with a club he acted in self-defense without any provocation on his part, although in so doing all of the requisites required by law to exempt from criminal liability were not present, since the means employed by the defendant in repelling the aggression were not reasonably adequate to the nature of the assault but exceeded the boundaries fixed by the circumstances.[28]

Third. Lack of sufficient provocation on the part of the person defending himself.

According to this third requisite, the person defending himself, that is, the person assaulted, must not have given cause for the aggression by his unjust conduct, nor by inciting nor provoking the assailant. If the provocation is sufficient, his self-defense is not legitimate; and "sufficient," according to the Supreme Court of Spain, means that the provocation be proportionate to the aggression which gave rise to it.[29] According to the same court, to remonstrate because of an illicit act,[30] or to engage in a verbal argument,[31] cannot be considered sufficient provocation.

It has likewise been held that the provocation must be proximate and immediate.[32] The following case is an example of unlawful aggression and lack of sufficient provocation: Defendant having discovered that the deceased had built a part of his fence on defendant's land, asked the deceased why he had done so. The question angered the deceased so that he rushed at the accused and pushed him into a shallow pool of water, and then made some attempt to push him still further into the pool. It was proved that the deceased made no attempt to draw his bolo

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[28] Dec. of Sup. Ct. of Spain of January 20, 1904, 72 Jur. Crim. 123-124. See also People vs. Roxas, 58 Phil. 733.
[29] Dec. of Sup. Ct. of Spain of February 20, 1893.
[30] Dec. of Sup. Ct. of Spain of March 3, 1890.
[31] Dec. of Sup. Ct. of Spain of October 5, 1877.
[32] Decs. of Sup. Ct. of Spain of March 5, 1902, 68 Jur. Crim. 251 and of April 20, 1906.

which he had at his side. It was likewise proved that the accused had no reason to believe that the deceased intended to take his life or do him any really grave bodily harm, but nevertheless the accused struck his adversary a fatal blow on the head "with terrible force and in the heat of anger" and in an attempt to defend himself from the unprovoked assault of the deceased. Such facts, according to the Supreme Court, do not entitle the accused to complete exemption from criminal liability, but constitute an incomplete defense because of the presence of unlawful aggression and lack of sufficient provocation on the part of the accused.[33]

But, a person who, after being kicked, and struck with a cane, without provocation on his part, draws a pen-knife to defend himself from a second attack and with it stabs his assailant several times, after an unsuccessful struggle to wrest from the latter a revolver he is holding in his hand, acts in self-defense.[34]

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 circumstances 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.

In this case, as in that of self-defense, there is required as first requisite an unlawful aggression, and as second, reasonable necessity of the means employed. These two requisites have already been commented upon in the discussion of self-defense.

As a third requisite, the code requires, in case there was provocation on the part of the person assaulted, that the offender did not participate in the same. If the offender took part in the provocation, the benefits of this circumstance cannot be extended to him. For this reason, the Supreme Court of Spain held that the defense against an unlawful aggression upon a relative included in this paragraph, should not be confused with a quarrel engaged in to help such a relative.[35] If the first two requisites

[33] U. S. vs. Pasca, 28 Phil. 222.
[34] People vs. Pangan et al., 56 Phil. 728.
[35] Decs. of Sup. Ct. of Spain of December 2, 1898, 61 Jur. Crim. 331 and of April 21, 1900, 64 Jur. Crim. 315.

are taken into account, the third one being negative must also be considered as long as nothing to the contrary appears.[36]

Where a husband entered his house one morning while it was yet dark and surprised a person in the act of holding his wife by the hands, with the intention of laying her on the floor and lying with her, if his first impulse was to inflict upon the aggressor a rather serious wound on one of the arms, he undoubtedly acted in defense of the person and rights of his offended wife; he made use of a legitimate right, one which is included in Article 11, No. 2, of the Revised Penal Code, inasmuch as there concurred the three requisites required by the law; neither of the spouses provoked the affair nor gave the wounded man any occasion to enter the house, in which the woman was alone at a very early hour of the morning, and the husband, on seeing that a man was making a violent attempt upon the honor of his wife, found himself obliged to repel and prevent his attempt, availing himself as a rational means of the bolo which he carried, and for this reason he incurs no criminal liability.[37]

Again, a person who, in defending his father against an unlawful aggression, kills the aggressor in the honest belief that he was in imminent danger, incurs no criminal liability.[38]

The accused, hearing the voice of his wife calling for aid, ran into his house and found a man struggling with her and endeavoring to throw her down with the evident intention of raping her, whereupon he attacked her assailant with his bolo and inflicted upon him fatal wounds. This is a typical case of defense of relatives provided for in this paragraph of the Penal Code.[39]

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

This circumstance requires the same requisites of unlawful aggression and reasonable necessity of the means employed, provided the person defending, in undertaking the defense, has not been actuated by revenge, resentment, or other evil motive.

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[36] Dec. of Sup. Ct. of Spain of April 20, 1930.
[37] U. S. vs. Padilla, 34 Phil. 641.
[38] U. S. vs. Esmedia, 17 Phil. 260. See also U. S. vs. Rivera, 26 Phil 138, and U. S. vs. Batungbakal, 37 Phil. 382; People vs. Cabungcal, 51 Phil. 802.
[39] U. S. vs. De Ocampo, 6 Phil. 449.

A man, who, seeing his neighbor, an old man 78 years of age, held down on the ground by a strong and robust young man and in serious danger of being throttled, and believing the old man unable to cope with the assailant, furnished the person assaulted a small gaff such as is used on gamecocks, with which the latter in such dire need and in self-defense inflicted upon his assailant a mortal wound, incurs no criminal liability, as is also the person who inflicted the wound.[40]

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.[41]

The present revised paragraph extends the application of the old provision. Under the paragraph which we are now discussing, one who falls under this circumstance may cause damage (daños) upon either **person** or **property** of another. Under the old code, damage may be caused to **property** only. Applying the revised provisions of the code, the following example would constitute an exemption from criminal liability: Supposing, A was driving his bus loaded with passengers with due care and diligence on a mountain highway, when a child suddenly darts across the path of his vehicle. At that instant, his only alternative, aside from hitting the child, is to swerve to the left, which if he does will plunge the bus and all its passengers into a deep ravine. He was therefore forced by the circumstances to continue his course until the child was hit. This is an instance of causing damage to another under the state of necessity as described in this paragraph. This illustrates the extent of the application of the present provision of the Revised Penal Code, with reference to damage to person or damage to property.

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[40] U. S. vs. Subingsubing, 31 Phil. 376.
[41] Substantially the same as par. 7 of Art. 8 of the old Penal Code.

The damage referred to in this paragraph is that caused without intent to do so. For example, when there is a fire in a zone of houses of light materials, and two or three houses are demolished in order to prevent the spread of the fire, the person demolishing the houses under such circumstances is exempt from criminal liability within the meaning of this paragraph.[42]

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.[43]

There are two requisites in order that this circumstance may be taken into account:

(a) That the offender acted in the performance of a duty or in the lawful exercise of a right; and

(b) That the injury or offense committed be the necessary consequence of the performance of a duty or the lawful exercise of a right or office.

Thus, a physician who amputates the leg of a patient in order to save him from gangrene cannot be guilty of the crime of mutilation, for the reason that in such a case the physician is protected by the provisions of this paragraph; neither is the executioner of Bilibid Prison guilty of murder for the executions performed by him.

Likewise, a peace officer who takes possession of personal property by means of a search warrant lawfully issued and properly served cannot be held liable for the crime of robbery of the said property.[44]

And, in like manner, a policeman who, finding a fugitive from jail, demands his surrender, but the latter, instead of doing so, attacks the officer with a piece of bamboo pointed in the shape of a lance and then runs away without parting with his weapon, is justified to fire his revolver against the fugitive, and, in case the latter is killed, such officer will not be criminally liable because of the provisions of this paragraph.[45]

But a lawyer who, in the course of his oral argument, slanders his opponent cannot claim exemption under this paragraph, for the reason that for a lawyer to interpose a good and effective defense

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[42] Viada, Codigo Penal, 166.
[43] Same as par. 11 of Art. 8 of the old Penal Code.
[44] U. S. vs. Cuison, 4 Phil. 194.
[45] People vs. Delima, 46 Phil. 738.

of his case, need not commit the crime of insults; on the contrary, he should show moderation and politeness.[46]

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.[47]

The present paragraph is also similar to par. 12 of Art. 8 of the Penal Code which is as follows: "Any person who acts by virtue of obedience due another."

The innovation introduced in the wording of this paragraph is based on the decisions of the Supreme Court of Spain and of the Philippines with reference to the construction of the phrase "obedience due another."

In **People vs. Baugh et al.**, G. R. No. 17478 of February 8, 1922, it was said that the application of this circumstance was limited to the obedience which a subordinate person owes his superior, and depends always upon the supposition that the order is legal and the means employed to carry it out are likewise legal. In other words, in order that the benefits of this paragraph may be invoked, it must be shown that the person who gave the order and the one executing it have acted within the limitation prescribed by law.[48] Thus, a soldier of the Philippine Constabulary who assaults a person by order of his superior officer cannot be exempt from criminal liability by alleging due obedience, for the reason that the order was illegal.[49]

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

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

This paragraph, like par. 1 of Art. 8 of the old Penal Code, establishes the distinction between imbecility and insanity, because while the feebleminded (imbecile) is exempt in all cases from criminal liability, the insane is not so exempt if it can be shown that he acted during a lucid interval.

The Supreme Court of Spain held that in order that this exempting circumstance may be taken into account, it is necessary that there be a complete deprivation of intelligence in committing

[46] Dec. of Sup. Ct. of Spain of June 16, 1890, 44 Jur. Crim. 366.
[47] Based on the provisions of par. 2, Art. 61, of the Penal Code of Spain of 1928.
[48] Dec. of Sup. Ct. of Spain of November 27, 1876.
[49] U. S. vs. Cuison, 20 Phil. 433.

the act, that is, that the accused be deprived of reason; that there be no responsibility for his own acts; that he acts without the least discernment;[50] that there be a complete absence of the power to discern,[51] or that there be a total deprivation of freedom of the will.[52] For this reason, it was held that the imbecility or insanity at the time of the commission of the act should absolutely deprive a person of intelligence or freedom of will, because mere abnormality of his mental faculties does not exclude imputability.[53] The Supreme Court of Spain likewise held that deaf-muteness cannot be equal to imbecility or insanity.[54]

But offenses committed in a state of somnambulism or while in a dream, *if* **duly proven,** are justifying circumstances similar to imbecility or insanity.[55]

The allegation of insanity or imbecility must be clearly **proved.** Without positive evidence that the defendant had previously lost his reason or was demented, a few moments prior to or during the perpetration of the crime, it will be presumed that he was in a normal condition. Acts penalized by law are always reputed to be voluntary, and it is improper to conclude that a person acted unconsciously, in order to relieve him from liability, on the basis of his mental condition, unless his insanity and absence of will are proved.[56]

When the imbecile or an insane person has committed an act which the law defines as a felony (delito), **the court shall order his confinement 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.**

When it appears in the Court of First Instance that an accused person is afflicted with present insanity in such a degree that he ought not to be brought to trial, it is the duty of the court to suspend the proceedings and to commit the accused to an asylum or hospital for the insane until he is restored to sanity; and the court may, in its discretion, at any time order a preliminary hearing to determine whether the accused is really insane or not.[57]

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[50] Dec. of Sup. Ct. of Spain of November 21, 1891, 47 Jur. Crim. 413.
[51] Dec. of Sup. Ct. of Spain of April 29, 1916, 96 Jur. Crim. 239.
[52] Dec. of Sup. Ct. of Spain of April 9, 1872, 6 Jur. Crim. 94, 97.
[53] Dec. of Sup. Ct. of Spain of April 20, 1911, 86 Jur. Crim. 326.
[54] Decs. of Sup. Ct. of Spain of April 12, 1873, 8 Jur. Crim. 420, 421 and of December 26, 1913, 91 Jur. Crim. 394.
[55] People vs. Gimena, 55 Phil. 604; People vs. Taneo, 58 Phil. 255.
[56] U. S. vs. Hontiveros, 18 Phil. 62; People vs. Bonoan, 64 Phil. 87.
[57] U. S. vs. Guendia, 37 Phil. 337.

When a defendant in a criminal case interposes the defense of insanity, the burden of proving that fact rests upon him.[58] In passing on the question of the propriety of suspending the proceedings on the ground of present insanity, it should be borne in mind that not every aberration of the mind or exhibition of mental deficiency is sufficient to justify such suspension. The test is to be found in the question whether the accused would, with the assistance of counsel, have a fair trial.[59]

2. A person under nine years of age.

This paragraph considers as infant a person under nine years of age and therefore absolutely irresponsible. The phrase "under nine years" should be construed "nine years or less," as may be inferred from the next subsequent paragraph which does not totally exempt a person "over nine years of age" if he acted with discernment.

3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of article 80 of this Code.

The law considers doubtful the liability of a person at this stage of his life, and hence, before the accused is held criminally liable, it is necessary to inquire whether he acted with or without discernment.

Criminalists do not seem to be in accord with respect to the real concept of what discernment is. Carrara (par. 221, note 1) defined it as the capacity to distinguish the good from the bad; according to Berner,[60] it consists in knowledge of the sense of duty and knowledge of the punishability of one's act. Other authorities more properly distinguish juridical discernment from moral discernment. Juridical discernment, says Prins (Rev. Penit., 1892, p. 421), is that which consists in knowing that robbery is punished, that there are gendarmes, jails, and police officers and it is possessed by a boy at any age; the lower he has descended the social strata the sooner the boy acquires juridical discernment because it is in these classes where the boy learns that there are jails and police officers. But, on the contrary, as regards social discernment, which consists in knowing that there is one path of righteousness and another which is not, it is never acquired by

[58] People vs. Bascos, 44 Phil. 204.
[59] U. S. vs. Guendia, **supra**; People vs. Bonoan, 64 Phil. 87.
[60] Lehrbuch des Deutschen Strafrechts, Leipzig, 1886, 76.

a boy of certain lower social conditions, because in order to distinguish between the good and the bad, it is necessary to be able to choose, and there are many who have nothing before their eyes but the example of evil, and therefore cannot choose.[61]

To determine whether a minor, over nine but less than fifteen years of age, acted with discernment, the court must take into account his mental capacity to understand the difference between right and wrong, taking into consideration all the facts and circumstances of the case, the very appearance, the very attitude, the very comportment and behavior of said minor, not only before and during the commission of the act, but also after and even during the trial.[62]

A trial judge cannot by his personal opinion only and without receiving positive evidence to the contrary ignore and fail to take into account the allegation of the accused that he is under 15 years.[63]

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.

Art. 80 of this Code provides for the confinement of delinquent minors in institutions for the correction and training of the same. The trial judge has discretion to deliver a defendant under 15 years of age either to his family, which has the obligation to educate and watch over him, or to any of the institutions or persons mentioned in Art. 80 of this Code.

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.[64]

This circumstance refers to purely **accidental** cases. As can be seen, two indispensable requisites are necessary, to wit: (a) that the person is wholly free from blame, i. e., that he employed all the diligence and prudence of which he was capable;

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[61] Calon, Derecho Penal, 279, 280.
[62] People vs. Doqueña, 68 Phil. 580.
[63] U. S. vs. Bergantino, 3 Phil. 118, and U. S. vs. Agadas et al., 36 Phil. 246.
[64] Same as par. 8, Art. 8 of the old Penal Code.

and (b) that such a person did not have the intention to cause the injury.

When one of the above conditions is not present, the culprit is entitled to a special mitigating penalty, according to Art. 67 of this Code.

An example of this circumstance is the case of a chauffeur who, while driving his automobile on the right side of the road at a moderate speed and with due diligence, suddenly sees a child dash across the street. If, under such circumstances, the chauffeur runs over the child with his car, he cannot be held criminally liable by virtue of the provisions of this paragraph.[65]

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

This circumstance had its beginning in the old maxim "**actus me invito, non est meus actus,**" i. e., that an involuntary act is not one's act. In order that this circumstance may be invoked, it is necessary that the force used be of such a nature that notwithstanding the natural opposition which we may exert, we are impelled to do something or to suffer it to be done. The irresistible force can never consist of an impulse or passion or obfuscation. It must consist of an extraneous force coming from a third person.[66]

Furthermore, the force treated of in this paragraph must be understood to be a physical force exerted by a third person, which annuls the freedom of will of a person and forces him to commit the crime.[67] Momentary anger can never he considered as an exempting circumstance.[68]

Thus, an affidavit made by a witness cannot be the basis of a conviction for perjury if it is shown that such affidavit was made thru threats, violence, or duress.[69]

In **U. S. vs. Caballero et al.,** 4 Phil. 350, it appears that Baculi, one of the accused who was not a member of the band which murdered some American citizens, was in a plantation belonging to him gathering bananas. Upon hearing the shooting, he ran. However, Baculi was seen by the leaders of the band who called him, and striking him with the butts of their guns, they compelled him to bury the bodies. The Supreme Court held that

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[65] U. S. vs. Tayongtong, 21 Phil. 476. See also U. S. vs. Tañedo, 15 Phil. 196; People vs. Ayaya, 52 Phil. 354.
[66] Dec. of Sup. Ct. of Spain of March 15, 1876, 14 Jur. Crim. 361.
[67] Dec. of Sup. Ct. of Spain of Feb. 10, 1904, 72 Jur. Crim. 157, and March 3, 1905, 74 Jur. Crim. 243.
[68] Dec. of Sup. Ct. of Spain of July 3, 1874.
[69] U. S. vs. Felipe, 5 Phil. 333.

Baculi was exempt from criminal liability because he acted under compulsion of an irresistible force.

6. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.[70]

The Supreme Court of Spain has already construed that the fear referred to in this article must come from real causes, that is, that the efficient cause of the fear must be a real and known evil.[71]

Therefore, it should not be taken into account, when the facts upon which it is based are not proven;[72] it is likewise required that the fear be imminent,[73] and that it be the outcome of an immediate cause.[74]

In **U. S. vs. Elicanal**, 35 Phil. 209, the Supreme Court held that before a defendant may invoke with success this circumstance, it must appear that the threat which caused the fear was of an evil greater than, or at least equal to, that which he was required to commit; that it promised an evil of such gravity and imminence that it might be said that the ordinary man would have succumbed to it.

Certain commentators, among them Silvela, in Vol. 1, p. 199, and Groizard, in Vol. 1, p. 313, are of the opinion that the appreciation of the evil which was sought to be avoided should not be judged strictly, because one's own injury will always seem to be graver than that caused to another. In such a case it would be sufficient that such person had acted in good faith believing in the gravity of the injury which threatened him.

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

The cause for this exemption is, according to Groizard,[75] an impediment coming from the compliance of an impossible duty; such is the case of a policeman who failed to deliver his prisoner to the judicial authority within the period of so many hours as provided for in Art. 125 of the Revised Penal Code, if it appears that the distance between the place of detention of the prisoner and that of judicial authority could not be travelled within said time.

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[70] Same as par. 10, Art. 8 of the old Penal Code.
[71] Dec. of Sup. Ct. of Spain of January 10, 1899, 62 Jur. Crim. 26.
[72] Dec. of Sup. Ct. of Spain of June 27, 1903, 70 Jur. Crim. 198.
[73] Dec. of Sup. Ct. of Spain of November 8, 1905, 75 Jur. Crim. 273.
[74] Dec. of Sup. Ct. of Spain of February 9, 1903.
[75] Com. Al Codigo Penal, Vol. 1, page 435.

CHAPTER THREE

CIRCUMSTANCES WHICH MITIGATE CRIMINAL LIABILITY

Art. 13. MITIGATING CIRCUMSTANCES.—The following are mitigating circumstances:[1]

BASIS OF MITIGATING CIRCUMSTANCES.—In the same manner as justifying circumstances and circumstances of exemption, to which Arts. 11 and 12 of this Code refer, are based on an entire absence of freedom, intelligence, and intent on the part of the actor, the mitigating circumstances which are the object of this article are based on the diminution of these same conditions. Therefore, their effect both in the moral and in the juridical order is to diminish or mitigate the liability of the offender.

An examination of the mitigating circumstances enumerated in Art. 13 of the Revised Penal Code shows that they are based upon some cause or causes which diminish or hinder our free will or intelligence, or evince a lesser perversity. As Silvela says: "To be of eighteen years of age, in which control of passions and appetites is more difficult; provocation and threat which lean inadvertently to revenge or to repel force by force; the circumstances of committing the act in the immediate vindication of an offense, or of acting under an impulse so powerful as naturally to produce passion and obfuscation, which circumstances are not essentially different from one another; and, finally, that of committing the act in a state of intoxication or of a more or less complete disturbance of the mind express or represent moments in which incitement to crime — be it or not controlled by freedom — is apparent. A crime may or may not be committed, but if it be, a mitigation will be found in the stimulus by which the doer was actuated, and if no crime be committed the greater the excitement to evil which he has controlled and subdue the more the glory obtained by him."[2]

REQUISITES OF MITIGATING CIRCUMSTANCES.—These circumstances represent subjective stages in which the actor is found without fault on his part and which places him in a position to commit a crime. With the exception of very few instances, the

[1] Is almost entirely Art. 9 of the old Penal Code.
[2] Derecho Penal, Vol. 2, p. 206.

circumstances enumerated in this article must have the following requisites: (a) that the facts constituting the same must all be prior or simultaneous to the commission of the crime;[3] (b) that the circumstances of mitigation must be in the offender itself in executing the act, i. e., must be of a wholly subjective nature;[4] and (c) that such circumstances must be based on facts or grounds which weaken the will of the actor,[5] or by the presence of which his freedom of will is diminished.[6]

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.[7]

The circumstances of justification or exemption which may give place to mitigation when not all the requisites required by law are present are the following: Self-defense (par. 1, Art. 11); defense of a relative (par. 2, id.); defense of a stranger (par. 3, id.); state of necessity (par. 4, id.); accident (par. 4, Art. 12; performance of a duty (par. 5, Art. 11); and uncontrollable fear (par. 6, Art. 12).

So far as self-defense is concerned, it should be borne in mind that in accordance with the provisions of Art. 67 of this Code, when TWO of the three requisites mentioned therein are present (for example, unlawful aggression and lack of sufficient provocation), the case must not be considered as one in which an ordinary or generic mitigating circumstance (which would be the subject of par. 1 which we are now commenting upon) is present. Instead, it should be considered a special mitigating circumstance referred to in Art. 67 of this Code.

On the other hand, if only ONE of the requisites is present in any of the cases referred to in circumstances Nos. 1, 2 and 3 of Art. 11 (for example, unlawful aggression), the provisions of par. 1 of Art. 13, which we are now commenting upon would be perfectly applicable, because the case constitutes an ordinary or generic mitigating circumstance.[8]

According to the decisions of the Supreme Court of Spain, insanity or imbecility cannot be considered a mitigation, for the

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[3] Decs. of Sup. Ct. of Spain of February 14, 1871 and May 3, 1873.
[4] Dec. of Sup. Ct. of Spain of October 18, 1873.
[5] Dec. of Sup. Ct. of Spain of April 22, 1876.
[6] Dec. of Sup. Ct. of Spain of August 12, 1876.
[7] Same as par. 1, Art. 9 of the old Penal Code.
[8] See People vs. Cabellon, et al., 51 Phil. 846.

reason that the mental condition of a person is indivisible; that is, there is no middle ground between sanity and insanity.[9]

Circumstances Nos. 8 and 9 of this article, however, consider mitigating certain physical defects and ailments which in some way diminish will power. These circumstances, therefore, seem to be somewhat inconsistent with the decisions of the Supreme Court of Spain above quoted, because it cannot be denied that epilepsy, monomania, etc., which in some manner represent the middle ground between sanity and insanity, are now considered mitigating circumstances by virtue of the provisions of circumstances Nos. 8 and 9 of this article.

Obedience due another cannot give way to mitigation.[10] But performance of duty and uncontrollable fear may do so.[11]

2. That the offender is under eighteen years of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of article 80.

THAT THE OFFENDER BE LESS THAN 18 YEARS OF AGE. This means that the offender should be more than 15 but less than 18, because if he is less than 15 years, the case would come under the provisions of Art. 12, pars. 2 and 3. It must be borne in mind that this is a qualified or extraordinary mitigating circumstance in accordance with the provisions of Art. 68 of this Code, because the effect of minority is as follows: (1) if the offender is less than 15 but more than 9, a discretionary penalty shall be imposed upon him, but always lower by two degrees than the penalty provided for by law for the crime which he committed, and (2) if the offender is more than 15 but less than 18, the penalty immediately next lower in degree than that provided for by law must be imposed upon him.

But whether he is over or under 15 years, the offender cannot be committed to jail nor can any penalty be imposed upon him in accordance with the provisions of Art. 80 of this Code. Hence, it seems wholly unnecessary to fix the penalty as provided for in Art. 68 for offenders under 18 years of age, unless the offender becomes so unruly or incorrigible as to warrant the taking of the measures provided for in par. 7 of Art. 80.

In one case, there was no evidence as regards the age of the

[9] Decs. of Sup. Ct. of Spain of December 19, 1891 and of October 3, 1884.
[10] Dec. of Sup. Ct. of Spain of July 12, 1897.
[11] Decs. of Sup. Ct. of Spain of April 14, 1894 and of January 10, 1899.

accused, aside from his own testimony, to the effect that he was over 18 years. The court, in its judgment, found that by his appearance the accused was a "youth 18 or 19 years old." It was held that owing to the marked difference between the penalty to be imposed if the culprit is over 18 years and that applicable if he is under 18 years of age, the conclusion of the trial court drawn from personal observation is not sufficient to establish beyond a reasonable doubt that the defendant was, as a matter of fact, 18 years of age when the crime was committed.[12]

OVER 70 YEARS OF AGE. This provision is taken from circumstance No. 15, Art. 25, of the proposed Correctional Code of 1916 which provides as follows: "Extreme old age or minority which does not constitute ground for exemption."

The period of old age and of infirmity, differently determined in human life by physiologists, is deemed by some criminalists to constitute a mitigating circumstance.

The well-known authority, Francisco Carrara,[13] does not, however, accept this theory in an absolute manner. Anent this, he says: "But old age in itself cannot mitigate the liability of the acts committed by the old man; on the contrary, society is entitled to demand from him, because of his experience and the cooling of his passions, a greater respect for the law; and if the years did not deprive him of the knowledge of good and evil, greater duties possibly are imposed thus upon him. Furthermore, from the point of view of immediate injury, a crime committed by an old man presents in its subjective moral force greater intensity than that perpetrated by a young man, in so far as bad example is concerned. Moral sense proclaims this truth in the minds of all."

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

This circumstance can only be taken into account when the facts proven show that there is a notable and evident disproportion between the means employed to commit the criminal act, and its consequences.[14]

In other words, it is required that the injury caused be not commensurate or proportional to the intensity of the means employed nor to the efficacy of the instrument used to commit the same.[15]

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[12] U. S. vs. Agadas, 36 Phil. 246.
[13] Derecho Criminal, par. 231.
[14] U. S. vs. Reyes, 36 Phil. 791.
[15] Dec. of Sup. Ct. of Spain of August 10, 1900; People vs. Sia Bonkia, 60 Phil. 1.

The accused, who inflicted upon the deceased only two wounds in the course of a fight, one on the left elbow and the other on the left calf, as a result of which the man died on the afternoon of the day in question, is entitled to the mitigating circumstance of not having intended to commit so great a wrong as that committed.[16]

In **U. S. vs. Dacquel,** 36 Phil. 781, the Supreme Court applied this circumstance in favor of the accused, a lieutenant of the barrio, who, because a religious procession took place without his consent, began to strike everyone, hitting a nine-year old girl in the right arm and inflicting upon her physical injuries which took more than 30 days to heal.

It was likewise taken into account in **U. S. vs. Luciano,** 2 Phil. 96, where one, in the heat of anger, struck his victim twice with a piece of **bojo** cane, the victim dying as a consequence of the blows, favored by the pathological condition of the victim. It was likewise taken into account in **U. S. vs. Trono et al.,** 3 Phil. 213, in which the accused, police officers, arrested the deceased as a suspect of having stolen a revolver, and in order to compel him to confess, severely illtreated him, as a consequence of which he died. The accused were held guilty of the crime of homicide with this mitigating circumstance.

The intention of the offender must, as a general rule, be inferred from the nature and extent of the tangible evil committed, because this evil is almost always the sensible manifestation of the will of the offender, except when the evidence or other facts and circumstances may serve as a reasonable ground to hold that the material act has gone beyond the limits of intention.[17]

For this reason, one who, with definite and perverse intention of doing injury, inflicts upon his victim a serious and fatal wound in the abdomen cannot invoke in his favor the circumstance that he did not have the intention to commit so great a wrong as that committed.[18] Neither must this circumstance be taken into account in a case of physical injuries committed by throwing a stool at a person, because the means availed of by the offender were adequate, not only to produce the evil which he caused, but another evil more serious.[19]

4. That sufficient provocation or threat on the

[16] People vs. Lumasag, 56 Phil. 19.
[17] Dec. of Sup. Ct. of Spain of June 10, 1892.
[18] U. S. vs. Mendac, 31 Phil. 240. See also People vs. Flores, 50 Phil. 548; People vs. Orongan, et al., 58 Phil. 426.
[19] Dec. of Sup. Ct. of Spain of June 5, 1895.

part of the offended party immediately preceded the act.[20]

It shall be borne in mind that the provocation must originate from the offended party, and further, that it must be **immediate** to the act, i. e., to the assault.

By provocation is understood any conduct or act capable of exciting, inciting, or irritating any one.

Thus, when the aggression is committed in retaliation to an insult, injury or threat, the offender cannot allege self-defense, but at most a mitigating circumstance under the provisions of this paragraph.[21]

The fact that the victim seized the hand of the daughter of the accused against her will was also held to be provocation on the part of the victim.[22] In case the provocation which precedes an aggression committed by the accused against several persons, among whom is one who without taking part in that provocation or quarrel only tries to separate the contending parties, should be alleged as a mitigating circumstance, the provocation should only be considered to mitigate the penalty which should be imposed upon the accused for the offense committed against that person or those persons who provoked the affair. For example B insults A and because of this, a quarrel takes place between them. During the quarrel, C arrives at the place for the purpose of separating the contending parties, but is fatally wounded by A who also inflicts serious physical injuries upon B. Upon prosecution of A for serious physical injuries inflicted upon B and for having killed C, A's liability should be mitigated by the circumstance of provocation on the part of B, but he cannot invoke the same circumstance for the death of C.[23]

Bringing a warrant for the arrest of the accused charged with misdemeanor is not such a provocation within the meaning of this paragraph that will be considered in mitigation of the penalty for the crime of homicide in having killed the officer giving such order.[24]

5. That the act was committed in the immediate vindication of a grave offense to the one committing the

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[20] Same as par. 4 of Art. 9 of the old Penal Code.
[21] U. S. vs. Carrero, 9 Phil. 544.
[22] U. S. vs. Rodriguez, 23 Phil. 22.
[23] U. S. vs. Malabanan, 9 Phil. 262.
[24] U. S. vs. Abijan, 1 Phil. 83.

felony (delito), **his spouse, ascendants, descendants, legitimate, natural, or adopted brothers or sisters, or relatives by affinity within the same degrees.**[25]

This circumstance involves two requisites: (1) that the vindication be **immediate**; and (2) that the offense be **grave** or **serious.**

In the circumstance previously commented upon, it is necessary that the provocation or threat **immediately precede** the act, i. e., that there be no interval of time; while in this circumstance, it is only needed that the vindication of the offense be **proximate,** which admits of more interval of time, more separation between the insult and the vindication. This greater leniency in the case of the circumstance which we now comment upon is due undoubtedly to the fact that it concerns the honor of a person, an offense which is more worthy of consideration than mere spite against the one giving the provocation or threat.

The question whether or not a certain personal offense is serious must be decided by the court, having in mind the social standing of the person, the place, and the time when the insult was made.

Thus, if a person kills another for having found him in the act of committing an attempt against his (accused's) wife, he is entitled to the benefit of this circumstances for having acted in vindication of a grave offense against his and his wife's honor.[26]

During a **fiesta** the accused, a man 70 years of age, asked one Patobo for some roast pig. Patobo answered: "There is no more; come here and I will make a roast pig of you." With this as the provocation, a little later while the said Patobo was squatting down, the accused came up behind him and struck him on the head with an ax causing his death the following day. The Supreme Court took into consideration the mitigating circumstance that the act was committed in the immediate vindication of a grave offense. The offense the accused was endeavoring to vindicate would, to an average person, be considered as a mere trifle, but since to this defendant it evidently was a serious matter to be made the butt of a joke in the presence of so many guests, it was proper to give the defendant the benefit of this mitigating circumstance.[27]

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[25] Same as par. 5, Art. 9 of the old Penal Code.
[26] U. S. vs. Arribas, 1 Phil. 87; see also U. S. vs. Davis, 11 Phil. 96.
[27] U. S. vs. Ampar, 37 Phil. 201; see also U. S. vs. De Ocampo, 6 Phil. 449.

The circumstance of immediate vindication is not inherent in that of passion and obfuscation. The two can separately co-exist.[28]

6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.[29]

The fact that the deceased favored a rival of the defendant in his courtship of a young woman does not constitute a legitimate and sufficient cause of that passion and obfuscation which mitigates the guilt. Causes which merely give rise to the excitement inherent in combatants are not sufficient, and furthermore the obfuscation must originate from lawful feelings.[30]

The causes which produce passion and obfuscation and mitigate criminal liability are those which originate from lawful sentiments and not such as arise from vicious, unworthy, and immoral passions.[31]

Thus, where the accused killed his supposed wife the day after he discovered the supposed adultery committed by her, this circumstance cannot be taken into account, since there is no moral justification for the impulse of aggression.[32]

Hence, the application of the mitigating circumstance of obfuscation is justified during a quarrel when the acts of the injured person are the immediate cause of passion and obfuscation. When the victim arrives at the scene after the quarrel and is then attacked by the contending parties, such circumstance cannot be applied to mitigate the penalty.[33] In a case where the accused killed his wife on the occasion when she visited her aunt's husband, this mitigating circumstance was held to be applicable, having in mind the jealousy of the accused and her refusal to return to his house until after the arrival of her uncle.[34]

This circumstance of passion and obfuscation cannot be considered separately and independently from drunkenness which is not habitual in a case of homicide, since drunkenness necessarily implies a disorder in the mental faculties of a person.[35]

And, where the extenuating circumstance of obfuscation

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[28] U. S. vs. Davis, 11 Phil. 96.
[29] Same as par. 6, Art. 9 of the old Penal Code.
[30] U. S. vs. Flores, 28 Phil. 29; People vs. Silang Cruz, 53 Phil. 635.
[31] U. S. vs. Hicks, 14 Phil. 217.
[32] People vs. Laota, 46 Phil. 392. See also People vs. Akanatsu, 51 Phil. 963.
[33] U. S. vs. Esmedia, 17 Phil. 260.
[34] U. S. vs. Ortencio, 38 Phil. 341.
[35] People vs. Baterna, 40 Phil. 996; *see also* People vs. Austria, 50 Phil. 535; People vs. Dinulon, 47 Phil. 745 and People vs. Mancao, 49 Phil. 887.

rests on the same facts as the extenuating circumstance of provocation or threats, the two circumstances must be regarded as one and the same.[36]

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.[37]

The incorporation of this mitigating circumstance in the Revised Penal Code satisfies a real need, because the decisions of both the Supreme Court of Spain and that of the Philippines[38] hold that the **voluntary confession** of the accused cannot be considered as an analogous mitigating circumstance. Our courts, however, have laid down as an invariable rule that the confession of guilt entitles the accused to a mitigation in the penalty. With the incorporation of this circumstance in the Code, this practice of the courts finds legal sanction.

Voluntary surrender is one circumstance and voluntary confession of guilt is another. So when an accused person, besides voluntarily surrendering after the commission of the offense confesses also his guilt or pleads guilty to the complaint, he is entitled to two mitigating circumstances.[39]

In order, however, that voluntary confession of guilt may be taken into account as a mitigating circumstance, it must be made **before** the prosecution presents its evidence.[40]

But the fact that the order of arrest of the appellant had already been issued is no bar to the consideration of the circumstance of voluntary surrender, because the law does not require that the surrender be prior to the order of arrest.[41]

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.[42]

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[36] People vs. Basalo, 53 Phil. 940.
[37] A merger of circumstances Nos. 10 and 11 of Art. 25 of the proposed Correctional Code of 1916.
[38] Dec. of February 23, 1872 and U. S. vs. Ablaza, 1 Phil. 740.
[39] People vs. Forto, 61 Phil. 589.
[40] People vs. Fortuno, 73 Phil. 597; People vs. Bawasanta, 64 Phil. 409; People vs. Salapare, 69 Phil. 162.
[41] People vs. Yecla et al., 68 Phil. 740.
[42] Same as circumstance No. 16 of Art. 25 of the proposed Correctional Code of 1916.

The Supreme Court of Spain in its decisions of December 27, 1899 and of December 26, 1913, had held that deaf-muteness and lack of instruction are mitigating circumstances similar to minority.

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.[43]

The Supreme Court of Spain, long before the incorporation of this circumstance in the Code of 1928, had already held in its decision of September 28, 1897, that a woman under the influence of lactic fever, who kills her son the day after delivering, is entitled to the benefit of this analogous circumstance. It likewise considered senility or mental derangement as a similar mitigating circumstance.

10. And, finally, any other circumstance of a similar nature and analogous to those above mentioned.[44]

Thanks to the incorporation of circumstances Nos. 7, 8, and 9 of this article, analogous circumstances are now better defined, undoubtedly because certain circumstances, especially Nos. 8 and 9, are similar or analogous to infancy or minority.

The Supreme Court of Spain and that of the Philippines do not seem to be very liberal in taking into account and creating similar circumstances. For example, it has been said that neither the previous good conduct of the accused,[45] nor retraction in the crime of false testimony, insult, or calumny,[46] nor old age,[47] nor necessity,[48] nor extreme poverty,[49] nor enmity between the offended party and the offender,[50] constitutes analogous mitigating circumstances. Lack of education does not constitute a mitigating circumstance in the crimes of theft or robbery.[51]

The mitigating circumstance invoked by the appellant, which is that the crime committed by the accused has caused no irreparable material damage to the offended party, is not recognized by the Revised Penal Code. It is not among those which may be considered as similar in nature and analogous to those

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[43] Same as circumstance No. 2, Art. 65, of the Spanish Penal Code of 1928.
[44] Same as circumstance No. 8, Art. 9 of the old Penal Code.
[45] Decs. of March 18, 1871 and of Nov. 15, 1875.
[46] Dec. of December 18, 1873.
[47] Dec. of December 23, 1871.
[48] Dec. of April 20, 1871.
[49] Dec. of March 27, 1878.
[50] Dec. of January 23, 1906.
[51] People vs. De la Cruz, et al., 77 Phil. 444.

expressly recognized, in accordance with Art. 13, Subsec. 10, and therefore it cannot correctly be taken into consideration.[52]

On the other hand, the following have been considered as analogous mitigating circumstances: voluntary restitution of the property stolen by the accused,[53] the honest belief on the part of the offender that he was the legitimate husband of the woman whom he killed when he found her in the arms of her paramour,[54] the circumstance that an offender was moved to attack the injured party because the latter concealed himself and refused to pay his account, as being similar to obfuscation,[55] and the circumstance that appellant boxed in the presence of many people, was well-known and respected in the community, which fact produced rancour in his mind.[56]

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[52] People vs. Dy Pol, 64 Phil. 563.
[53] Dec. of November 14, 1887.
[54] U. S. vs. Tubban, 29 Phil. 434; U. S. vs. Verzola, 33 Phil. 285.
[55] People vs. Marenillo, CA-G. R. No. 42946.
[56] People vs. Libria, G. R. No. L-6585, July 16, 1954.

CHAPTER FOUR

CIRCUMSTANCES WHICH AGGRAVATE CRIMINAL LIABILITY

Art. 14. AGGRAVATING CIRCUMSTANCES. — The following are aggravating circumstances:

BASIS OF AGGRAVATING CIRCUMSTANCES. — The aggravating circumstances enumerated in this article are based on the greater moral perversion of the offender who acts under any of them. Followers of the modern or positivist school would consider the aggravating circumstances enumerated in this article as signs of a dangerous state and greater dreadfulness of the offender which justify his confinement.

AGGRAVATING CIRCUMSTANCES CANNOT BE PRESUMED.—The facts constituting aggravating circumstances should be proved by competent evidence, as well as the crime itself to which they are related.[1] And the fact that the aggravating circumstance was not alleged in the information but was actually proven in the trial, the same must be taken into consideration in the imposition of the penalty.[2]

Mere supposition or presumption is insufficient to establish their presence according to law. No matter how truthful these suppositions or presumptions may seem, they must not and cannot produce the effect of aggravating the condition of the defendant.[3]

1. That advantage be taken by the offender of his public position.[4]

In order that this circumstance may be taken into account, it is necessary that it be conclusively shown that the offender took advantage of his public position or of the influence or reputation inherent in it in order to commit the crime. For example, a police officer who arrests a woman on the pretext that she committed a misdemeanor, and then takes her to an uninhabited place in order to rape her, is guilty of the crime of rape with the concurrence of the aggravating circumstance of having taken advantage of his public position;[5] or a court stenographer who deli-

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[1] U. S. vs. Barbosa, 1 Phil. 741.
[2] People vs. Collado, 60 Phil. 610.
[3] U. S. vs. Perdon, 4 Phil. 141.
[4] Same as circumstance No. 11, Art. 10 of the old Penal Code.
[5] U. S. vs. Yumul, 34 Phil. 169.

berately alters his notes in order to favor one of the parties, is guilty of falsification of a public document with the concurrence of this aggravating circumstance.

But in the case of a member of the Legislature who, upon being surprised in a gambling house, offers resistance to his captor, it cannot be alleged that he committed the crime of attempt against the authority with the concurrence of this aggravating circumstance.[6] Neither should this aggravating circumstance be taken into account in the case of a justice of the peace who receives from a debtor a certain amount of money to turn it over to the creditor pursuant to an extrajudicial agreement between them, but who retains the money for his own personal use and benefit. Although such justice of the peace commits the crime of estafa, it does not appear, however, that he took advantage of his public position to commit it.[7]

2. That the crime be committed in contempt of or with insult to the public authorities.[8]

This circumstance can be illustrated, thus: Let us suppose that A and B are quarreling in a street and the municipal mayor upon passing by, attempts to separate them to stop the quarrel. Notwithstanding the intervention and the presence of the mayor, A and B continue to quarrel until A succeeds in killing B. In this case, A commits the crime of homicide with the aggravating circumstance of "in contempt of or with insult to the public authority." This circumstance may only be taken into account in a case where the authority is not the offended party, because if it were, the crime committed would be attempt or contempt against the authority.

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.[9]

(a) WITH INSULT OR IN DISREGARD OF THE RESPECT DUE THE OFFENDED PARTY.

In order that this circumstance may exist, it is necessary that there be a difference in the social condition of the offender

[6] People vs. Veloso, 48 Phil. 169.
[7] U. S. vs. Estebaya, 36 Phil. 64.
[8] Same as circumstance No. 16, par. 10 of the old Penal Code.
[9] Same as circumstance No. 20, Art. 10 of the old Penal Code.

and the offended party; for example, the offense committed by a private citizen against a person in authority, a pupil against his teacher, or a ward against his guardian.[10]

This circumstance should not be taken into account when there is equality of social condition between the offender and the offended party.[11]

It must be borne in mind that this circumstance may only be taken into account in crimes which cause offense or contempt upon persons in authority, the same being crimes against persons and honor. Thus, in the case of robbery of a thing belonging to the President of the Philippines, the aggravating circumstance of disregard of respect due to the offended party cannot be taken into account, because the mere fact that the thing belonged to the President did not make it more valuable than things belonging to a private person or citizen.

(b) DISREGARD OF RESPECT DUE TO THE AGE OF THE OFFENDED PARTY.

This is another circumstance which should only be taken into account in crimes against persons and honor. This circumstance is present when the offended person, by reason of his age, could be the father of the offender.[12]

(c) DISREGARD OF RESPECT DUE TO SEX.

When the condition of being a woman is indispensable in the commission of the crime, for example, in the crimes of rape, abduction, seduction and parricide (e. g., the killing of a wife by her husband), this circumstance cannot be taken into account because it is inherent in said crimes.[13] 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.[14]

Disregarding of sex is aggravating only "if in committing the crime, the offender intended to insult the sex of his victim.[15]

(d) CRIME COMMITTED IN THE DWELLING OF THE OFFENDED PARTY.

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[10] U. S. vs. Cabiling, 7 Phil. 469.
[11] Viada, 1 Cod. Pen., 324.
[12] Viada, 1 Cod. Pen., 326; U. S. vs. Esmedia, 17 Phil. 260; U. S. vs. Reguera, 41 Phil. 506.
[13] Viada, 1 Cod Pen., 328-329.
[14] U. S. vs. Quevengco, 2 Phil. 412.
[15] People vs. Basarain, G. R. No. L-6690, May 24, 1955.

As may be seen, a condition **sine qua non** of this circumstance, is that the offended party did not provoke the offender.[16]

This circumstance does not exist when the crime was committed in the place where both an offended party and the offender live.[17] Neither is it present in a case of robbery in an inhabited house which is the dwelling of the offended party, because this circumstance is inherent in the crime of robbery committed in an inhabited house.[18]

The fact, however, that the crime of adultery was committed in the house of the offended party should be considered as aggravating circumstance, inspite of the fact that the conjugal dwelling is the common dwelling of both the husband and the wife.[19]

It has been held that even though the aggressor did not go up into nor enter the interior of the house of the deceased, yet since he entered the field about the house, and went under the house in order to inflict on the offended party the various wounds resulting in death, there was present in the commission of the crime the aggravating circumstance that the same was committed in the dwelling of the offended party.[20] And where the defendant began the aggression upon the person of the deceased in the latter's own dwelling by binding his hands and taking him to a place near the house to kill him, the crime must be considered as characterized by the presence of this aggravating circumstance.[21]

When it appears that the trespass to dwelling or **allanamiento de morada** is a direct means to the commission of a graver offense (say, homicide) the case cannot be considered as complex crime of homicide with **allanamiento de morada**, but only as simple homicide with the aggravating circumstance of dwelling place. The rule is that when **allanamiento de morada** is a direct means to the commission of a graver offense, the minor offense yields to the principal one and is regarded as only an aggravating circumstance.[22]

A house of prostitution is not a dwelling house, at least during

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[16] People vs. Cabellon et al., 51 Phil. 847.
[17] Viada, 1 Cod. Pen., 330; N. S. vs. Licarte, 23 Phil. 106; U. S. vs. Destrito, 23 Phil. 28.
[18] U. S. vs. Cas, 14 Phil. 21; Art. 399, **infra.**
[19] U. S. vs. Ibañez et al., 33 Phil. 611.
[20] U. S. vs. Macarinfas, 40 Phil. 1.
[21] U. S. vs. Lastimosa, 27 Phil. 432.
[22] Groizard, Cod. Penal, 656; People vs. Abedosa, 52 Phil. 791.

the hours in which it is open to the public.[23] Neither is a gambling house.[24]

4. That the act be committed with abuse of confidence or obvious ungratefulness.[25]

With respect to **abuse of confidence**, it has already been held in decisions of the Supreme Court that it exists only when the offended party has trusted the offender, and the latter, betraying such trust, commits the crime. Such would be the case, for example, of a visitor who commits robbery or theft in his host's house.[26]

This circumstance of abuse of confidence is inherent in the crime of **estafa**, and therefore should not be taken into account in that crime.[27] It should not likewise be taken into account in the crime of malversation of public funds committed by a public officer, because it is one of the elements of the crime.[28]

Ungratefulness, in order to constitute an aggravating circumstance, must be **obvious**, i. e., manifest and clear.

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.[29]

There is, however, a little innovation in this circumstance, and that is, the substitution for the phrase "consecrated place," used in the old Penal Code, by the words "place dedicated to religious worship." This innovation undoubtedly improves the text of the law, making it clearer and more specific. We now know that only places dedicated to religious worship, i. e., churches, may be considered consecrated places.

This circumstance must be taken into account in cases, for example, where homicide or serious physical injury is committed in open court or in the session hall of the Legislature while it is in session, without prejudice, of course, to the liability of the offender for contempt of court or of the Legislature.

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[23] U. S. vs. Balmori et al., 18 Phil. 578.
[24] U. S. vs. Baguio, 14 Phil. 240.
[25] A merger of circumstances No. 10 of Art. 10 of the old Penal Code, and No. 15 of Art. 26 of the proposed Correctional Code of 1916.
[26] U. S. vs. Barbicho, 13 Phil. 616; U. S. vs. Viloria, 27 Phil. 466; and U. S. vs. Doroja, 31 Phil. 498.
[27] U. S. vs. Torrida, 23 Phil. 189.
[28] U. S. vs. Weiss, 4 Phil. 627.
[29] Almost the same as circumstance No. 19, Art. 10 of the old Penal Code.

This circumstance was not, however, taken into account in the following case: The accused and the deceased were the plaintiff and the defendant, respectively, in a civil case pending in the court of the justice of the peace. After the testimony was taken, the justice of the peace invited the deceased into an adjoining room, and as soon as he rose to accept the invitation, the accused, without warning, assaulted him with a knife, killing him on the spot. Evidently, the reason for not applying this circumstance was that the court had already adjourned when the crime was committed.[30]

6. That the crime be committed in the night time, 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.[31]

As can be seen, **in the night time, in an uninhabited place** or **by a band** should be considered as an aggravating circumstance only when it is shown that the same was specially sought for to facilitate the commission of the crime.

(a) NIGHT TIME.

The decisions of both the Supreme Court of Spain and of the Philippines have always held that night time should only be taken into account when it clearly appears that the offender has purposely sought it, or at least that he took advantage of the same to commit the crime with greater facility or impunity.[32]

Treachery and night time are two separate and distinct aggravating circumstances. The latter cannot be considered inherent in the former.[33] This decision seems to be inconsistent with a decision of the Supreme Court of the Philippines in **U. S. vs. Macalinao,** 4 Phil. 407, where it was held that having taken into consideration the particular circumstance of treachery, the concurrence of the circumstance of nocturnity should not be taken

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[30] U. S. vs. Punsalan, 3 Phil. 260.
[31] Similar to circumstance No. 5 of Art. 10 of the old Penal Code.
[32] U. S. vs. Ramos, 2 Phil. 434; U. S. vs. Tomulac, 3 Phil. 728; U. S. vs. Billedo, 32 Phil. 574; People vs. Undiana, 50 Phil. 641; U. S. vs. Bonete, 40 Phil. 958; People vs. Aquino, 68 Phil. 615; People vs. Tagacaolo, G. R. No. L-6871, April 1955; People vs. Cuevas, G. R. No. L-5844-45, May 30, 1955.
[33] Dec. of Sup. Ct. of Spain of July 3, 1878.

into account in applying the penalty, since the latter is considered as included in the former.[34]

(b) UNINHABITED PLACE.

The circumstance of uninhabited place exists when the crime is committed at sea,[35] or at a place far from human habitation.[36] As a general rule, this circumstance should be taken into account when the evidence shows that a crime was committed in the place where the victim did not have any chance of being helped or seen by another person. Thus, where it appears that the crime was committed within 150 meters of an inhabited house and there is no evidence as to the nature of the place between the place of the killing and the house referred to, the aggravating circumstance of uninhabited place has not been established beyond reasonable doubt.[37] Likewise, where it appears that a police station was located a short distance from the scene of the crime and it does not appear that the same was unoccupied, it cannot be said that the crime was committed in an uninhabited place.[38]

The circumstance of uninhabited place is distinct and separate from that of by a band,[39] but of the same legal effect.

(c) BY A BAND.

According to the definition given in the paragraph which we are now commenting upon, **a band** must be composed of **more than three armed** persons. Hence, if in a group composed of some persons only **three** were armed, the aggravating circumstance of **by a band** cannot be considered.[40]

It should be borne in mind, however, that the presence of the circumstance of uninhabited place and **by a band** in the crime of robbery is specially provided for in Art. 300 of this Code.[41]

7. That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic, or other calamity or misfortune.[42]

The present Code, however, adds **epidemic** to the list of calamities or misfortunes.

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[34] See also U. S. vs. Empeinado, 9 Phil. 613; U. S. vs. Salgado, 11 Phil. 56.
[35] U. S. vs. Maharaja Alim, 38 Phil. 1.
[36] People vs. Bangog et al., 52 Phil. 87.
[37] U. S. vs. Bahatan, 34 Phil. 695.
[38] U. S. vs. Arciga et al., 2 Phil. 110.
[39] U. S. vs. Morada, 23 Phil. 477.
[40] U. S. vs. Mendigoren, 1 Phil. 658; see also U. S. vs. Melegrito, 11 Phil. 229.
[41] See U. S. vs. Castroverde et al., 4 Phil. 246.
[42] Is almost entirely circumstance No. 13, Art. 10 of the old Penal Code.

An example of this circumstance can be given in the case of a fireman or any person who commits robbery or theft in a burning house.

8. That the crime be committed with the aid of armed men or persons who insure or afford impunity.[43]

The casual presence of armed men near the place where the crime was committed does not constitute an aggravating circumstance when it appears that the accused did not avail himself of their aid or rely upon them to commit the crime.[44]

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.[45]

REPETITION; ITS FORMS.—The repetition of the crime is another circumstance which aggravates the liability of the offender. In the present Code there are three forms of repetition: **reiteration, recidivism,** and **multi-recidivism** or **habitual delinquency.** The first two constitute generic aggravating circumstances, while the last constitutes an extraordinary aggravating circumstance according to Art. 62 of this Code.

Recidivism, viewed as an aggravating circumstance, is not a factor or element which necessarily forms an integral part of habitual delinquency.[46]

Hence, when the offender commits a crime different from that for which he was convicted, it is said that there is **reiteration,** and that is the circumstance provided for in No. 10 of this article; if the conviction was for a crime of the same class as the previous one, it is called **recidivism** and is the one which is the subject of this circumstance. In order that this circumstance may be considered, it is not enough that the offender has previously been convicted of a crime embraced in the same title of this Code at the time of committing the crime for which he is prosecuted, but it is necessary that the offender should have been convicted by **final judgment** at the time of the rendition of the judgment for the last offense.[47]

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[43] Same as circumstance No. 14, Art. 10 of the old Penal Code.
[44] U. S. vs. Abaigar, 2 Phil. 417.
[45] Same as circumstance No. 18, Art. 10 of the old Penal Code.
[46] People vs. Bernal, 63 Phil. 750.
[47] U. S. vs. Tieng Pay, 42 Phil. 212.

For this reason, in a case where the accused was prosecuted in three different cases for the same crime and was convicted in all of them, the lower court erred in holding that the accused was twice a recidivist, because when judgment was rendered in one of them it could not be said that there were final judgments in the other two or vice versa, since it was necessary that 15 days should elapse after each judgment in the said three cases before they might be considered final.[48] General and indefinite representations of bad antecedents of the accused which do not disclose that he has formerly been punished for a crime or is a recidivist do not constitute an aggravating circumstance.[49]

A person guilty of the crime of arson shall be deemed a recidivist if it appears that at the time of the rendition of the judgment against him he was previously convicted by final judgment of robbery. Arson and robbery are included in Title X of the Revised Penal Code, the circumstance that the previous conviction took place sixteen years prior to the commission of the second offense notwithstanding.[50]

For cases of **multi-recidivism,** see the provisions of Art. 62, Rule 5, of this Code. In **People vs. Nayco,** 45 Phil. 167, it was held that the mere allegation that the "herein accused had heretofore been twice convicted of theft in the Municipal Court by virtue of final judgments" was insufficient to sustain a conviction under the provisions of Art. 62, Rule 5, of this Code. It is necessary, according to this decision, that there be an express allegation that the accused is an **habitual delinquent** within the terms of the said article.

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.[51]

As has been said in the preceding paragraph, this form of repetition of crime is called **reiteration,** because it has reference to a crime of a class different from that for which the offender was previously prosecuted and convicted.

The phrase "the offender has been previously punished for an offense" means that the offender, prior to the commission of the

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[48] U. S. vs. Torrida, 23 Phil. 189.
[49] U S. vs. Ramos, 1 Phil. 192.
[50] People vs. Colocar, 60 Phil. 879.
[51] Same as circumstance No. 17, Art. 10 of the old Penal Code.

new offense, had been convicted by **final judgment** of another crime to which the law attaches an equal or greater penalty.

Pardon, according to the provisions of Art. 130 of the old Penal Code, does not completely extinguish the penalty and all its effects. Hence, it does not prevent a former conviction (even though the offender was pardoned for the same) from being taken into account for the purpose of aggravating the penalty.[52]

A former sentence of **reclusion temporal** for the crime of homicide cannot be considered equal to or greater than **presidio** (now **prision**) **mayor** in its medium period, or to **cadena** (now **reclusion**) **temporal** in its minimum period for the crime of robbery.[53]

11. That the crime be committed in consideration of a price, reward, or promise.[54]

In accordance with this legal provision, criminal liability is aggravated not only when there is actual payment of money between the inducer and the induced, but also when any kind of reward or **promise** of reward has been made. This circumstance necessarily includes two persons or offenders, to wit: the one making the offer and the one accepting it.

P induced C, an ignorant person, to kill his (P's) brother and a niece, grand-daughter of C, in an uninhabited place, as in fact C killed them. It was held that these facts constituted the crime of murder characterized by price or reward.[55]

The circumstance of price, reward, or promise is not necessarily included in premeditation.[56]

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.[57]

This circumstance should not be taken into account in the crime of murder characterized by inundation, fire, poison, explosion, shipwreck or derailment of a locomotive, because Art. 248, par. 3, in defining murder, includes as an element of the same the above-named circumstances.

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[52] U. S. vs. Sotelo, 28 Phil. 147.
[53] Dec. Sup. Ct. of Spain, Nov. 20, 1875; see also U. S. vs. Ramos, 1 Phil. 81.
[54] Same as circumstance No. 3, Art. 10 of the old Penal Code.
[55] U. S. vs. Padi et al., 19 Phil. 111.
[56] U. S. vs. Rabor, 7 Phil. 726; U. S. vs. Manalinde, 14 Phil. 77.
[57] Same as circumstance No. 4, Art. 10 of the old Penal Code.

Hence, if the purpose of the explosion, inundation, shipwreck, fire or poison is to deprive one or more predetermined persons of their lives, the crime committed will be murder, and in such a case the aggravating circumstance which we are now discussing should not be taken into account. If the purpose of the offender in making use of these means was other than to deprive certain persons of their lives, then this aggravating circumstance should be taken into account.

13. That the act be committed with evident premeditation.[58]

Premeditation must be proved by means of external or visible acts. It cannot be established by presumption or supposition.[59]

In the absence of proof regarding overt acts which show that the accused had planned the commission of a crime prior to its execution, it is error to take into account this aggravating circumstance.[60]

In one case it was held that the fact that there existed a quarrel between the deceased and the accused as to the location of the boundary lines between their lands, and that this dispute was the cause which led to the commission of the crime, was not sufficient to show that the accused conceived the idea of the commission of the crime prior to putting it into execution.[61]

In the same manner, when some hours before the commission of the crime the accused told the wife of the deceased of his resentment against him for having allowed his sister-in-law, whom the accused was courting, to move to another town, there was not sufficient proof of premeditation.[62]

In premeditation there is no fixed period of time. The period of time necessary to justify the inference that there is known premeditation is a period sufficient in the judicial sense to give the accused full opportunity for meditation and reflection, and sufficient to allow the conscience of the actor to overcome the resolution of his will if he desires to hearken to its warnings.[63]

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[58] Same as circumstance No. 7, Art. 10 of the old Penal Code.
[59] U. S. vs. Navarro, 7 Phil. 713; U. S. vs. Bañagale, 24 Phil. 69; U. S. vs. Bahatan et al., 34 Phil. 695; U. S. vs. Bisandre, 40 Phil. 78.
[60] U. S. vs. Donoso, 3 Phil. 234. See also People vs. Sulaman et al., 53 Phil. 239; People vs. Fuentesuela, 73 Phil. 553.
[61] U. S. vs. Idica, 3 Phil. 313.
[62] U. S. vs. Narvatan, 48 Phil. 470.
[63] U. S. vs. Ricafort, 1 Phil. 173; U. S. vs. Gil 13 Phil. 530; U. S. vs. Blanco, 18 Phil. 206; People vs. Marasigan, 70 Phil. 583; People vs. Diokno, 63 Phil. 601.

In other words, known premeditation exists when the killing was carefully planned by the offender or when he previously prepared the means which he considered adequate to carry it out, when he prepared beforehand the means he deemed suitable for carrying it into execution, when he has had such sufficient time to consider and accept the final consequences, and when there has been a concerted plan.[64]

Premeditation exists even though the victim is unknown or not pre-determined.[65]

Known premeditation is an inherent or implied circumstance in the crimes of robbery, estafa, adultery, and other similar crimes, and therefore should not be taken into account in the same.[66]

14. That craft, fraud, or disguise be employed.[67]

This circumstance is characterized by moral or intellectual deceit rather than physical force to which the criminal resorts to carry out his design. This circumstance is applicable, for example, in a case where a person pretends to be the lover of a maid of the house in order to enter the same and rob her master (craft); or when A simulates the handwriting of B, who is a friend of C, inviting the latter without the knowledge of B by means of his forged letter, to meet him at a designated place in order to give A, who lies in wait at an appointed place, an opportunity to kill C (fraud); or when the offender disguises himself in order to avoid being recognized (disguise).[68]

15. That advantage be taken of superior strength, or means be employed to weaken the defense.[69]

This circumstance is applicable only to crimes against persons, and sometimes against person and property, such as robbery with physical injuries or homicide.

This circumstance should be considered when the offender, because of his great physical strength, has an advantage over the offended party. Such may be the case of a big and strong man who assaults a boy or a woman or an old and sickly man.[70]

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[64] U. S. vs. Cornejo, 28 Phil. 457; People vs. Fuentesuela, 73 Phil. 533.
[65] U. S. vs. Rodriguez, 19 Phil. 150; People vs. Cabrera et al., 43 Phil. 64.
[66] U. S. vs. Blanco, 10 Phil. 298; U. S. vs. Hermosilla, 31 Phil. 405.
[67] Same as circumstance No. 8, Art. 10 of the old Penal Code.
[68] U. S. vs. Rodriguez, 19 Phil. 23.
[69] Same as circumstance No. 9, Art. 10 of the old Penal Code.
[70] U. S. vs. Baul, 39 Phil. 846; U. S. vs. Tandoc, 40 Phil. 954; People vs. Abril et al., 51 Phil. 671; People vs. Quesada, 62 Phil 446.

But, the fact that there was but one person assaulted and two aggressors does not necessarily constitute the aggravating circumstance of abuse of superior strength, if the relative physical strength of the aggressors and the assaulted does not appear.[71] This circumstance, however, should not be applied to the case of a husband who kills his wife, for the reason that sex is inherent in the crime of parricide.[72] This use of means which weakens the defense consists in the use of any trick for the purpose of preventing any defense which the victim may offer.

Where the assault is not made with **alevosia**, i. e., where the assailant does not employ means to commit the crime without risk to himself arising from any defense and the simultaneousness of the attack upon a defenseless person only constitute abuse of superior strength.[73]

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 make.[74]

This is a circumstance which should be taken into account only in crimes against persons and in a few others, such as robbery with homicide.

There would be treachery although the crime was merely an attempted or frustrated offense, whenever the offender has employed in its execution means, methods or forms which tend to insure the execution thereof. Notice should be taken of the wording of this paragraph: "which **tend** directly and specially to insure its execution." Thus, in an assault made suddenly and unexpectedly and under the guise of friendship and before the victim had the opportunity to regain his composure, or in the killing of a child of tender years by a group of adults in the fullness of their physical capacity, this circumstance of treachery should be taken into account.[75]

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[71] People vs. Bustos et al., 51 Phil. 385.
[72] Dec. of Sup. Ct. of Spain of April 28, 1873.
[73] U. S. vs. Lasada, 21 Phil. 287.
[74] Same as circumstance No. 2, Art. 10 of the old Penal Code.
[75] U. S. vs. Baul, 39 Phil. 846; U. S. vs. Binayoh, 35 Phil. 23; U. S. vs. Elicanal, 35 Phil. 209; U. S. vs. Lansangan, 27 Phil. 474.

Treachery is also present when the offender binds his victim before inflicting upon him the fatal wound.[76] Likewise, **alevosia** is present when the aggression upon a person is suddenly and unexpectedly made while he is asleep.[77] When treachery is taken into account as a qualifying circumstance in murder, it is improper again to consider in addition to that circumstance the generic aggravating circumstance of abuse of superior strength, since the latter is necessarily included in the former.[78]

When the evidence shows that shortly after a quarrel between the accused and the deceased the former turned upon the latter and attacked him with a bolo, inflicting wounds which caused his instant death, the attack having commenced while both were face to face, it is error to find that the crime was committed with treachery.[79]

However, even though the assault was made face to face, if it was committed suddenly and unexpectedly without being preceded by any quarrel between the deceased and the aggressor in such a manner that the former did not have the least opportunity of defending himself or of avoiding the attack, it is proper to consider the presence of the circumstance of treachery.[80]

Even though at the inception of the aggression which ended in the death of the deceased, treachery was not present, if at the time the fatal wound was inflicted on the deceased he was defenseless, the circumstance of treachery must be taken into account.[81]

For example, if A assaults B face to face with a revolver and B runs away and enters a room, and then A from outside, calculating where B must be standing in the room and after making sure of the place where he is, fires upon him and kills him on the spot, in this case, treachery must be taken into account because there is no connection between the commencement of the aggression and the moment when the fatal shot was fired.

Such is not the rule, however, when there is no break in the continuity of the aggression and the act of inflicting the fatal wound. For example, if the record shows that the quarrel

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[76] U. S. vs. De Leon, 1 Phil. 163; U. S. vs. Lastimosa, 27 Phil. 432.
[77] U. S. vs. Rubeta, 1 Phil. 331; U. S. vs. Villorente, et al., 30 Phil. 59.
[78] U. S. vs. Estopia, 28 Phil. 97; U. S. vs. Oro, 19 Phil. 548; U. S. vs. Vitug, 17 Phil. 1.
[79] U. S. vs. Idica, 3 Phil. 313. See also People vs. Ballugan, G. R. No. L-8267, July 30, 1955.
[80] U. S. vs. Cabiling, 7 Phil. 469; U. S. vs. Cornejo, 28 Phil. 457; People vs. Pengzon, 44 Phil. 224.
[81] U. S. vs. Baluyot, 40 Phil. 385.

between the deceased and the accused commenced face to face, and the former turned to flee, was pursued by the latter, and after running a short distance, fell to the ground face downward, and before he could recover or get up to continue his flight, the accused stabbed him and inflicted upon him a fatal wound in the back, the assault cannot be qualified by treachery, since the criminal intent was executed until its consummation without any break in the continuity of the assault and without the intervention of any element which is in essence contrary to the conditions of the assault.[82]

However, it should be borne in mind that treachery is never presumed and must be proved beyond reasonable doubt. Thus, from the mere fact that the deceased shows wounds in the back, the circumstance of treachery cannot be inferred conclusively in the absence of other proof regarding the manner in which the assault was committed.[83]

Likewise, if the record shows that each and everyone of the deceased were wounded in the back and in other parts of their bodies in such a manner that there is doubt whether the deceased were attacked from behind, the offense cannot be qualified as murder.[84] The fact that one of the accused held fast the deceased from behind and the other assaulted him while in this position constitutes a form of aggression tending to insure its execution without any risk to the aggressors arising from any defense which the deceased might make. In other words, this assault is treacherous as defined by this paragraph.[85]

The circumstance of treachery in connection with the crime of frustrated parricide is not to be considered as a specific qualifying circumstance but only as an ordinary generic circumstance.[86]

17. That means be employed or circumstances brought about which add ignominy to the natural effects of the act.[87]

This circumstance is applicable to crimes against chastity. It would be present in a case where one rapes a married woman in the presence of her husband.[88]

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[82] People vs. Cañete, 44 Phil. 478.
[83] U. S. vs. Perdon, 4 Phil. 141; People vs. Abril et al., 51 Phil. 670.
[84] U. S. vs. Atig, 36 Phil. 303.
[85] U. S. vs. Valdez, 40 Phil. 876.
[86] U. S. vs. Villanueva, 2 Phil. 61.
[87] Same as circumstance No. 12, Art. 10 of the old Penal Code.
[88] U. S. vs. Iglesia, 21 Phil. 55.

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.[89]

This circumstance is not taken into account in the crime of robbery as defined in Art. 299, No. 1 (a) and Art. 302, No. 1, of this Code. The scaling of a wall in the commission of trespass to the dwelling cannot be admitted as an aggravating circumstance, but is an integral part of the circumstance of violence with which the criminal party committed the crime.[90]

19. That as a means to the commission of a crime a wall, roof, floor, door, or window be broken.[91]

For example, a murderer who, for the purpose of entering the house of his victim, breaks a wall or a window of the house.

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.[92]

The use of motor vehicles, airships, or similar objects is considered an aggravating circumstance, because the same furnish a quick means for the flight or concealment of the offender. Hence the expression "or other similar means" which is used in his paragraph should be understood as referring to motorized vehicles or other efficient means of transportation similar to automobile or airplane.

21. That the wrong done in the commission of the crime be deliberately **augmented by causing other wrong not necessary for its commission.**[93]

Two essential requisites must concur in this circumstance: (a) that the evil caused be deliberately increased, i. e., purposely, with full knowledge and intent that the evil is increased; and (b) that the evil or injury be unnecessary for the execution of the purpose of the offender.

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[89] Same as circumstance No. 21, Art. 10 of the old Penal Code.
[90] U. S. vs. Barberan, 17 Phil. 509.
[91] Same as circumstance No. 22, Art. 10 of the old Penal Code.
[92] A merger of circumstances 13 and 14 of Art. 66 of the Spanish Penal Code of 1928.
[93] Same as circumstance No. 6, Art. 10 of the old Penal Code.

As a general rule the unnecessary mutilation of the body of the victim characterizes vindictiveness. From the mere fact, however, that many wounds were found in the body of the victim it cannot be said that vindictiveness was present[94] in the absence of conclusive evidence that the victim was alive when the numerous wounds were inflicted upon him.[95]

In a case of murder, the number of wounds found upon the corpse does not, by itself alone, justify the acceptance of the circumstance of cruelty, it being necessary to show that the accused deliberately and inhumanly increased the sufferings of the victim.[96]

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[94] U. S. vs. Ulat, 7 Phil. 559; U. S. vs. Rivera, 41 Phil. 472.
[95] People vs. Bersabal, 48 Phil. 439; see also the case of U. S. vs. Macalintal, 2 Phil. 448.
[96] People vs. Aguinaldo, 55 Phil. 610.

CHAPTER FIVE

ALTERNATIVE CIRCUMSTANCES

Art. 15.—THEIR CONCEPT.—Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the (1) relationship, (2) intoxication and (3) degree of instruction and education of the offender.

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

The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional it shall be considered as an aggravating circumstance.[1]

RULE FOR THE APPLICATION OF CIRCUMSTANCE OF LACK OF INSTRUCTION.—Lack of instruction and education of the offender mitigates criminal liability in practically all kinds of crimes,[2] with the exception of offenses against chastity,[3] and the crimes of theft or robbery.[4] And it is for the trial court, rather than the Supreme Court, to determine the proper application of this circumstance.[5]

RELATIONSHIP, WHEN AGGRAVATING AND WHEN NOT. —As regards relationship, it can be said that, as a general rule,

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[1] A merger of circumstance No. 6, article 9, circumstance No. 1, article 10, and article 11 of the old Penal Code, as amended by Act 2142 of the Philippine Legislature.
[2] U. S. vs. Reguera et al., 41 Phil. 506.
[3] U. S. vs. Ramirez et al., 39 Phil. 738.
[4] People vs. De la Cruz, et al., 77 Phil. 444.
[5] U. S. vs. Elicanal, 35 Phil. 209; U. S. vs. Estorico, 35 Phil. 410.

it is a *mitigating* circumstance in crimes against property, and an aggravating circumstance in crimes against persons when the offended party is, as it were, a relative of a higher degree (for example, a son who assaults or wounds his father); and therefore it is a mitigating circumstance when the offended party is in a lower degree with respect to the offender (for example, a nephew assaulted by an uncle). This rule, however, must be understood to include only those crimes which might be classified as less grave since it is already known that in so far as grave felonies are concerned (for example, parricide), the circumstance of relationship is an aggravating circumstance inherent in the crime.[6]

INTOXICATION.—The circumstance of intoxication, as is clearly stated in the article which we are now commenting upon, is a mitigating circumstance only when the same is not habitual or when it is not subsequent to the plan to commit the crime.

Intoxication is an aggravating circumstance when the offender intentionally got drunk after planning the commission of the crime, for reasons which are easily understood. A timorous criminal may embolden himself by drinking liquor before committing the crime. This is the reason for this aggravating circumstance.

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[6] Viada, 1 Cod. Pen., 247-248.

TITLE TWO

Persons Criminally Liable for Felonies

Art. 16. WHO ARE CRIMINALLY LIABLE.—The following are criminally liable for grave and less grave felonies:[1]

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

In all offenses or crimes there are always two parties, namely: the **active** subject, and the **passive** subject, that is, the victimizer and the victim.

Art. 16 of the Penal Code enumerates and defines the **active subject** of the crime.

Corporations or juridical persons cannot be prosecuted for common offenses.

Because of the highly personal or individual nature of the criminal responsibility, criminal jurisprudence has established the principle that only natural persons can be made the active subject of common offense, except when special penal laws expressly enjoin that the president, manager, director, or person in charge of such corporation, shall be liable on behalf of the latter.[2] The criminal jurisprudence limiting to natural persons the criminal responsibility for common offense is based on the theory that the act of a corporation is not the act of an individual person. It is the act of some, among the many, members composing the organization. It would be sheer injustice to make all stockholders or members of a corporation criminally responsible for the corporate act of a firm, unless there is a clear and conclusive evidence that each and everyone of them have concocted and conspired together to commit the criminal act.

The doctrine should be understood to mean that a corporation can be used as a shield or immunity for its manager or directors to commit crime or fraud under the cloak of a corporate

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[1] Same as Art. 12 of the old Penal Code.
[2] People vs. Tan Boong Kong, 54 Phil. 605; Decision of the Supreme Court of Spain, Jan. 18, 1909. See also West Coast Insurance Co. vs. Hurd, 27 Phil. 401.

act. If it appears from the evidence that a manager or a small group of directors of a corporation, personally or collectively have committed crime or fraud, such manager or directors can be prosecuted and convicted, even though the act has been committed under the cloak of corporate franchise.[2a]

The following are criminally liable for light felonies:

1. Principals.
2. Accomplices.

In the same manner as Art. 7 of this Code provides that light felonies are punishable only when consummated, with the exception of those against persons or property, this article provides that only the principal and the accomplices shall be liable criminally for light felonies, with the exception of those persons who belong to the last-named class of co-delinquents, i. e., to the accessories after the fact. The reason for this provision is in the insignificance of the penalty attached to it.

Art. 17. PRINCIPALS.—The following are considered principals:[3]

There are three types or forms of co-delinquency, to wit:
(a) Direct participation;
(b) Inducement; and
(c) Co-operation.

1. Those who take a direct part in the execution of the act;

PRINCIPALS BY DIRECT PARTICIPATION.—This is the first type or form of co-delinquency known as direct participation. This is present when some persons after having conceived a criminal plan get together and take part in the execution of the crime by acts which directly tend to the same end. For example, in homicide, the one actually inflicting the fatal wound is not the only principal; the one holding the victim down and the one who guards the door to prevent any help are also principals. The acts of each and every one of the offenders in this case are all directed to the same end, i. e., to kill their victim.[4]

[2a] People vs. Campos, 40 O. G., Sup. 12, p. 7.
[3] Same as Art. 13 of the old Penal Code.
[4] U. S. vs. Reogilon, 22 Phil. 127; U. S. Zalsos et al., 40 Phil. 96; People vs. Mandagay et al., 46 Phil. 838; U. S. vs. Valdez et al., 40 Phil. 876.

The criminal responsibility of the principals to a crime may be **collective, quasi-collective,** or **individual.**

Collective criminal responsibility—An instance of collective responsibility: In a murder, which the offenders previously agreed to commit, not only the one who inflicts the fatal wound is considered a principal, but also the one who holds down the victim and the one who lies in wait at the door to prevent any help being rendered. The acts of each and every one of the offenders in this case are all directed to the same end, that is, to the killing of their victim. Criminal responsibility in such a case is collective.

General rule in case there had been conspiracy—In a crime committed by the joint act of two or more persons through conspiracy or connivance the act of each conspirator done in furtherance of the conspiracy is, in contemplation of law, the act of all.[5] Once conspiracy is proven, all are responsible, it being immaterial who discharged the fatal shot.[6]

In order that there may be common design it is not necessary that, in conspiring for the perpetration of the crime, they should fix in detail all the means by which they are going to execute the crime. It is enough if there is a **general plan** for obtaining the intended result by whatever means may be deemed adequate from time to time. Generally, it is not material that the plan which was carried out differs widely from the original plan; nor will it be required to show the existence of any previous plan if, from the evidence, it clearly appears that there had been negotiations to the same end.[7]

The rule previously laid down does not mean, however, that a conspirator should necessarily be liable for the acts of another conspirator even though such acts differ radically and substantially from that which they intended to commit. For example, if A and B conspire to whip C, and B, instead of merely whipping C, kills him for personal reasons, A cannot be liable for the homicide committed by B for the reason that the acts conmitted by B were not included in the purpose of the conspiracy against C.[8]

Exception to the rule—In the case of a robbery committed

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[5] U. S. vs. Remigio, 37 Phil. 599; People vs. Cabrera et al., 43 Phil. 64; People vs. Chan Lin Wat, 50 Phil. 182.
[6] People vs. Canoy, G. R. No. L-4653-54, Jan. 30, 1953; People vs. Cusi et al., 65 Phil. 614.
[7] Underhill's Crim. Evidence, 794, par. 490; People vs. Carbonel et al., 24 Off. Gaz., 2657.
[8] 12 C. J. 577-578; Buckley vs. State, 181 S. W. 729. See also Clark's Criminal Law, 2nd Ed., 149.

by a band, and in an uninhabited place however, a member of the band will be responsible for any of the assaults which the other members of the band may commit, even though such member did not take part therein, or was entirely ignorant of its perpetration, unless it appears that he made an effort to prevent the perpetration of such assault.[9]

Quasi-Collective Criminal Responsibility—Between the collective criminal responsibility and the individual responsibility, however, there appears to be a middle way which may be termed quasi-collective responsibility.

Even though there had been no previous conspiracy between the defendants to commit a particular wrong or crime, the responsibility of the doers will not be altogether individual if it can be proven that at the time of the attack the doers were animated by one common purpose to accomplish the harm done. In other words, there would be quasi-collective responsibility if it could be proven that there had been between the doers a spontaneous and intentional or material cooperation to do the harm thereby caused; in which case, such doers would be criminally liable either as principals or accomplices, according to the nature of their material participation in the crime. Thus, where S began an unlawful assault on T and, after the latter had been struck down by a fatal blow from a bolo in the hands of F, continued the attack by cutting T in the stomach with F's bolo, though no serious injury was inflicted, he was held to be an accomplice in the homicide; his intention to collaborate with F in doing bodily harm to T was held to be sufficiently manifest.[10]

Two individuals assaulted a third inflicting on him two wounds, one mortal, and the other curable in twenty days. The Supreme Court held that the one who inflicted the second should answer as accomplice for the crime of homicide, and not for that of physical injuries; the grounds being that while it was the wound inflicted by the other defendant that caused the death of the deceased, there can be no doubt but that by the second wound, inflicted at the same time as the other, the one who dealt it cooperated in the fatal result; and that he was, in consequence, according to Article 18 of the Code, an accomplice in the crime of homicide, since without taking part in its execution in any of the three ways set forth in Article 17, he cooperated therein by a simultaneous act.[11]

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[9] Art. 296, infra; U. S. vs. Macalalad, 9 Phil. 1.
[10] People vs. Tumayao, 56 Phil. 587.
[11] People vs. Caballero, 53 Phil. 585.

Individual criminal responsibility.—In the absence of a conspiracy or a previous plan to commit a crime, the criminal responsibility arising from different acts directed against one and the same person is individual and not collective, and each of the participants is liable only for that actually committed by himself.[12] Suppose that the deceased were the one who assaulted a group of three individuals with a knife, and in the course of an incomplete self-defense, two of them caused less grave physical injuries upon the assailant, while the third inflicted the fatal wound. In this case, the party who inflicted the fatal wound would be the only one responsible as principal for the crime of homicide; the other two would be held liable only for the less grave physical injuries.[13]

B pointed a shotgun at S without good reason; there ensued a struggle between the two for the weapon. M, a female companion of B, approached the combatants and quickly wounded S in the abdomen with a knife, in consequence of which S died almost instantly. Held that M alone is liable for the resulting homicide, and B cannot be convicted as accomplice, there being no prior plan of agreement between them, and because B did not even know that M would intervene in the struggle, and attack the deceased with a knife.[14]

One Francisco Martinez made a bet of ₱1.00 with Mariano Suarez, and the latter having refused to pay the amount thereof, a dispute arose between them which resulted in a fight in which Juan Martinez and Leon Martinez later intervened. When the fight began, Francisco Martinez held the hand of his opponent and Juan Martinez seized the front part of his shirt and while they were engaged in dealing blows upon each other, Leon Martinez, the other accused, came upon the scene and with a pen-knife gave Mariano Suarez a thrust in the epigastric region, inflicting upon him a wound, as a result of which Suarez died 38 hours after the occurrence. Juan Martinez was the father of Francisco and Leon Martinez. It was held that as no evidence appeared in the record showing that the three accused had agreed to kill the deceased but, on the contrary, as it appeared from the evidence of the prosecution that the accused Leon Martinez intervened in the fight between his father and brother and the deceased acted independently without any previous agreement with his co-accused, it was not proper to consider said accused Juan Martinez and Fran-

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[12] U. S. vs. Magcomot et al., 13 Phil. 386; U. S. vs. Abiog et al., 37 Phil. 137.
[13] Dec. Sup. Ct. of Spain, June 2, 1874, 11 Jur. Crim. 13-14; 1 Viada, Cod. Pen., 342-343; People vs. Martinez, 42 Phil. 85; People vs. Tamayo, 44 Phil. 38.
[14] People vs. Ortiz & Zausa, 55 Phil. 993.

cisco Martinez responsible for the wound inflicted upon the deceased by the co-accused Leon Martinez.[15]

On the other hand, let us suppose that A and B had provoked C, and later on the quarrel developed into a fight between A and B on one side and C on the other, as a result of which C suffered less serious physical injuries caused by B and a mortal wound inflicted by A. In this case, B would be liable not only for the crime of less serious physical injuries but would be an accomplice in the crime of homicide committed by A, for the reason that B, under such circumstances, cooperated with a simultaneous acts in the knifing of C.[16] This is a type of quasi-collective responsibility; not an individual one.

2. Those who directly force or induce others to commit it;

PRINCIPALS BY INDUCEMENT.—This is the second type or form of co-delinquency known as compulsion or inducement. It presupposes a person who provokes or induces another to execute the crime ((intellectual or moral actor), and another person who materially executes the crime (material actor). The forms of provocation may be varied: by means of an order, by agreement, or by inducement. The first case may be illustrated by the example of a master who orders his servant to set on fire a house, or to kill a person. The second, by the example of one who offers a certain sum of money to another in order to commit a crime, said person accepting the proposal. The third case takes place when one excites the feelings of another, leading him to the execution of a crime but in such a manner that his freedom of will is not materially restrained.[17]

REQUISITES OF DIRECT INDUCEMENT.—There is compulsion or inducement when the offender through actual violence or intimidation forces or compels another to commit the crime. An example of actual violence or fear is furnished by the case of one who threatens to kill another with a revolver if the latter does not commit the crime which the former orders him to commit. It must be borne in mind that these acts of inducement should not consist of simple advice before the execution of the crime, nor of simple words at the moment of its execution. Such advice and counsel constitute undoubtedly wrongful acts and a reprehensible incitement before the moral law. But in order that they may be

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[15] People vs. Martinez, 42 Phil. 85.
[16] See U. S. vs. Domingo, 37 Phil. 446. See also People vs. Cortes et al., 55 Phil. 143.
[17] See Calon, Derecho Penal, 393-394.

considered as direct inducement, in accordance with the Code it is necessary that he who gives counsel or utters such words has a great ascendency or influence over the person who acts, and that this be so direct, so efficacious, and so powerful as to amount to physical or moral coercion or violence.[18] It is necessary that the inducement be the determining cause of the commission of the crime.[19]

One who directly induces another to commit a crime incurs criminal liability as principal, although he does not take part in the material execution of the same.[20]

The qualifying circumstance of **alevosia** does not exist as to a principal by inducement unless it is shown that he induced his co-principal not only to commit the deed but also to use the means, modes, or methods which the latter adopted in its execution.[21]

As the Supreme Court of Spain held in a case decided on November 13, 1907, although treachery, as a qualifying circumstance, is a condition which should be considered against all persons participating or cooperating in the perpetration of the crime, it is evident that in the said case, it could only be imputed to him who inflicted the wound upon the deceased while the latter was struggling with the other defendant, because, although the two helped each other in attacking the deceased, it had not been sufficiently proved that they had conspired to take the latter's life.[22]

3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

PRINCIPALS BY COOPERATION.—This is the third form of co-delinquency known as co-operation. For example, a person who offers his house as a passage for the thief with whom he is in connivance before and after the commission of the crime of robbery cooperates in the commission thereof within the meaning of this paragraph.[23]

A principal by cooperation should not be confused with an accomplice or accessory.[24] For example: "A" conspired with

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[18] 1 Viada, Cod. Penal, 354.
[19] People vs. Kiiche Omine et al., 61 Phil. 609. See also People vs. Inandan, 24 Phil. 203.
[20] U. S. vs. Leal, 1 Phil. 118.
[21] U. S. vs. Gamao, 23 Phil. 81.
[22] See People vs. Carandang, 54 Phil. 503.
[23] Dec. Sup. Ct. of Spain of May 9, 1871.
[24] See comments on Arts. 18 and 19, infra.

others to steal several thousand pesos worth of bulky goods then lying in the customhouse. He agreed to take and did in fact take delivery of the goods in his warehouse from the wagons in which his co-conspirators loaded the goods at the customhouse, and he agreed to pay them a substantial sum of money upon delivery of the goods. It was held, that "A" was guilty of the crime of theft as a principal and not merely as accessory after the fact.[25]

ESSENTIAL REQUISITE OF PRINCIPAL BY COOPERATION.—Immediate participation in the criminal design entertained by a slayer is essential to the responsibility of one who is alleged to have taken a direct part in the crime as a principal but who has not himself inflicted a wound really contributing to the death. Moreover, his criminal participation in the criminal resolution of the slayer is a substantive fact that must be clearly deducible from all the circumstances taken together.[26]

Where one of two persons who are jointly engaged in a quarrel with another stabs and kills the latter on the spot, his companion cannot be held as principal or accomplice where it does not appear that there was some concerted action leading up to the striking of the fatal blow or the said companion had any reason to believe that a deadly attack was to be made on the deceased.[27]

Art. 18. ACCOMPLICES.—Accomplices are those persons who, not being included in article 17, cooperate in the execution of the offense by previous or simultaneous acts.[28]

DISTINCTION BETWEEN AN ACCOMPLICE AND A PRINCIPAL BY COOPERATION.—An accomplice is, in some manner, a co-delinquent by cooperation. His participation in a case of complicity, however, although **necessary,** is not **indispensable** as is the case of a co-principal by cooperation. For example, if one lends his dagger or pistol to a murderer fully knowing that the latter will commit murder, he undoubtedly cooperates in the commission of the crime of murder with a previous act which, however, cannot be considered **indispensable** for the reason that even though the offender did not lend his dagger or pistol, the murderer could have obtained it somewhere else or from some

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[25] U. S. vs. Tan Tiap Co., 35 Phil. 611.
[26] People vs. Tamayo, 44 Phil. 81. See also People vs. Agbuya et al., 57 Phil. 238.
[27] U. S. vs. Manayao et al., 4 Phil. 293.
[28] Same as Art. 14 of the old Penal Code.

other person. In such a case the participation of the offender is that of an accomplice by virtue of the provisions of this article.[29]

In like manner the chauffeur of an automobile who carries in his vehicle his co-accused and their victim with knowledge that his co-accused will commit the crime of abduction incurs criminal liability as accomplice in that crime.[30]

Mere passive presence at the scene of another's crime and mere silence and failure to give the alarm, without evidence of agreement or conspiracy, do not constitute the cooperation required by Art. 18 of this Code for complicity in the commission of the crime witnessed passively, or with regard to which one has kept silent.[31]

A, B, C and D agreed to defend by force what they believed to be their rights. Immediately A and B proceeded to assault and inflict mortal wounds upon E, F and G. While A and B were inflicting these fatal wounds C and D surrounded the victims in order to prevent their flight. Upon these facts, C and D are accomplices in the crime of homicide committed by A and B, because they cooperated in the killing by a simultaneous act which although necessary was not indispensable.[32]

ESSENTIAL REQUISITE OF ACCOMPLICESHIP.—In order to hold one criminally liable as accomplice for his participation in the commission of a crime, it is essential that it be proven beyond reasonable doubt that between the supposed accomplice and the principal there was community of criminal purpose, i. e., that it be shown that the supposed accomplice committed the acts imputed to him with the intention to help morally or materially in the commission of the crime.[33]

For this reason, a corporal in the Constabulary who, while physical injuries were inflicted upon a prisoner which later caused his death, merely stood by, cannot be liable for the commission of the crime as an accomplice in the absence of sufficient proof to show that he induced, ordered, or advised the person who committed the assault to do so.[34]

Likewise, the witnesses to a marriage ceremony cannot be held liable as accomplices in the crime of illegal marriage in the

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[29] See 1 Viada, Cod. Pen., 370. See People vs. Lingad et al., 51 O. G. 6191, Dec. 1955.
[30] People vs. Balotan, 45 Phil. 573.
[31] People vs. Silvestre and Atienza, 56 Phil. 353.
[32] U. S. vs. Domingo et al., 37 Phil. 446. See also People vs. Cortes, 55 Phil. 143.
[33] People vs. Tamayo, 44 Phil. 38; People vs. Azcona, et al., 59 Phil. 580.
[34] U. S. vs. Guevara, 2 Phil. 528; U. S. vs. Cunanan, 37 Phil. 777.

absence of proof to show that such witnesses testified to facts other than that they were present when the ceremony was performed.[35]

On the other hand, when a servant, at the instigation of his master, assists in inducing a girl to leave her home for immoral purposes, he is liable as accomplice in the crime of abduction.[36]

In the crime of qualified theft, the qualifying circumstance of breach of confidence does not apply to an accomplice to the said crime if he was not in the same confidential relation which the principal had with the offended party.[37]

When doubt exists as to whether persons acted as principals or accomplices, the doubt must be resolved in their favor, i. e., they should be held liable only as accomplices.[38]

Art. 19. ACCESSORIES. — Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:[39]

Accessoryship is one of the varieties of co-delinquency. An accessory differs from a principal or an accomplice in the commission of the crime in that (a) the accessory does not take a direct part in the commission of the crime, and (b) the participation of the accessory in all cases always takes place after the commission of the crime.

1. By profiting themselves or assisting the offenders to profit by the effects of the crime.

This can be illustrated by the case of a person who buys or receives stolen property from another, knowing it to be so.[40]

Knowledge of the commission of the crime may be acquired even after committing the acts resulting in one being accessory. Even though a person in good faith buys stolen property, if he insists in re-selling it and in refusing to reveal the name of the person from whom he acquired it although he was later duly

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[35] U. S. vs. Gaoiran, 17 Phil. 404.
[36] U. S. vs. Sotto, 9 Phil. 231.
[37] People vs. Valdellon, 46 Phil. 245.
[38] People vs. Batangan, 54 Phil. 384.
[39] Same as Art. 15 of the old Penal Code.
[40] U. S. vs. Barambañgan, 34 Phil. 645; People vs. Tan Choco, 42 O. G. 3187.

informed of the illegal origin of the property, he will at any rate be liable as an accessory.[41]

2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.

For example, one who helps in burying the body of a person who has been murdered, in order to prevent the discovery of the crime.[42] In like manner, one who without taking direct part in the commission of the crime, nevertheless, furnishes the means to make it appear that the deceased was armed and that it was necessary to kill him for having offered resistance to the Constabulary, is an accessory, and the fact that he acted by virtue of an order given by his superior will not exonerate him.[43]

However, one who keeps silent regarding the commission of a certain crime does not incur any criminal liability.[44]

3. By harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

CLASSES OF ACCESSORIES UNDER THIS PARAGRAPH.—In accordance with the provisions of this paragraph, there are two classes of accessories, to wit: (a) **public officers** who help the author of a crime by **misusing** their office and duties; and (b) **private persons** or public officers with or without abuse of public functions, who help persons guilty of treason, parricide, murder, or attempt against the life of the chief executive, or those who help persons who are habitual criminals.

REQUISITE OF THE FIRST CLASS OR TYPE.—In the first case, the public officer who harbors, conceals, or assists in the escape of the offender, shall be liable as an accessory even though the crime committed by the offender was merely that of **estafa**, seduction, or any other crime less serious than murder, parricide,

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[41] Dec. of Sup. Ct. of Spain of January 27, 1872; Viada, 1 Cod. Pen., 385; U. S. vs. Montano, 3 Phil. 110.
[42] U. S. vs. Leal, 1 Phil. 118.
[43] U. S. vs. Cuison, 20 Phil. 433.
[44] U. S. vs. Caballeros, 4 Phil. 350.

treason, etc., provided there was **misuse of public office** on the part of such officer. For example, a municipal president who refuses to arrest the principals in the commission of the crime of homicide, thus allowing them to escape, is likewise liable as accessory.[45] And a municipal president or chief of police who refuses to arrest a thief or a forger who commits a crime in his presence and gives him money that he may escape, is an accessory whose punishment is provided for in Art. 53, in connection with Art. 58 of this Code. The help to the offenders in this case is given with misuse of the public office because there is no doubt that a president or chief of police in such a case makes illegal use of his office in giving help to the offenders.

He is likewise an accessory under this paragraph, who gives false information to the authorities as regards the whereabouts of a criminal in order to enable the latter to escape.[46]

REQUISITE OF THE SECOND CLASS OR TYPE.—In the second case, i. e., when the one who harbors, conceals, or assists in the escape of the offender is a private person, it is necessary, before he can be held criminally liable as accessory, that the crime committed be that of **treason, parricide, murder, or attempt against the life of the President of the Philippines,** or that the offender helped be an **habitual criminal.** Thus, for example, if A after committing abduction or bigamy goes to the house of his friend B, and borrowing money from him, escapes to a foreign country, B does not incur criminal liability. He is not an accessory although he loaned the money, for the reason that the crime committed by his friend A is not one of those specified in this paragraph.

If a public officer helps a murderer or a person who commits parricide, or other persons guilty of any of the crimes mentioned in this paragraph, he will likewise be dealt with as an accessory and sentenced not only to the principal penalty provided for in Art. 53, but also to the accessory penalty prescribed in Art. 58, regardless of whether or not there was abuse of public functions.

SUBORDINATION OF LIABILITY.—The liability of an accessory after the fact is subordinate to that of the principal, because the participation of an accessory is subsequent to the commission of the crime. Hence his guilt is directly related to that of the principal.[47]

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[45] U. S. vs. Yacat, 1 Phil. 443.
[46] U. S. vs. Callapag, 21 Phil. 262.
[47] U. S. vs. Mendoza, 23 Phil. 194.

Art. 20. ACCESSORIES WHO ARE EXEMPT FROM CRIMINAL LIABILITY.—The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article.[48]

GROUND FOR THE EXEMPTION.—The exemption provided for in this article is based on the ties of blood and the preservation of the cleanliness of one's family name, which compels one to conceal crimes committed by relatives so near as those mentioned in this Article.

As may be seen, a son who helps his father to bury the body of a person whom the latter has murdered; or a wife who conceals her husband after the latter has committed the crime of treason; or a grandchild who, having knowledge of an attempt committed by his grand-father against the life of the President of the Philippines, destroys the instruments of the crime, does not incur any liability. Such, however, is not the case when the concealment of the effects of the crime is made with intent to gain. For example, a husband who conceals the property stolen by his wife is liable as accessory.[49]

LIABILITY OF A PUBLIC OFFICER WHEN RELATED TO THE PRINCIPAL.—Court decisions are silent on the point whether or not a public officer, who with evident abuse of his office, furnishes means of escape to his brother, who has committed murder, incurs criminal liability as accessory.

Pacheco[50] is of the opinion that such a public officer does not incur any criminal liability. We concur with Pacheco's opinion. Ties of blood or relationship constitute a more powerful incentive than the call of duty. Furthermore, Art. 20 grants the benefits of exemption to all except to accessories who profit or help the offender to profit from the benefits of the crime. Hence, we must consider included in the exemption provided for in this Article the other cases of accessories referred to in Art. 19.

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[48] Same as Art. 16 of the old Penal Code.
[49] U. S. vs. Deuda et al., 14 Phil. 595.
[50] Cod. Pen., vol. I, pp. 273-275.

TITLE THREE

Penalties[1]

CHAPTER ONE

PENALTIES IN GENERAL

Art. 21. PENALTIES THAT MAY BE IMPOSED.—No felony shall be punishable by any penalty not prescribed by law prior to its commission.[2]

In accordance with the provisions of this Article, no act or omission is to be considered a crime and its perpetrator punished except by virtue of a law in force at the time of its commission.[3]

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[1] Penalty in its general sense signifies pain; specially considered in the juridical sphere, it means suffering undergone, because of the action of human society, by one who commits a crime (**Pessina**, Elementos de Derecho Penal, pp. 375, 376).

The penalty provided for in this Code answers a three-fold purpose, to wit: **retribution** or **expiation** as shown by the earnest desire to make the penalty commensurate with the gravity of the offense; **correction or reformation,** as shown by the rules which regulate the execution of the penalties consisting in deprivation of liberty (see Rules and Regulations of the Bureau of Prisons of June 12, 1922); and **social defense,** as shown by the inflexible severity of the Code of recidivists and habitual delinquents.

According to the classical school on which this Code is mainly based, in order that a penalty may be deemed just, it should contain the following characteristics, to wit:

(a) It must be **productive** of suffering with the following limitation, that the integrity of the human personality be not affected, because penalty should only be a restriction of freedom since the offender, in violating the law, abuses such freedom. Hence, the Code rejects those correctional penalties which injure his moral integrity;

(b) It must be **commensurate** with the offense. Ancient law expressed this need of proportion in the law of Talion, by virtue of which an injury was inflicted on the offender equal or similar to that caused by him; but this form of proportion, belonging to a savage age, has luckily disappeared. The classical school considers penalty properly under two aspects: one, **qualitative,** according to which the different crimes must be punished with different penalties; and another **quantitive,** according to which each crime must be punished by a more or less severe penalty, in harmony with its greater or less criminality.

(c) It must be **personal;** that is, it should be imposed only upon the offender so that no one may be punished for the crime of another;

(d) It must be **legal;** that is, it must be the consequence of a judgment rendered according to law;

(e) It must be **certain,** i. e., that no one may escape its effects;

(f) It must be **equal** for all, which means that the same penalty must be applied to the rich and to the poor, to the powerful and to the humble; and

(g) It must be **correctional** as far as possible.

However, followers of the classical school do not believe that the correction of the offender is the sole or principal purpose of the penalty, and maintain that the anti-juridical will of the offender should be corrected as a means towards the attainment of the purpose of the penalty—the re-affirmation of the right infringed (See **Cuello Calon,** Der. Pen. 413).

[2] Same as Art. 21 of the old Penal Code. The legal phraseology of Art. 21 is defective. The phrase "**prior** to its commission" should be "**at** the time of its commission".

[3] People vs. Moran et al., 44 Phil. 387.

One Macasaet was convicted of a violation of Secs. 66 and 68 of the Internal Revenue Law (Act 1189), and sentenced to the payment of a fine and costs, and was further sentenced to subsidiary imprisonment in case of insolvency, by virtue, it seems, of the provisions of Sec. 1 of Act No. 1782. **Held,** that, inasmuch as Act 1732 did not go into force until after the commission of the offense, subsidiary imprisonment cannot be lawfully imposed.[4]

It is not error for a Judge of the Court of First Instance to fail to mention the particular provision of the Penal Code upon which he bases his conclusions. If his conclusions are based upon some provision of law, his sentence will be sustained.[5]

The defendants were charged with three crimes of theft and were sentenced to "five years in Bilibid." **Held,** that the sentence was defective, inasmuch as it did not specify the exact penalty prescribed by the Penal Code.[6]

Art. 22. RETROACTIVE EFFECT OF PENAL LAWS.—Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.[7]

The provisions of this Article are applicable even to special laws which provide more favorable conditions to the accused. Thus, for example, if a special law of the Legislature provides that a certain offense also penalized under a special law (e. g. violation of the Election Law) prescribes in two years, this prescriptive law will be applicable even to those offenders who committed the crime prior to its promulgation. In a case in which the law which prescribes a penalty for the commission of a certain crime is repealed and the new law provides a new and different penalties for the commission of that crime, the penalty which should be imposed upon the person who committed the crime prior to the promulgation of the repealing law is that which is more favorable to the offender.[8]

Article 22 of the Revised Penal Code, by introducing the clause

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[4] U. S. vs. Macasaet, 11 Phil. 447. See also U. S. vs. Cuna, 12 Phil. 241.
[5] U. S. vs. Mendoza et al., 14 Phil. 198.
[6] U. S. vs. Avillar et al., 28 Phil. 131.
[7] Similar to Art. 22 of the old Penal Code. This provision, however, introduces an innovation in that the habitual delinquent is excepted from its benefits.
[8] U. S. vs. Soliman, 36 Phil. 5.

relative to the person guilty of a felony "who is not a habitual criminal, as this term is defined in rule 5 of Article 62 of this Code," excepts the habitual delinquent from the benefits to be derived from the said article.[9]

Juan Moran et al. were prosecuted and convicted of a violation of Sec. 2639 of the Administrative Code (Election Law), on March 31, 1922. On March 9, 1922, and during the pendency of a motion for reconsideration and new trial, the Legislature approved Act 3030 providing, among other things, that violations of the Election Law should prescribe in one year. Act 3030 is nothing but an amendment to Sec. 1865 of the Administrative Code in which nothing is provided as regards the prescription of the offense (violation of the Election Law). It was held that in accordance with the provisions of Art. 22 of this Code, Juan Moran and his co-accused were entitled to the benefits of Act 3030, no matter whether or not the offense and the prosecution had taken place prior to the approval of the said Act, and that the prosecution in this case having commenced one year after the commission of the crime, if this was really committed, it had already prescribed.[10]

In accordance with the old Penal Code, seduction was a private crime and only the aggrieved party or her representative was entitled to prosecute or pardon the offender. Act No. 1773, amending said code, made this crime a public crime which can be prosecuted by the Government. In the cases cited below, it was held that although the crime was committed before the enactment of an amendment to the law, all amendments to it which are beneficial to the defendant should be given retroactive effect in so far as they favor the accused, and the acts having been committed while the old law was still in force, and the latter being more favorable to the defendant, the crime should be governed by the provisions of the Penal Code.[11]

The rule which has just been stated, however is not applicable when the prior law expressly provides that its provisions should not be applicable to pending actions or to existing causes of action.[12]

Art. 23. EFFECT OF PARDON BY THE OFFENDED PARTY.—A pardon by the offended party does not extinguish criminal action except as provided

[9] People vs. Alcaraz, 56 Phil. 520.
[10] People vs. Moran et als., 44 Phil. 387.
[11] U. S. vs. Hocbo, 12 Phil. 304; U. S. vs. Cuna, 12 Phil. 241; U. S. vs. Tonga, 15 Phil. 43.
[12] Tavera vs. Valdez, 1 Phil. 468.

in article 344 of this Code; but civil liability with regard to the interest of the injured party is extinguished by his express waiver.[13]

In case of **adultery** and **concubinage**, the offended party cannot institute criminal prosecution if he shall have consented or pardoned the offenders.[14] Neither shall the offenses of seduction, abduction, rape, or acts of lasciviousness be prosecuted if the offender has been expressly pardoned by the offended party.[15] In case of seduction, abduction, acts of lasciviousness, or rape, moreover, criminal liability is extinguished by the marriage of the accused to the offended party.[16]

The embezzlement of jewelry cannot be compromised by agreement with the owner after its disappearance, by receiving its value from the defendant. The judgment must be complied with, and no agreement may thereafter be entered into.[17]

Art. 24. MEASURES OF PREVENTION OR SAFETY WHICH ARE NOT CONSIDERED PENALTIES.—The following shall not be considered as penalties:[18]

1. The arrest and temporary detention of accused persons, as well as their detention by reason of insanity or imbecility, or illness requiring their confinement in a hospital.

2. The commitment of a minor to any of the institutions mentioned in article 80 and for the purposes specified therein.

3. Suspension from the employment or public office during the trial or in order to institute proceedings.

4. Fines and other corrective measures which in the exercise of their administrative or disciplinary powers, superior officials may impose upon their subordinates.

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[13] Same as Art. 23 of the old Penal Code.
[14] Art. 344, R.P.C.; People vs. Schneskenburger, et al., 73 Phil. 413.
[15] Art. 344, R.P.C.
[16] Art. 89, No. 7.
[17] U. S. vs. Ongtengco, 4 Phil. 144; People vs. Velazco, 42 Phil. 75.
[18] Same as Art. 24 of the old Penal Code.

5. Deprivation of rights and the reparations which the civil laws may establish in penal form.

The arrest and temporary detention of accused persons is merely a preventive measure, not a penalty; however, when the accused is finally convicted, he shall, except in certain cases, be credited with one-half of the preventive imprisonment he had undergone.[19]

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[19] See Art. 29 infra.

CHAPTER TWO

CLASSIFICATION OF PENALTIES

Art. 25. PENALTIES WHICH MAY BE IMPOSED.—The penalties which may be imposed, according to this Code, and their different classes, are those included in the following:

SCALE[1]

Principal Penalties

Capital punishment:

Death

Afflictive penalties:

Reclusion perpetua,
Reclusion temporal,
Perpetual or temporary absolute disqualification,
Perpetual or temporary special disqualification,
Prision mayor.

Correctional penalties:

Prision correccional,
Arresto mayor,
Suspension,
Destierro.

Light penalties:

Arresto menor,
Public censure.

Penalties common to the three preceding classes:

Fine, and
Bond to keep the peace.

Accessory Penalties

Perpetual or temporary absolute disqualification,

[1] The scale of penalties provided for in this article is a merger of Scales 2, 3, and 5 of Art. 91 of the old Penal Code.

Perpetual or temporary special disqualification,
Suspension from public office, the right to vote and be voted for, the profession or calling,
Civil interdiction,
Indemnification,
Forfeiture or confiscation of instruments and proceeds of the offense,
Payment of costs.

The present code reduces the various penalties provided for in the old Code.

Having in mind the subject-matter of these penalties, the same can be classified as: corporal (penalty of death), deprivation of freedom (**reclusion, prision, arresto**), restriction of freedom (**destierro**), deprivation of rights (disqualification and suspension) and pecuniary (**fine**).

By reason of their gravity, penalties are divided into capital, afflictive, correctional, and light.

Art. 26. FINE—WHEN AFFLICTIVE, CORRECTIONAL OR LIGHT PENALTY.—A fine, whether imposed as a single or as an alternative penalty, shall be considered an afflictive penalty, if it exceeds 6,000 pesos; a correctional penalty, if it does not exceed 6,000 pesos but is not less than 200 pesos; and a light penalty, if it be less than 200 pesos.[2]

Increasing or decreasing the penalty of fine by one or more degrees.—See Art. 75, infra.

[2] Based on the provisions of Art. 26 of the old Penal Code. Of course the old Penal Code did not use the word **pesos** but **pesetas.**

CHAPTER THREE

DURATION AND EFFECT OF PENALTIES

SECTION ONE

Duration of Penalties[1]

Art. 27. RECLUSION PERPETUA. — Any person sentenced to any of the perpetual penalties shall be pardoned after undergoing the penalty for thirty years, unless such person by reason of his conduct or some

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[1] **Indeterminate Sentence.**—Notwithstanding the provisions of this section about the duration of penalties, Act No. 4103 provides that, with the exception of persons convicted of crimes punished with death penalty or life imprisonment, of treason, rebellion, sedition, espionage; or piracy, habitual delinquency, sentence breaking, violation of conditional pardon, and convicts whose maximum term of imprisonment does not exceed one year, all convicts of offenses punishable by the Revised Penal Code, shall be sentenced to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be imposed properly under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the Court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum of which shall not be less than the minimum term prescribed by the same. In other words, the prisoner must serve the minimum penalty before he is eligible for parole under the provisions of Act No. 4103, which leaves the period between the minimum and maximum penalty indeterminate in the sense that he may, under the conditions set out in said Act, be released from serving said period in whole or in part. He must be sentenced, therefore, to imprisonment for a period which is not more than the "maximum" nor less than the "minimum," as these terms are used in the Indeterminate Sentence Law.

The maximum penalty must be determined, in any case punishable by the Revised Penal Code, exactly as if Indeterminate Sentence (Act No. 4103) had never been passed. It was not the purpose of said Act to make inoperative any of the provisions of the Revised Penal Code. Neither the title nor the body of the Act indicates any intention on the part of the Legislature to repeal or amend any of the provisions of the Revised Penal Code.

In determining the "minimum" penalty, Act No. 4103 confers upon the courts in the fixing of penalties the widest discretion that the courts have ever had. The determination of the minimum penalty presents two aspects: first, the more or less mechanical determination of the extreme limits of the minimum imprisonment period; and second, the broad question of the factors and circumstances that should guide the discretion of the court in fixing the minimum penalty within the ascertained limits. We construe the expression in section 1 "the penalty next lower to that prescribed by said Code for the offense" to mean the penalty next lower to that determined by the court in the case before it as the maximum (that is to say, the correct penalty fixed by the Revised Penal Code).

The Indeterminate Sentence Law simply provides that the "minimum" shall "not be less than the minimum imprisonment period of the penalty next lower." In other words, it is left entirely within the discretion of the court to fix the minimum imprisonment anywhere within the range of the next lower penalty without reference to the degrees into which it may be subdivided.

Keeping in mind the basic purpose of the Indeterminate Sentence Law "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness" (Message of the Governor-General, Official Gazette No. 92, Vol. XXXI, August 3, 1933), it is necessary to consider the criminal, first, as an individual and, second, as a member of society. In other words, the Indeterminate Sentence Law aims to

other serious cause shall be considered by the Chief Executive as unworthy of pardon.

RECLUSION TEMPORAL.—The penalty of reclusion temporal **shall be from twelve years and one day to twenty years.**

PRISION MAYOR AND TEMPORARY DISQUALI-

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individualize the administration of our criminal law to a degree not heretofore known in these Islands. Some factors to be taken into consideration are indicated.

The following is a practical example for the application of the Indeterminate Sentence Law. D was prosecuted for the crime of frustrated murder. Upon arraignment he pleaded guilty and was sentenced to ten years and one day of **prision mayor** with the accessory penalties prescribed by law and to pay costs. The penalty for the crime of murder, under article 248 of the Revised Penal Code, is **reclusion temporal** in its maximum period to death. Under article 50 the penalty for a frustrated felony is the one next lower in degree than that prescribed for the consummated felony, which in the present case is **prision mayor** in its maximum period to **reclusion temporal** in its medium period, or from ten years and one day to seventeen years and four months.

But under the provisions of the "Indeterminate Sentence Law," the minimum shall not be less than the minimum period of the penalty next lower in degree. Since the penalty next lower in degree than **prision mayor** in its maximum period to **reclusion temporal** in its medium period is **prision correccional** in its maximum period to **prision mayor** in its medium period, the penalty which can be imposed upon the accused in this case under the provisions of the "Indeterminate Sentence Law" shall be a penalty ranging from 4 years, 2 months, and 1 day to 10 years. As stated above, it is within the discretion of the court to fix the time of imprisonment within said range without reference to the technical division of the fixed time, into maximum, medium, and minimum periods. In cases like this, the courts are vested with a wider discretion than they ever had before. (People vs. Ducosin, 59 Phil. 109.)

The pertinent portion of the "Indeterminate Sentence Law" reads as follows:

"Hereafter, in imposing a prison sentence for an offense punished by Acts of the Philippine Legislature, otherwise than by the Revised Penal Code, the court shall order the accused to be imprisoned for a minimum term, which shall not be less than the minimum term of imprisonment provided by law for the offense, and for a maximum term which shall not exceed the maximum fixed by law; and where the offense is punished by the Revised Penal Code, or amendments thereto, the court shall sentence the accused to such maximum as may, in view of attending circumstances, be properly imposed under the present rules of the said Code, and to a minimum which shall not be less than the minimum imprisonment period of the penalty next lower to that prescribed by said Code for the offense. Except as provided in section two hereof, any person who shall have been so convicted and sentenced and shall have served the minimum sentence imposed hereunder, may be released on parole in accordance with the provisions of this Act." (Sec. 1, Act No. 4103.)

"This Act shall not apply to persons convicted of offenses punished with death penalty or life imprisonment; to those convicted of treason, conspiracy or proposal to commit treason; to those convicted of misprision of treason, sedition or espionage; to those convicted of piracy; to those who are habitual delinquents; to those who shall have escaped from confinement or evaded sentence; to those who having been granted conditional pardon by the Chief Executive shall have violated the terms thereof; to those whose minimum term of imprisonment does not exceed one year; nor to those already sentenced by final judgment at the time of approval of this Act, except as provided in section five hereof." (Sec. 2, Act No. 4103.)

The determination of the minimum term of the indeterminate sentence within the range provided by law is left entirely within the discretion of the trial court, and this discretion should not be interfered with except in case of abuse. (People vs. De Joya, 52 O. G. 788, Feb. 1956.)

Where the penalty imposed does not exceed one year the accused is not entitled to the benefits of the Indeterminate Sentence Law. (Sec. 2, Act No. 4103; People vs. Recote, G. R. Nos. L-5801-02, March 28, 1955.

FICATION.—The duration of the penalties of prision mayor **and temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case its duration shall be that of the principal penalty.**

PRISION CORRECCIONAL, SUSPENSION, AND DESTIERRO.—The duration of the penalties of prision correccional, suspension, **and** destierro **shall be from six months and one day to six years, except when suspension is imposed as an accessory penalty, in which case, its duration shall be that of the principal penalty.**

ARRESTO MAYOR.—The duration of the penalty of arresto mayor **shall be from one month and one day to six months.**

ARRESTO MENOR.—The duration of the penalty of arresto menor **shall be from one day to thirty days.**

BOND TO KEEP THE PEACE.—The bond to keep the peace shall be required to cover such period of time as the court may determine.

Art. 28. COMPUTATION OF PENALTIES. — If the offender shall be in prison, the term of the duration of the temporary penalties shall be computed from the day on which the judgment of conviction shall have become final.[2]

If the offender be not in prison, the term of the duration of the penalty consisting of deprivation of liberty shall be computed from the day that the offender is placed at the disposal of the judicial authorities for the enforcement of the penalty. The duration of the

[2] The reason why the duration of the temporary penalties shall be computed only from the day the judgment of conviction becomes final, and not from the day of his imprisonment, is because under Art. 24 the arrest and temporary detention of the accused is not considered a penalty. However, he may be credited with ½ of the period of his preventive imprisonment under Art. 29.

other penalties shall be computed only from the day on which the defendant commences to serve his sentence.

Art. 29. ONE-HALF OF THE PERIOD OF THE PREVENTIVE IMPRISONMENT DEDUCTED FROM TERM OF IMPRISONMENT.—Offenders who have undergone preventive imprisonment shall be credited in the service of their sentences consisting of deprivation of liberty, with one-half of the time during which they have undergone preventive imprisonment, except in the following cases:

1. When they are recidivists, or have been convicted previously twice or more times of any crime;

2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily;

3. When they have been convicted of robbery, theft, estafa, **malversation of public funds, falsification, vagrancy, or prostitution.**[3]

Case No. 2 of the above article is an innovation introduced by this Code.

SECTION TWO

Effects of the penalties according to their respective nature

Art. 30. EFFECTS OF THE PENALTIES OF PERPETUAL OR TEMPORARY ABSOLUTE DISQUALIFICATION.—The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held, even if conferred by popular election.

[3] Same as the last paragraph of Art. 30 of the old Penal Code, as modified by Act 2557.

2. The deprivation of the right to vote in any election for any popular elective office or to be elected to such office.

3. The disqualification for the offices or public employment and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all right to retirement pay or other pension for any office formerly held.[1]

Art. 31. EFFECTS OF THE PENALTIES OF PERPETUAL OR TEMPORARY SPECIAL DISQUALIFICATION.—The penalties of perpetual or temporary special disqualification for public office, profession, or calling shall produce the following effects:

1. The deprivation of the office, employment, profession or calling affected;

2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence, according to the extent of such disqualification.[2]

Art. 32. EFFECTS OF THE PENALTIES OF PERPETUAL OR TEMPORARY SPECIAL DISQUALIFICATION FOR THE EXERCISE OF THE RIGHT OF SUFFRAGE.—The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the

[1] Same as Art. 31 of the old Penal Code.
[2] Same as Articles 34 and 35 of the old Penal Code.

offender shall not be permitted to hold any public office during the period of his disqualification.[3]

Supposing a pardon is granted, in accordance with the provisions of Art. 27 of this Code, upon a convict undergoing life imprisonment after having served 30 years. Shall it be understood that the convict is likewise pardoned from the penalty of temporary absolute disqualification which is an accessory to life imprisonment according to the provisions of Art. 40 of this Code? We are inclined to answer this question in the negative. First, because Art. 30 of the Revised Penal Code is silent as to the maximum duration of perpetual disqualification, and second, because Art. 36 of the Revised Penal Code expressly provides that a pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

Art. 33. EFFECTS OF THE PENALTIES OF SUSPENSION FROM ANY PUBLIC OFFICE, PROFESSION OR CALLING, OR THE RIGHT OF SUFFRAGE.—The suspension from public office, profession, or calling, and the exercise of the right of suffrage shall disqualify the offender from holding such office or exercising such profession or calling or right of suffrage during the term of the sentence.

The person suspended from holding public office shall not hold another having similar functions during the period of his suspension.[4]

Art. 34. CIVIL INTERDICTION.—Civil interdiction shall deprive the offender during the time of his sentence of the rights of parental authority, or guardianship, either as to the person or property of any ward, of marital authority, of the right to manage his property and of the right to dispose of such property by any act or any conveyance inter vivos.[5]

Art. 35. EFFECTS OF BOND TO KEEP THE PEACE.—It shall be the duty of any person sentenced

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[3] Id.
[4] Same as Article 36 of the old Penal Code.
[5] Same as Article 42 of the old Penal Code.

to give bond to keep the peace, to present two sufficient sureties who shall undertake that such person will not commit the offense sought to be prevented, and that in case such offense be committed they will pay the amount determined by the court in its judgment, or otherwise to deposit such amount in the office of the clerk of the court to guarantee said undertaking.

The court shall determine, according to its discretion, the period of duration of the bond.

Should the person sentenced fail to give the bond as required he shall be detained for a period which shall in no case exceed six months, if he shall have been prosecuted for a grave or less grave felony, and shall not exceed thirty days, if for a light felony.[6]

Art. 36. PARDON; ITS EFFECTS. — A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.[7]

The second paragraph of this article is merely a repetition of a principle laid down by jurisprudence.

Art. 37. COSTS—WHAT ARE INCLUDED.—Costs shall include fees and indemnities in the course of the judicial proceedings, whether they be fixed or unalterable amounts previously determined by law or regulations in force, or amounts not subject to schedule.[8]

Art. 38. PECUNIARY LIABILITIES—ORDER OF PAYMENT.—In case the property of the offender should not be sufficient for the payment of all his pecuniary liabilities, the same shall be met in the following order:

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[6] Same as Art. 44 of the old Penal Code.
[7] Same as Art. 46 of the old Penal Code.
[8] Same as Art. 47 of the old Penal Code.

1. **The reparation of the damage caused.**
2. **Indemnification of consequential damages.**
3. **The fine.**
4. **The costs of the proceedings.**[9]

REPARATION is distinguished from INDEMNIFICATION, in that the former applies to damage caused to property (Art. 106) while indemnification refers to injuries caused to the injured party or his family, or others by reason of the crime (Art. 107.).

Art. 39. SUBSIDIARY PENALTY.—If the convict has no property with which to meet the pecuniary liabilities mentioned in paragraphs 1st, 2nd, and 3rd of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each two pesos and 50 centavos subject to the following rules:

1. If the principal penalty imposed be prision correccional **or** arresto **and fine, he shall remain under confinement until his fine and pecuniary liabilities referred in the preceding paragraph are satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner.**

2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a light felony.

3. When the principal penalty imposed is higher than prision correccional **no subsidiary imprisonment shall be imposed upon the culprit.**

4. If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict, during the period of time established in the preceding rules, shall

[9] Same as Art. 49 of the old Penal Code.

continue to suffer the same deprivations as those of which the principal penalty consists.

5. The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from reparation of the damage caused, nor from indemnification for the consequential damages in case his financial circumstances should improve; but he shall be relieved from pecuniary liability as to the fine.[10]

It may be inferred from the provisions of this Article that there is no subsidiary imprisonment (a) when the principal penalty is higher than **prision correccional,**[11] i. e., more than six years as in **prision mayor, reclusion temporal and reclusion perpetua;** and (b) for the non-payment of the costs.

Act No. 1732 of the Philippine Commission which provides for subsidiary imprisonment in case of insolvency in the payment of a fine for violations of Acts of the Philippine Commission is also applicable to Acts promulgated by the Philippine Legislature.[12]

And subsidiary imprisonment in case of insolvency is not imprisonment for debt according to the Supreme Court. The law prohibiting imprisonment for debt has reference to those debts arising from contract, and not to those cases where the penal law provides for the payment of a certain amount as a penalty for the commission of a crime.[13]

Where a fine has been imposed on the accused by final judgment, but no proviso of a subsidiary imprisonment has been made in case of insolvency, the court cannot legally oblige the accused to suffer the subsidiary penalty provided for by Article 39 of the Revised Penal Code. This is so, because, subsidiary imprisonment is also a penalty, and Art. 78 provides that "no penalty shall be executed except by virtue of a final judgment.[14]

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[10] Based on the provisions of Arts. 50, 51 and 52 of the old Penal Code.
[11] People vs. Concepcion, 59 Phil. 518.
[12] U. S. vs. Esteban, 42 Phil. 1.
[13] U. S. vs. Cara, 41 Phil. 828. See also People vs. Rodriguez, G. R. No. L-6300, April 20, 1954; U. S. vs. Heery, 25 Phil. 600.
[14] People vs. Fajardo, 65 Phil. 539.

SECTION THREE

Penalties in which other accessory penalties are inherent

Art. 40. DEATH—ITS ACCESSORY PENALTIES.—The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date of sentence, unless such accessory penalties have been expressly remitted in the pardon.[1]

Art. 41. RECLUSIÓN PERPETUA AND RECLUSIÓN TEMPORAL—THEIR ACCESSORY PENALTIES.—The penalties of reclusión perpetua **and** reclusión temporal **shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.**[2]

Art. 42. PRISIÓN MAYOR — ITS ACCESSORY PENALTIES.—The penalty of prisión mayor **shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.**[3]

Art. 43. PRISIÓN CORRECCIONAL — ITS ACCESSORY PENALTIES.—The penalty of prisión correccional **shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in this article although**

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[1] Same as Art. 53 of the old Penal Code.
[2] Similar to the provisions of Arts. 55 and 59 of the old Penal Code.
[3] Same as Arts. 57 and 58 of the old Penal Code.

pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.[4]

Art. 44. ARRESTO — ITS ACCESSORY PENALTIES.—The penalty of arresto **shall carry with it that of suspension of the right to hold office and the right of suffrage during the term of the sentence.**[5]

Art. 45. CONFISCATION AND FORFEITURE OF THE PROCEEDS OR INSTRUMENTS OF THE CRIME.—Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.[6]

The money used to bribe a customs official to permit the illegal importation of opium cannot be confiscated when it clearly appears that it belongs to a third and innocent person.[7]

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[4] Same as the provisions of Arts. 58 and 61 of the old Penal Code.
[5] Same as Art. 61 of the old Penal Code.
[6] Same as Art. 62 of the old Penal Code.
[7] U. S. vs. Bruhez, 28 Phil. 305.

CHAPTER FOUR

APPLICATION OF PENALTIES

SECTION ONE

Rules for the application of penalties to the persons criminally liable and for the graduation of the same

Art. 46. PENALTY TO BE IMPOSED UPON PRINCIPALS IN GENERAL.—The penalty prescribed by law for the commission of a felony shall be imposed upon the principals in the commission of such felony.

Whenever the law prescribes a penalty for a felony in general terms, it shall be understood as applicable to the consummated felony.[1]

Art. 47. IN WHAT CASES THE DEATH PENALTY SHALL NOT BE IMPOSED.—The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except in the following cases:

1. When the guilty person be more than seventy years of age.

2. When upon appeal or revision of the case by the Supreme Court, all the members thereof are not unanimous[2] in their voting as to the propriety of the imposition of the death penalty. For the imposition of said penalty or for the confirmation of a judgment of the inferior court imposing the death sentence, the Supreme Court shall render its decision per curiam, **which shall be signed by all justices of said court, unless some member or members thereof shall have become disqualified from taking part in the consideration of the**

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[1] Same as Art. 63 of the old Penal Code.

[2] The requirement under the R. P. C. that all the members of the Supreme Court concur to impose death penalty, was modified by the Judiciary Act of 1948 which provides that death penalty is imposable when **eight justices** agree thereto. ((R. A. No. 296, Sec. 9.)

case, in which event the unanimous vote and signature of only the remaining justices shall be required.[3]

Being more than 70 years refers not to the age at the time the crime was committed but at the time the death sentence is to be executed. Hence, when the accused condemned to death was less than 70 years at the time the crime was committed but due to lapse of time by reason of appeal, he became more than 70 years when the judgment was confirmed by the Supreme Court, the death penalty shall not be carried out.[4]

It will be noted that while Act 3104 extends its benefits not only to the offender over 70 years of age but also to one under eighteen, the present Code does not include a minor under 18 years, and rightly so because it is well known that by the provisions of Art. 80 of this Code all proceedings against him shall be suspended, and instead of rendering judgment against him he shall be placed under the care of a benevolent institution for his training and correction.

One Fuentes was convicted of the crime of parricide by the Court of First Instance and sentenced to suffer the death penalty. Upon review of the case by the Supreme Court, only eight justices took part, the ninth justice being absent. The decision of the Supreme Court affirming the judgment of the court below was written by one justice and concurred in by the other seven justices present. Upon petition for a writ of habeas corpus on the ground that the case had not been considered and decided by the Supreme Court in the manner provided for in subsection 2 of Sec. 1 of Act 3104, it was held: (a) that even assuming that the petitioner's contention was correct, he could still be legally confined under a lawful judgment of the Court of First Instance, and that therefore the writ of habeas corpus would not lie; (b) that the provisions of subsection 2 of Sec. 1 of Act 3104 to the effect that the sentence imposing the death penalty shall be signed by all the members of the Court must be construed to mean all the members of the Court present for duty and actually constituting the court at the time the case was heard and decided.[5]

Art. 48. PENALTY FOR COMPLEX CRIMES.— When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means

[3] Based on the provisions of Sec. 1 of Act 3104 of the Philippine Legislature.
[4] See also Art. 83, infra.
[5] Fuentes vs. Director of Prisons, 46 Phil. 22.

for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.[6]

Under the punitive system established by the classical school, to which our Penal Code belongs, a person committing multiple crimes may meet either one penalty only, or several, depending on whether the type of multiple crimes committed is **ideal** or **material.**

Plural crimes of the ideal type, which entail only one penalty, are divided into three groups, namely:

FIRST GROUP: THE SO-CALLED COMPLEX CRIMES PENALIZED UNDER ART. 48 OF THE PENAL CODE

The complex crime penalized under Art. 48 of the Penal Code takes place:

(a) When two or more offenses are caused or produced by one single act: for instance, a person who throws a hand-grenade and causes thereby several victims, one killed and several injured, is guilty of the complex crime of **murder** with **physical injuries**[7]; or a person who shoots to death a Provincial Governor who is in the actual performance of his office is responsible for the crime of **assault upon a person in authority** with **murder.**[8]

(b) When two crimes have been committed, but one is a necessary means to commit the other. For instance, a person who forges the signature of a payee in a Government warrant in order to cash such warrant, is guilty of the complex crime of **estafa** through the **falsification** of a **public document**[9]; or, where an accused forcibly abducts and afterward rapes the victim, is guilty of the complex crime of **abduction** with **rape.**[10] In the first case, the crime of **falsification** was a necessary means to commit the **estafa;** while in the second, the **abduction** was a means to commit **rape**

It must be taken into account that for the multiple or plural crime to be considered as a complex crime under the provisions of Art. 48 of the Penal Code, it must clearly appear that the offender has availed himself of one crime for the purpose of com-

[6] As amended by Act 4000 of the Philippine Legislature. Based on the provisions of Art. 89 of the old Penal Code.
[7] People vs. Guillen, 47 O. G. 3433, 1951.
[8] U. S. vs. Baluyot, 40 Phil. 385
[9] People vs. Geyrozaga, 53 Phil. 278.
[10] People vs. De Guzman, 51 Phil. 105.

mitting the other. In other words, it must clearly appear that one of the crimes is the end while the other is the means to attain the former; otherwise, a **material** plurality of crime is obtained, and as such, must be treated and penalized independently one from the other in accordance with the provisions of Art. 70 of the Penal Code.

There had been some confusion or misunderstanding in the application of the provisions of Art. 48 of the Penal Code. Many prosecutors and judges of the Court of First Instance seem to have labored under the impression that the members of the subversive organization known as "Hukbong Mapagpalaya ng Bayan" can be prosecuted and convicted in one complaint, not only for the crime of rebellion, but also for all the other grave crimes, such as arson, murder of innocent civilians, robbery and rape, committed by the organization. The government prosecutors, in their desire to exact the maximum punishment for the Huks, have invariably charged them with the so-called "complex crime of rebellion with murder, arson, rape, etc."

The co-mingling of the crimes of rebellion and other heinous acts committed by the members of the HMB cannot be alleged in one complaint without violating the specific provisions of Rule 113, Sec. 2 (e), of the Rules of Court, and the provisions of Arts. 48 and 70 of the Penal Code. The slaying of civilians, the rape of an innocent lass or the burning of homes are not in themselves necessary means to consummate rebellion or vice-versa. The multiple crime of rebellion, arson, murder, robbery or rape, having been conceived and executed by different persons, on different occasions and places, and inflicted upon different victims, must be dealt with independently and charged only against whomsoever appear to be personally and individually guilty thereof. Neither can such mingling of rebellion and other grave acts be considered as continued crime or one single offense,[10a] for the reason that it lacks the unity of criminal resolution and oneness of unlawful purpose, so indispensable in the **concursus delictorum**, whether it be a complex crime or continued crime.

We quote hereunder the authoritative opinion of the Supreme Court of Spain on the instant subject:

> "**Delitos complejos.**—Habiendo sido ejecutados los dos hechos con fecha distinta, por modo diverso y en lugar no comun a los dos, no puede afirmarse que constituyan un solo

[10a] But see People vs. Hernandez et al., 52 O. G. 4612 (Aug. 1956) holding that rebellion committed with murder, rape, etc. constitute but **one crime**—rebellion, and Art. 48, R. P.C. does not apply.

delito. **(S. 4 Jun. 927.)** Constando que las acometidas que ocasionaron las dos muertes correspondieron a distintas determinaciones de la voluntad existe pluralidad de delitos. **(S. 11 May. 927.)** Si cada uno de los actos delictivos se consumo en momentos separados y en diversas fechas recayendo sobre distintas personas, falta la unidad de acto necesaria al delito unico. **(S. 4 Feb. 927.)"**

"La repeticion de actos criminales ejecutados por una o varias personas en un mismo instante o en momentos sucesivos deben penarse como un solo delito cuando respondan a una unidad de resolucion y representen una unidad de lesion juridica, debiendo entenderse que existe aquella siempre que los hechos se desprenda una unidad de conducta exteriorizada con unidad de ocasion, porque existiendo homogeneidad en el proposito y en el bien lesionado los diferentes hechos punibles forman un todo juridico integrado por diversas acciones ejecutivas de la misma voluntad criminosa, que realiza con especial continuidad el fin delictivo propuesto. **(S. 6 Jun. 934.)"**[11]

In one of the leading cases decided by the Supreme Court,[12] it was held that the perpetration of heinous common offenses such as rape, murder, arson, etc. in connection with the commission of the crime of rebellion cannot be considered as complex crime of rebellion with rape, murder or arson, the reason given being that such common offenses are absorbed or inherent in the crime of rebellion. In arriving at this conclusion, the Supreme Court relied very much on its previous ruling laid down in the case of **People vs. Prieto,**[13] holding that—

"The execution of some of the guerrilla suspects mentioned in these counts and the infliction of physical injuries on others are not offenses separate from treason. Under the Philippine treason law and under the United States constitution defining treason, after which the former was patterned, there must concur both adherence to the enemy and giving him aid and comfort. One without the other does not make treason.

"In the nature of things, the giving of aid and comfort can only be accomplished by some kind of action. Its very nature partakes of a deed or physical activity as opposed to a mental operation. (Cramer vs. U. S., **ante.**) This deed

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[11] **Leyes Penales de España** by Medina and Marañon, pp. 146-147.
[12] People vs. Hernandez, et al., 52 O. G. 5506, (1956.)
[13] 45 O. G. 3329.

of physical activity may be, and often is, in itself a criminal offense under another penal statute or provision. xx xx."

We believe that both rulings (in re Prieto and Hernandez) cannot resist rational and scientific analysis.

Surely the physical activity or deed performed by a traitor who sells his country to the enemy should and must refer to acts constituting the normative element of the crime of treason, which is to **levy war** or to **give aid** and **comfort** to the enemy. An informer or spy who breaks into the office of the chief of staff of the resistance army in the stillness of the night and takes away vital military secrets and later on gives the same to the enemy must have collaborated and furnished some aid and comfort which were accomplished through the exertion of some physical effort or some kind of action. Such physical acts performed satisfy all the requirements of the normative elements of treason. But when the traitor, besides stealing military secrets and furnishing them to the enemy, goes out of his way and kills or murders a fellow countryman, the latter act is not and cannot be considered absorbed or inherent in the crime of treason, for it is the outcome of a criminal will and criminal resolution (to commit murder) *altogether different from that of selling his country to the enemy* (treason). The same line of reasoning can be followed in connection with the ruling of the Supreme Court in **People vs. Hernandez.** As we pointed out in discussing the theory of material plurality of crimes (Article 70, **infra**) a rebel who, besides taking up arms against the constituted authorities for the purpose of overthrowing the government, resorts to arson, rape, murder and other predatory acts, should be prosecuted and punished, in addition to rebellion, for as many common offenses as can be alleged and proved against him.

It is fortunate indeed that the Supreme Court in its latest decision[14] on this important subject has qualified the pronouncement in the Hernandez case, in the sense that a rebel who, for some independent or personal motives, commits murder or other common offenses in addition to rebellion, may be prosecuted and convicted for such common offenses. In other words, the Supreme Court is still of the opinion, notwithstanding the ruling in People vs. Geronimo, that if the killing or arson has been perpetrated in the course or on the occasion of a fight against the forces of the government, such killing and arson are inherent

[14] People vs. Geronimo, G. R. No. L-8936, promulgated Oct. 23, 1956.

or absorbed in the crime of rebellion. The latter doctrine is, in our opinion, still repugnant to the sound scientific principle on the matter of punishment of multiple crimes, but it is decidedly an improvement over the doctrine in the Hernandez case. For a further discussion on the subject see Article 70, **infra.**

SECOND GROUP: WHEN THE LAW SPECIFICALLY FIXES ONE SINGLE PENALTY FOR TWO OR MORE OFFENSES COMMITTED

For instance: **kidnapping** with **serious physical injuries,** punishable with **reclusion perpetua** to death under par. 3, Art. 267 of the Rev. Penal Code; **robbery** with **homicide** as defined and penalized with life imprisonment to death under par. 1, Art. 294; **frustrated robbery** with **homicide,** punishable with **reclusion temporal** in its maximum period to **reclusion perpetua** under Art. 297.

THIRD GROUP: IN CASES OF CONTINUED CRIMES

In case of **continued crime,** which in appearance consists of several crimes but in reality, it is a sole or single crime in the mind of the perpetrator. For instance, a bill collector of a commercial firm misappropriates for his personal use several amounts collected by him from different persons at different times. There is here but one crime, because the different and successive misappropriations are but the different moments during which one criminal resolution arises and a single fraud develops. Should the different misappropriations be disconnected from one another and each of them be prompted by a different intention, there would be the so-called **real plurality of crimes,** calling for as many penalties as the misappropriations committed; but since the intention is only one and hence, the malice is likewise one only, there is but one crime because the different and successive misappropriations are merely different and successive portions of a single misappropriation which is the result of one single malicious intent.[15]

Likewise, a robber who robs a house and takes therefrom two chickens belonging to two different persons, commits only one crime, for the reason that there is unity of thought in the criminal purpose of the culprit, and this unity of thought and action cannot be altered by the circumstances that the things stolen belong to two different persons.[16] Or when a revolver and a shotgun are found at the same time in the possession of a certain person without the license prescribed by law, such

[15] U. S. vs. Ferrer, 34 Phil. 277.
[16] People vs. De Leon, 49 Phil. 437.

person can only be prosecuted in one single count or complaint.[17]

Outside of the cases described in the three preceding groups, the multiple crimes, i. e., crimes which have no connection with one another (like rebellion and rape), specially when they were impelled by different intent, must be charged and punished separately, under the provisions of Art. 70 of the Penal Code.

Art. 49. PENALTY TO BE IMPOSED UPON THE PRINCIPALS WHEN THE CRIME COMMITTED IS DIFFERENT FROM THAT INTENDED.—In cases in which the felony committed is different from that which the offender intended to commit, the following rules shall be observed:

1. If the penalty prescribed for the felony committed be higher than that corresponding to the offense which the accused intended to commit, the penalty corresponding to the latter shall be imposed in its maximum period.

This Article is a reproduction of Art. 64 of the old Code, and has been interpreted as applicable only in cases where the crime committed befalls on different persons. For example, if and offender tries to kill a stranger (homicide) but by mistake kills his own father (parricide), the offender should be held liable for the intended crime (homicide), but the penalty shall be imposed in its maximum period.

But if, for instance, A in attempting to strike B on the face with a knife, with the sole intention of inflicting a wound that would leave a permanent scar on his face, instead accidentally landed the blow at the base of the neck of the victim, thereby causing the latter's ultimate death, the accused cannot claim the benefit of the Article in question. In other words, he cannot claim that he be sentenced for the intended crime (physical injuries), instead of the resulting crime (homicide), for the reason that, in the opinion of the Supreme Court of Spain and subsequently followed by the Supreme Court of the Philippines, the provisions in this Article are applicable only in cases where the crime befalls on different persons.[18]

[17] U. S. vs. Gustillo, 19 Phil. 201.
[18] People vs. Alburquerque, 59 Phil. 150; Decisions of the Supreme Court of Spain of October 20, 1897, and of June 28, 1899.

2. If the penalty prescribed for the felony committed be lower than that corresponding to the one which the accused intended to commit, the penalty for the former shall be imposed in its maximum period.

Illustration: An offender tries to kill his father (parricide) but by mistake kills a stranger (homicide). The penalty which shall be imposed in this case shall be that for the crime of homicide in its maximum period.

3. The rule established by the next preceding paragraph shall not be applicable if the acts committed by the guilty person shall also constitute an attempt or frustration of another crime, if the law prescribes a higher penalty for either of the latter offenses, in which case the penalty provided for the attempt or the frustrated crime shall be imposed in its maximum period.

The above rule cannot be applied to any of the crimes defined in the present Code, and its incorporation here seems to be unnecessary. This rule had application to conditions existing under the old Code for the reason that under it certain offenses, such as regicide in its different degrees, were punished with special severity. Thus, for example, the attempted regicide and frustrated regicide were not punished in accordance with the old Penal Code (Art. 158) with a penalty immediately lower by one or two degrees respectively than that corresponding to the consummated regicide. The rule provided in this paragraph had in view a case such as we have just mentioned. Hence, according to the provisions of the old Spanish Code, if a person sought to commit regicide but by accident committed merely homicide, such a person should be punished as guilty not of homicide (the penalty of which is only **reclusión temporal**) but of frustrated regicide with its corresponding special penalty, i. e., **reclusión temporal** in its maximum period to death.

Art. 50. PENALTY TO BE IMPOSED UPON PRINCIPAL OF A FRUSTRATED CRIME.—The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.[19]

[19] Same as Art. 65 of the old Penal Code.

The graduation of the penalties can be found in Art. 71 of this Code. It will be seen in scale No. 1 of said Article that the degree immediately lower than death is **reclusión perpetua,** then **reclusión temporal,** then **prisión mayor;** and so on until "fine," which is the last penalty in both graduated scales.

Under the provisions of Art. 71 of this Code, the penalty immediately lower in degree than public censure is a fine which does not exceed ₱200.00, because public censure being a light penalty, the fine which follows it in degree must likewise be light and hence should not exceed ₱200.00 in accordance with the provisions of Art. 26 of this code.

Art. 51. PENALTY TO BE IMPOSED UPON PRINCIPALS OF ATTEMPTED CRIMES.—A penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.[20]

Art. 52. PENALTY TO BE IMPOSED UPON ACCOMPLICES IN A CONSUMMATED CRIME. — The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the accomplices in the commission of a consummated felony.[21]

Art. 53. PENALTY TO BE IMPOSED UPON ACCESSORIES TO THE COMMISSION OF A CONSUMMATED FELONY.—The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the accessories to the commission of a consummated felony.[22]

Art. 54. PENALTY TO BE IMPOSED UPON ACCOMPLICES IN A FRUSTRATED CRIME.—The penalty next lower in degree than that prescribed by law for the frustrated felony shall be imposed upon the accomplices in the commission of a frustrated felony.[23]

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[20] Same as Art. 66 of the old Penal Code.
[21] Same as Art. 67 of the old Penal Code.
[22] Same as Art. 68 of the old Penal Code.
[23] Same as Art. 69 of the old Penal Code.

Art. 55. PENALTY TO BE IMPOSED UPON ACCESSORIES OF A FRUSTRATED CRIME.—The penalty lower by two degrees than that prescribed by law for the frustrated felony shall be imposed upon the accessories to the commission of a frustrated felony.[24]

Art. 56. PENALTY TO BE IMPOSED UPON ACCOMPLICES IN AN ATTEMPTED CRIME.—The penalty next lower in degree than that prescribed by law for an attempt to commit a felony shall be imposed upon the accomplices in an attempt to commit the felony.[25]

Art. 57. PENALTY TO BE IMPOSED UPON ACCESSORIES OF AN ATTEMPTED CRIME.—The penalty lower by two degrees than that prescribed by law for the attempt shall be imposed upon the accessories to the attempt to commit a felony.[26]

Art. 58. ADDITIONAL PENALTY TO BE IMPOSED UPON CERTAIN ACCESSORIES.—Those accessories falling within the terms of paragraph 3 of article 19 of this Code who should act with abuse of their public functions, shall suffer the additional penalty of absolute perpetual disqualification if the principal offender shall be guilty of a grave felony, and that of absolute temporary disqualification if he shall be guilty of a less grave felony.

Under the provisions of Art. 73 of the old Penal Code, accessories falling within the terms of Par. 3 of Art. 19 who should act with abuse of their public functions, were punished only with absolute disqualification, so long as the crime committed by the principal offender was not treason, parricide, murder, or attempt to take the life of the Chief Executive. The present Code, however, makes no distinction as to the nature of the crime committed by the principal offender and always imposes the punishments prescribed in Arts. 53 and 58.

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[24] Same as Art. 70 of the old Penal Code.
[25] Same as Art. 71 of the old Penal Code.
[26] Same as Art. 72 of the old Penal Code.

Art. 59. PENALTY TO BE IMPOSED IN CASE OF FAILURE TO COMMIT THE CRIME BECAUSE THE MEANS EMPLOYED OR THE AIMS SOUGHT ARE IMPOSSIBLE.—When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of arresto mayor **or a fine ranging from 200 to 500 pesos.**

This is an entirely new provision and constitutes one of the very few concessions to positivism made by the present Code.

We have already stated in commenting on par. 2 of Art. 4 of this Code, that the classical school did not consider punishable the impossible crime. Modernists or positivists, however, consider the author of an impossible crime as much liable as the author of a consummated crime whenever the former has shown evident signs of dangerousness.

This Article penalizes the impossible crime with a fine of from ₱200.00 to ₱500.00 or with **arresto mayor** according to the degree of perversity and dangerousness of the offender.

Are the provisions of this Article applicable to an impossible attempt to commit a **light felony?**

We do not think so. As will be seen, Art. 59 makes reference to "offense" without distinguishing whether it is grave, less grave, or light felony. However, if we take into account that Art. 7 provides that "light felonies are punishable only when they have been consummated, with the exception of those committed against persons or property" and the further circumstance that the punishment prescribed for an impossible crime (**arresto mayor** or a fine ranging from ₱200.00 to ₱500.00) is much heavier than the punishment which can be imposed upon any **consummated light felony,** it would appear quite obvious that the provisions of the present Articles are limited to **grave felonies** and **less grave felonies.**

Perhaps it may be asked in what cases may a person who commits an impossible crime be considered dangerous and perverse. This proposition may be better clarified with an illustration than with definitions.

If a person desiring to kill his enemy fires upon him from a distance of one kilometer, that person would have shown stupidity, rather than dangerousness, because anyone with a little common sense would know that firing a revolver at such a distance would be absolutely harmless. But let us suppose that this same person, in his desire to kill his enemy, steals the revolver of his friend and seeing it loaded, fires point blank at his enemy. It happens, however, that the cartridge is blank. Here is an example of an impossible crime, in which the offender by his conduct shows himself to be as perverse and dangerous as the author of any consummated murder, because subjectively speaking, such a person has fully realized the criminal act which he proposed to commit.

Followers of the positivist school punish the author of an impossible crime as long as he shows signs of dangerousness. In accordance with the positivist theory, the author of the first example which we gave should not be repressed, while the offender in the second example should merit repression equal to that of the author of a consummated offense.

Art. 60. EXCEPTION TO THE RULES ESTABLISHED IN ARTICLES 50 TO 57.—The provisions contained in articles 50 to 57, inclusive, of this Code shall not be applicable to cases in which the law expressly prescribes the penalty provided for a frustrated or attempted felony, or to be imposed upon accomplices or accessories.[27]

Among the offenses to which this Article may refer is that defined in Art. 297 of this Code relative to the attempted and frustrated robbery with homicide.

Art. 61. RULES FOR GRADUATING PENALTIES.[28]**—For the purpose of graduating the penalties which, according to the provisions of articles fifty to fifty-seven, inclusive, of this Code, are to be imposed**

[27] Same as Art. 74 of the old Penal Code.
[28] As amended by Commonwealth Act No. 217, Sec. 1.

upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

1. When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degree shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in article seventy-one of this Code.

According to the scales provided in Art. 71, there are four indivisible penalties, to wit: death, **reclusión perpetua,** perpetual absolute disqualification, and public censure. (Scale No. 2.)

The penalty immediately lower in degree than death is **reclusión perpetua** (scale No. 1); that immediately lower than perpetual absolute disqualification is temporary absolute disqualification (scale No. 2); and that immediately lower in degree than public censure is a fine not exceeding ₱200.00. (See Art. 71 in connection with Art. 26 of this Code.)

2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.[29]

(a) A case of two indivisible penalties: for example, **reclusión perpetua** to death. The penalty immediately lower in degree than the latter would be **reclusión temporal.**

(b) One or more divisible penalties imposed to their full extent: for example, that of **reclusión temporal.** The penalty immediately lower in degree would be **prisión mayor.**

(c) When the penalty is composed of several divisible penalties to be imposed to their full extent: for example, **prisión mayor** to **reclusión temporal** to their full extent. The penalty immediately lower in degree would be **prisión correccional.**

3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the

[29] Based on the provisions of Art. 75 of the old Penal Code.

maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale.

When the penalty is composed of one indivisible penalty and the maximum period of a divisible penalty: for example, **reclusión temporal** in its maximum period to death. The penalty next lower in degree would be **prisión mayor** in its maximum period to **reclusión temporal** in its medium period.

4. When the penalty prescribed for a crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and of the two next following, which shall be taken from the penalty prescribed, if possible; otherwise, from the penalty immediately following in the above mentioned respective scale.

When the penalty prescribed for the crime is composed of several periods corresponding to different divisible penalties: for example, **prisión mayor** in its maximum period to **reclusión temporal** in its medium period. The penalty next lower in degree would be **prisión correccional** in its maximum period to **prisión mayor** in its medium period.

5. When the law prescribes a penalty for a crime in some manner not specially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories.

When the given penalty is composed of one period only (for instance **prisión correccional** in its medium period) what would be the penalty next lower in degree? Would it be the period immediately following that of the proper divisible penalty (**prisión correccional** in its minimum period) or the penalty immediately following the given penalty in the graduated scale, to be imposed in the same period (in the instant case **arresto mayor** in its medium period)?

TABULATION OF THE PROVISIONS OF THIS CHAPTER

	Penalty prescribed for the crime	Penalty to be imposed upon the principal in a frustrated crime, and the accomplice in a consummated crime	Penalty to be imposed upon the principal in an attempted crime, the accessory in the consummated crime, and the accomplices in a frustrated crime	Penalty to be imposed upon the accessory in a frustrated crime, and the accomplices in an attempted crime	Penalty to be imposed upon the accessory in an attempted crime
First case	Death	**Reclusion perpetua**	**Reclusión temporal**	**Prisión mayor ...**	**Prision correccional**
Second case	**Reclusion perpetua** to death	**Reclusion temporal**	**Prisión mayor ...**	**Prisión correccional**	**Arresto mayor.**
Third case	**Reclusion temporal** in its maximum period to death.	**Prisión mayor** in its maximum period to **reclusión temporal** in its medium period.	**Prisión correccional** in its maximum period to **prisión mayor** in its medium period.	**Arresto mayor** in its maximum period to **prisión correccional** in its medium period.	**Destierro** in its maximum period to **arresto mayor** in its medium period.
Fourth case	**Prision mayor** in its maximum period to **reclusión temporal** in its medium period.	**Prisión correccional** in its maximum period to **prisión mayor** in its medium period.	**Arresto mayor** in its maximum period to **prisión correccional** in its medium period.	**Destierro** in its maximum period to **arresto mayor** in its medium period.	**Arresto menor** in its maximum period to **destierro** in its medium period.

The Supreme Court of the Philippines has rendered two conflicting opinions on this topic. In the case of **United States vs. Fuentes**, 4 Phil. 404, it was held that the penalty next lower in degree than **prisión correccional** in its medium period is **arresto mayor** in its medium period. Later, however, in two subsequent decisions of the same Court[30] it was held that the penalty next lower in degree than **reclusión temporal** in its maximum period is **reclusión temporal** in its medium period.

With due respect, we believe that the latter view adopted by the Supreme Court is erroneous, while the opinion laid down in **U. S. vs. Fuentes** is the one in harmony with the principle governing graduation of penalties.

The Revised Penal Code in classifying into two graduated scales the different penalties (graduated scales Nos. 1 and 2, Art. 71, as amended by Act 217) had in mind not only to establish and preserve, as far as possible, the unity of penalties, so that only penalties of the same kind and nature may be found in each graduated scale, but also at the same time to use said graduated scales as the only criterion for the purpose of determining what penalty is next higher or next lower in degree than a given penalty (Art. 61 as amended by Act 217.)

Now a close examination of Art. 61 of the Revised Penal Code which prescribes the rules for graduating the penalty which can be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, especially paragraphs 1, 2, 3 and 4 thereof, shows that when the Code speaks of a penalty lower than another, it makes reference to the given penalty **in toto**, or in its entirety, in the respective graduated scale. Thus: the penalty next lower in degree than death is **reclusión perpetua**; that immediately lower than the latter is **reclusión temporal** and so on (Scale No. 1, Art. 71, as amended by C. A. 217). And when the penalty prescribed for the crime is composed of several periods corresponding to different divisible penalties, we notice that the Code, following the underlying principle which governs graduation of penalty that each degree must consist of one entire penalty, has thought it fit to provide that the penalty next lower in degree in said cases shall be composed of **three** periods or **three** fractions (see par. 4, Art. 64). It is because, in accordance with the provisions of Art. 76, all divisible

[30] People vs. Co Pao, 58 Phil. 545; People vs. Gayrama, 60 Phil. 796; See also **People vs. Haldot**, 64 Phil. 739 affirming **People vs. Co Pao**, holding that "the penalty next lower than another should begin where the latter ends, otherwise, if it were to skip over intermediate ones, it would be lower but not next lower in degree". See also **People vs. Gonzales**, 73 Phil. 549.

penalties are legally divided into **three** periods: the minimum, the medium and the maximum.

The Code in providing in Art. 61 that each degree must consist of one whole or one unit of the penalties enumerated in the different graduated scales mentioned in Art. 71, or of three periods corresponding to different divisible penalties (say, the maximum period of **prisión mayor** and the minimum and medium of **reclusión temporal**), had the purpose to keep or rather to preserve a sensible distance between the responsibility of a principal and that of an accomplice, and between the responsibility for a consummated and that of for a frustrated crime. Such distance is the one covered by one **whole** penalty or one **unit** of the penalties described in the graduated scales under Art. 71. Thus, if the penalties prescribed for the principal of a consummated offense is **prisión mayor**, the punishment for an accomplice of the same offense would be the penalty next lower, which is **prisión correccional.**

Such purpose of keeping a distance of one **whole** penalty or one **unit** of the penalties enumerated in Art. 71 between one degree and another is not and cannot certainly be attained if we should follow the doctrine of the Supreme Court in the cases of People vs. Co Pao and People vs. Gayrama, **supra**, for the reason that between **reclusión temporal** in its maximum period and **reclusión temporal** in its medium period, there is only a distance of **one third** of a degree, instead of one whole degree. Such interpretation, therefore, is contrary to both the letter and spirit of Arts. 61 and 71 of the Revised Penal Code.

We therefore maintain that whenever the given penalty is composed of one or two fractions of a divisible penalty (for instance: **prisión mayor** in its maximum period; or **prisión mayor** in its medium and maximum period) the penalty next lower in degree must be **prisión correccional** in its maximum period, in the first case, and **prisión correccional** in its medium and maximum period in the second case.

SECTION TWO

Rules for the application of penalties with regard to the mitigating and aggravating circumstances, and habitual delinquency

Art. 62. EFFECT OF THE ATTENDANCE OF MITIGATING OR AGGRAVATING CIRCUMSTANCES

AND OF HABITUAL DELINQUENCY.—Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:[1]

1. Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty thereof shall not be taken into account for the purpose of increasing the penalty.[2]

For instance: The aggravating circumstance of unlawful entry (Art. 14, par. 18) is included in the definition of robbery committed in an inhabited house (Art. 299, par. [a], subsec. 1), and such cannot be taken as aggravating circumstance.

2. The same rule shall apply with respect to any aggravating circumstance inherent in the crime to such a degree that it must of necessity accompany the commission thereof.[3]

For instance, the aggravating circumstance of abuse of confidence (Art. 14, par. 4) is inherent in the crime of **estafa** under Art. 315, par. 1, of this Code.

3. Aggravating or mitigating circumstances which arise from the moral attributes of the offender, or from his private relations with the offended party, or from any other personal cause, shall only serve to aggravate or mitigate the liability of the principals, accomplices and accessories as to whom such circumstances are attendant.[4]

From the moral attributes of the offender. In a crime committed by several persons, the motives may not be the same; the state of their minds may be **different.** For example, in a homicide committed by two persons it may be that one of them acted with premeditation, and the other with passion and obfuscation. The circumstances of premeditation and passion and obfuscation

[1] Based on the provisions of Art. 77 of the old Code.
[2] Based on the provisions of Art. 78 of the old Code.
[3] Same as paragraph 2 of Art. 78 of the old Code.
[4] Same as Art. 79 of the old Penal Code.

in this case arise from the moral attributes of the offender, and in accordance with the rule prescribed in this Article, premeditation should only affect and aggravate the penalty of the one who acted with premeditation, while that of passion and obfuscation will only benefit and mitigate the liability of the one who acted under that circumstance. Let us give a case of physical injuries caused by several persons. One of the accused is the son of the offended party and the others, complete strangers to him. In this case the alternating circumstance of relationship (Art. 15) shall be taken into account as aggravating against the person related to the offended party.

Or from any other personal cause. This happens, for example, in a crime in which one of the accused is over 18 years of age, another is a recidivist, another has taken advantage of his public position to commit the crime, etc. All these circumstances depend on personal causes, and as such should only benefit or prejudice the person in whom such circumstances are attendant.

4. The circumstances which consist in the material execution of the act, or in the means employed to accomplish it, shall serve to aggravate or mitigate the liability of those persons only who had knowledge of them at the time of the execution of the act or their cooperation therein.

Causes which consist in the material execution of the act or in the means employed to accomplish it. For example, in a case of theft in which one of the accused has acted with abuse of confidence because he is the employee of the offended party, such aggravating circumstance should not be applied to the other accused who was not in the same relationship with the offended party.[5]

5. Habitual delinquency shall have the following effects:

(a) Upon a third conviction the culprit shall be sentenced to the penalty provided by law for the last crime of which he be found guilty and to the additional penalty of prisión correccional **in its medium and maximum periods;**

[5] People vs. Valdellon, 46 Phil. 245.

(b) Upon a fourth conviction the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prisión mayor **in its minimum and medium periods; and**

(c) Upon a fifth or additional conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prisión mayor **in its maximum period to** reclusión temporal **in its minimum period.**

Notwithstanding the provisions of this article, the total of the two penalties to be imposed upon the offender, in conformity herewith, shall in no case exceed 30 years.

For purposes of this article, a person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries,[6] robo, hurto, estafa, **or** falsificación, **he is found guilty of any of said crimes a third time or oftener.**[7]

NATURE OF HABITUAL DELINQUENCY.—Habitual delinquency is not a crime itself capable of exact definition. It is only a factor in determining a total penalty. It is impossible to lay down any mechanical criteria for fixing the additional penalty for habitual delinquency within the limits fixed by this Article of the Revised Penal Code.[8]

EFFECT OF MITIGATING AND AGGRAVATING CIRCUMSTANCES UPON HABITUAL DELINQUENCY.—The additional penalty imposed by law upon habitual delinquents is subject to the general rules prescribed by Art. 63 of this Code, that is, that such additional penalty is to be imposed in its minimum, medium or maximum period, according to number and nature of the modifying circumstances present in the case. Reasoning out the doctrine, the Supreme Court said, among others, the following:

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[6] As amended by R. A. No. 18.
[7] Taken from the provisions of Act 3397 of the Philippine Legislature.
[8] People vs. Sanchez, 57 Phil. 770.

"When the law prescribed the additional punishment for habitual delinquency in such a form as to make it susceptible of division into periods (minimum, medium and maximum), it must have been for no other reason, except to take into account all the circumstances which may exist in a given case with the end in view of avoiding arbitrariness in the selection of the period in which the punishment is to be imposed. Thus, it would be arbitrary to impose the maximum period of the additional penalty upon habitual delinquency if there had been no modifying circumstance in the perpetration of the case; in the same way it would be likewise arbitrary if the minimum of said additional penalty is to be imposed where there had been no mitigating circumstance in the commission of the crime.[9]

ITS DISTINGUISHING FEATURE FROM RECIDIVISM.—As will be seen from the provisions of paragraph 5 of Article 62, in order that a convict can be held a habitual delinquent, it is necessary that the crime previously committed be either robbery, theft, **estafa**, or forgery, or serious or less serious physical injuries[10] and that he should have committed any of such offenses for a third time or oftener; whereas in specific recidivism, it is enough that the crime previously committed should be embraced **in the same title of this Code**, whether or not the crime previously committed be robbery, theft, **estafa**, forgery, or something else. Furthermore, in specific recidivism, one previous conviction for the crime embraced in the same title would be enough, while in habitual delinquency, two previous convictions, at least, are necessary.

IS RECIDIVISM AN INHERENT ELEMENT OF HABITUAL DELINQUENCY?—This question was raised in two cases decided by the Supreme Court, namely: **People vs. Melendres**, 59 Phil. 154 and **People vs. Espina**, 62 Phil. 607. In both cases the issue was whether or not the Court, in imposing the penalty for the crime committed by an habitual delinquent, should impose such penalty in its maximum period in view of the presence of the aggravating circumstance that the offender has been convicted twice of the same or similar crime, notwithstanding the additional penalty prescribed by par. 5 of Article 62 of the Revised Penal Code. The Supreme Court decided the question in the affirmative, holding in both cases that recidivism should be taken into account as an aggravating circumstance in fixing the principal penalty even if the additional penalty for habitual delinquency provided for in par. 5 of Art. 62 of the Revised Penal Code is also imposed.

[9] People vs. De Jesus, 63 Phil. 426.
[10] As amended by R. A. No. 18.

The Court, reasoning its decision through Mr. Chief Justice Avanceña in the case of People vs. Espina, **supra**, said among other things the following:

'There is no doubt that the purpose of the law in imposing additional penalty on a habitual delinquent is to punish him more severely if, for imposing the additional penalty, recividism could not be considered as aggravating circumstance in fixing the principal penalty. This may be clearly understood from the following example:

"An accused who has already been previously twice convicted of the crime of theft, having served the sentences imposed upon him, commits, within ten years after service of his last sentence, the crime of robbery, inflicting on occasion thereof some of the *physical injuries punished in subsection 1 of Article 263 (Article* 294, subsection 2, of the Revised Penal Code). This crime is punished with **reclusión temporal** in its medium period to **reclusión perpetua.** Being an habitual delinquent, the penalty of two years, four months and one day of **prisión correccional** should be imposed upon him in addition to the principal penalty. Without taking into consideration the aggravating circumstance of recidivism, the principal penalty to be imposed upon him would be seventeen years, eight months and two days. However, if the additional penalty for habitual delinquency were not imposed, by imposing the principal penalty, taking into consideration the aggravating circumstance of recidivism, the penalty would be **reclusión perpetua** which is the maximum period of the penalty prescribed by law, or thirty years, if he is pardoned thereafter.

"Let us suppose that a mitigating circumstance was present in the foregoing example. If the aggravating circumstance of recidivism is not to be taken into consideration for imposing the additional penalty for habitual delinquency, the mitigating circumstance would require that the penalty prescribed by law be imposed in its minimum period, or fourteen years, eight months and one day. Adding to this the additional penalty of two years, four months and one day, the penalty would be seventeen years and two days. If the additional penalty is not imposed and the aggravating circumstance of recidivism is taken into account, the latter would compensate the mitigating circumstance and the penalty should have to be imposed in its medium period, or seventeen years, four months and one day, which would be four months more severe.

"Let us suppose that instead of one mitigating circumstance, two were present in this same example. Considering the aggra-

vating circumstance of recidivism, it would have to be compensated by one mitigating circumstance, leaving another, and the penalty to be imposed would be the minimum period, or fourteen years, eight months and one day of **reclusión temporal.** If the aggravating circumstance of recidivism were not taken into consideration and the penalty next lower in degree imposed in any of its periods, which may be the minimum according to the circumstances of the case, the penalty would be eight years and one day. Adding to this the additional penalty of two years, four months, and two days, the resulting penalty would be two years, three months and twenty-nine days less.

"Applying these examples to other cases of habitual delinquency, the result would, more or less, be the same.

"According to this, if the theory counter to that adopted by this court in People vs. Melendres, **supra,** were to be followed, the imposition of the additional penalty would make the penalty lighter, instead of more severe, contrary to the purpose of the law."[11]

RULE FOR THE COMPUTATION OF THE TEN-YEAR PERIOD.—The law on habitual delinquency does not contemplate the exclusion from the computation of all convictions falling outside the ten-year period immediately preceding the crime for which the defendant is being tried, provided such convictions are followed, at a greater or lesser interval of time, by another transgression **within ten years from one conviction to another.** The Revised Penal Code, in fixing the period of ten years, mentions the date of the defendant's release or his last conviction as the starting point. If the law intended to rule out all convictions occurring ten years before the commission of the crime under consideration, it would have expressly excluded them. As a matter of fact, the law does not contemplate to punish the accused again for crimes which gave rise to prior convictions, but merely considers them in ascertaining whether or not the accused is an habitual criminal, with a view to correcting such criminality upon the occasion of his committing another crime; and the Legislature has full power to determine in what cases such persistence in evil should be corrected.[12]

In other words, in a series of at least three crimes mentioned in this Article, so long as the lapse of time between any two successive ones does not exceed ten years, they should all be

[11] See also People vs. Tolentino, et al., 73 Phil. 643.
[12] People vs. Rama, 55 Phil. 981.

taken into account for the purpose of determining recidivism, even if the first took place more than ten years before the last. And any crime committed ten years before a given one should be ignored or disregarded together with those committed previous to it. For instance, if A committed theft in 1920, robbery in 1928, and swindling in 1935, all these crimes should be taken into account. But if A committed theft in 1920, robbery in 1922, swindling in 1934 and theft again in 1935, only the crime of swindling committed in 1934 can be taken into account and therefore A is not an habitual delinquent but only a recidivist.

CASES OF HABITUAL DELINQUENCY.—When an habitual delinquent has committed several crimes without being first convicted of any of them before committing the others, he cannot be sentenced for each of said crimes to the gradually increasing additional penalty, and for the purposes of the law, said crimes must be considered as one, applying the additional penalty to one of them, and ignoring the rest. For instance, when a person has committed two **estafas**, one after the other within a short space of time, without having been convicted of the first before committing the second, and the proper additional penalty having been applied to the first crime, no additional penalty can be imposed in view of the offense present before the Court.[13]

M was convicted of qualified **estafa**. He was further held to be an habitual criminal according to Act No. 3586, having been convicted of **estafa** six times before, the last conviction having taken place within the ten years immediately preceding the date on which he was again found guilty. **Held:** That the six prior convictions should be merged into three because M committed the second offense before his first conviction, the fourth before his third conviction, and because the fifth and sixth offenses were committed on one and the same day.[14]

The additional penalty provided for in this paragraph shall be imposed by the court in the period or degree which it may deem appropriate according to its sound discretion, regardless of the modifying circumstances which might have been present in the perpetration of the offense.[15]

Final sentences for robbery and theft passed upon a certain accused while he was yet a minor within the meaning of a juvenile offender act (between 9 and 18 years) cannot be considered as

[13] People vs. Santiago, 55 Phil. 266. See also People vs. Concepcion, 69 Phil. 58.
[14] People vs. Ventura, 56 Phil. 1.
[15] See People vs. Ortezuela, 51 Phil. 857.

previous criminal record for the purpose of declaring him an habitual delinquent under the provisions of paragraph 5 of Article 62 of the Revised Penal Code.[16]

A prosecuting attorney who seeks to apply this aggravating circumstance of habitual delinquency is under obligation to allege in the information "that the accused is an habitual delinquent under the provisions of Art. 62 of the Revised Penal Code, circumstance No. 5." The allegation that "the accused was, prior to this date, twice convicted of the crime of theft in the Municipal Court by final judgment" would be insufficient and defective.[17]

It is urged upon prosecuting attorneys that in the prosecution of cases of this nature, they should not content themselves with a general averment of habitual delinquency but should specify the dates (1) of the commission of the previous crimes, (2) of the last conviction or release, and (3) of the other previous convictions or releases of the accused.[18]

Where a defendant is charged with a crime and as being a habitual criminal, the penalty to be imposed must be fixed as follows: (a) the penalty for the crime committed, taking into consideration the aggravating circumstances and (b) the additional penalty for an habitual criminal as fixed by Art. 62, par. 5 of the Revised Penal Code.[19]

Art. 63. RULES FOR THE APPLICATION OF INDIVISIBLE PENALTIES.—In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:[20]

The rule contained in the first paragraph of this Article is simple and clear. If a crime is punished with a single indivisible penalty, such as death, or **reclusión perpetua**, etc., the penalty

[16] People vs. Tanyaquin, 57 Phil. 426.
[17] People vs. Nayco, 45 Phil. 167. See also People vs. Masonson, 63 Phil. 92; People vs. Cariaga, 64 Phil. 390.
[18] People vs. Venus, 63 Phil. 435; People vs. Sim, 64 Phil. 81.
[19] People vs. Hipolito et al., 53 Phil. 219. See also People vs. Navales, 59 Phil. 496; People vs. Casimiro, 59 Phil. 106.
[20] Same as Art. 80 of the old Penal Code.

shall be applied regardless of any mitigating or aggravating circumstance that may have attended the commission of the deed.

Penalty composed of two indivisible penalties: example, **reclusión perpetua** to death.

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

When there is present only one aggravating circumstance, the greater penalty, which in our illustration is death, shall be applied.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

When neither mitigating nor aggravating circumstances are present, the lesser penalty, which is **reclusión perpetua** in our illustration, shall be applied.

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

When there is present some mitigating circumstance and no aggravating circumstance, the lesser penalty, i. e., **reclusión perpetua** in our example, shall be applied.[21]

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Let us suppose that in the commission of robbery with homicide, the following circumstances are present: night time, abuse of confidence and intoxication, that is, two aggravating circumstances and one mitigating. In this case the greater penalty shall be applied.

[21] See People vs. Relador, 60 Phil. 593; People vs. Castañeda, 60 Phil. 604.

Art. 64. RULES FOR THE APPLICATION OF PENALTIES WHICH CONTAIN THREE PERIODS.—In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

3. When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.

4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.

5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

This paragraph may be illustrated by the following example: A, upon being insulted by B, hit the latter with a club without intending to kill him, but only to inflict upon him, at most, slight physical injuries. Three days later, however, B died of internal hemorrhage caused by the blows received by him. As is seen in the commission of the crime of homicide by A in this case, mitigating circumstances Nos. 3 and 4 of Art. 13 of this Code are

present without any aggravating circumstance. The penalty provided for homicide (Art. 249) is **reclusión temporal.** Pursuant to the rule established in this paragraph, A shall be punished with the penalty next lower in degree than **reclusión temporal,** that is, with **prisión mayor,** following the scale No. 1 provided for in Art. 71 of this Code.

Where a person, who has committed an offense to which the law attaches the penalty of **arresto menor,** voluntarily surrenders to the agents of the authorities after the commission of said offense, and spontaneously admits his guilt when accused and tried, in accordance with the provisions of this paragraph, the penalty next lower in degree shall be imposed. Under the provisions of Article 71 of this Code, as amended by Commonwealth Act No. 217, the penalty next lower in degree than **arresto menor** is public censure.[22]

6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.

In no case may a court impose **prisión correccional,** for example, for the commission of a crime which is punishable only with **arresto mayor,** whatever may be the number and nature of the aggravating circumstances present in the case.

7. Within the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime.

For example, **arresto mayor** is divided into three periods: minimum, which is from one month and one day to two months; medium, which is from two months and one day to four months; and the maximum, which is from four months and one day to six months.[23] Suppose a crime punished with **arresto mayor** was committed with the concurrence of three circumstances, two aggravating and one mitigating. In accordance with rule 4 of this Article, the penalty of **arresto mayor** in its maximum period, i. e., from four months and one day to six months, shall be imposed. Pursuant to rule 7, courts are empowered to impose an

[22] People vs. Leynez, 65 Phil. 608.
[23] See the table showing the duration of penalties provided for in Art. 76.

intermediate penalty between four months and one day of six months in the illustration given, having in mind the number and quality of the mitigating and aggravating circumstances, and the greater or less gravity of the evil produced by the crime.[24]

Art. 65. RULE IN CASES IN WHICH THE PENALTY IS NOT COMPOSED OF THREE PERIODS.—In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.[25]

For example, the theft committed under paragraph 2 of Art. 309 of this Code is punished by **prisión correccional** in its medium and maximum periods. As is seen, the penalty is not composed of three periods but of only two, and the duration is from two years, four months and one day to six years.[26] The period included in this penalty may be found by deducting two years, four months and one day from six years. The difference is three years and eight months. Divide this period by three and the quotient which is one year, two months and twenty days, will be the time comprised in each period. The three different portions of **prisión correccional** in its minimum, medium and maximum periods will therefore be the following:

Minimum period	Medium period	Maximum period	Period included in each period
2 years, 4 months and 1 day to 3 years, 6 months and 20 days.	3 years, 6 mos. and 21 days to 4 years, 9 mos. and 10 days.	4 years, 9 mos. and 11 days to 6 years.	1 year, 2 months and 20 days.

Art. 66. IMPOSITION OF FINES.—In imposing fines the courts may fix any amount within the limits established by law; in fixing the amount in each case attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit.[27]

[24] See People vs. Velazco et al., 42 Phil. 75.
[25] Same as Art. 82 of the old Penal Code.
[26] See the table showing the duration of penalties provided for in Art. 76.
[27] Based on the provisions of Art. 83 of the old Penal Code.

Art. 66 does not discriminate between the rich and the poor. On the contrary, the provision in authorizing the imposition of unequal fines, aims precisely at equality before the law. A fine of ₱50 on a laborer earning ₱4.00 a day would be more severe then a fine of the same amount to an office holder with a monthly income of ₱600.[28]

Art. 67. PENALTY TO BE IMPOSED WHEN NOT ALL THE REQUISITES OF EXEMPTION OF THE FOURTH CIRCUMSTANCE OF ARTICLE 12 ARE PRESENT.—When all the conditions required in circumstance number 4 of article 12 of this Code to exempt from criminal liability are not present, the penalty of arresto mayor **in its maximum period to** prisión correccional **in its minimum period shall be imposed upon the culprit, if he shall have been guilty of a grave felony, and** arresto mayor **in its minimum and medium periods, if of a less grave felony.**[29]

Case No. 4 of the circumstances which exempt from criminal liability (Art. 12) is as follows:

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

If, therefore, the act of the offender is not at all excusable because of the absence of some of the required elements, for example, due care, or there was fault or intent to cause the injury, this Article which we are now discussing will be perfectly applicable.

However, it must be borne in mind that there is no difference between the case provided in the Article which we are now discussing and that of one qualified by fault or criminal imprudence referred to in Art. 365 of this Code, and these two cases are so identical that Art. 365 provides exactly the same penalty. It is, therefore, evident that Art. 67 is a superfluity because we know already that the absence of any of the requisites specified in No. 4 of the circumstances of exemption from criminal liability (Art. 12) will necessarily change the case of a typical one of culpable felony or criminal imprudence referred to in Art. 365.

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[28] See People vs. Ching Kuan, G. R. No. 48515, Nov. 11, 1942.
[29] Based on the provisions of Art. 84 of the old Penal Code.

Art. 68. PENALTY TO BE IMPOSED UPON A PERSON UNDER EIGHTEEN YEARS OF AGE.—When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

The paragraph referred to above is now the third from the last paragraph of Art. 80 of this Code as amended by Commonwealth Act No. 99.

1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.[30]

It shall be borne in mind that the application of the penalty prescribed in the Article which we are now discussing is conditional, that is, that it can only be imposed if the minor fails to observe good conduct or to comply with the regulations of the institution in which he is confined. In accordance with the provisions of Art. 80 of this Code, delinquents of both sexes under the age of sixteen years shall be committed to the custody or care of a benevolent or charitable institution, either public or private, for the correction or education of such minor, instead of being imprisoned.

Pursuant to the provisions of this Article, a delinquent under 16 years of age may be imprisoned and punished with the penalties therein provided for only if, after said minor is committed to any of the benevolent institutions named in Art. 80, he should observe bad conduct.

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[30] Based on the provisions of Art. 85 of the old Penal Code. Correlate with Art. 80, R. P. C.

Art. 69. PENALTY TO BE IMPOSED WHEN THE CRIME COMMITTED IS NOT WHOLLY EXCUSABLE.—A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in articles 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.[31]

The following are justifying circumstances and exempting circumstances composed of certain conditions, as provided for in Arts. 11 and 12 of this Code:

Self-defense (Art. 11, par. 1);
Defense of relatives (Art. 11, par. 2);
Defense of strangers (Art. 11, par. 3);
State of necessity (Art. 11, par 4); and
Injury caused by mere accident (Art. 12, par. 4).

Let us take a case of homicide in which the provocation and unlawful aggression came from the deceased, but the means employed by the offender was not reasonable. As will be seen, in this case there are present more than one of the requisites of self-defense, i. e., lack of provocation and unlawful aggression. In this case, the court can impose a penalty lower by one or two degrees than that of **reclusión temporal**, which is the penalty provided for homicide (Art. 249). The penalty to be imposed upon the offender in a case like this is therefore that of **prisión mayor** or **prisión correccional.**

Art. 70. SUCCESSIVE SERVICE OF SENTENCES.—When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit; otherwise, the following rules shall be observed:

In the imposition of the penalties, the order of their respective severity shall be followed so that they may

[31] Based on the provisions of Art. 86 of the old Penal Code.

be executed successively or as nearly as may be possible, should a pardon have been granted as to the penalty or penalties first imposed, or should they have been served out.

For the purpose of applying the provisions of the next preceding paragraph the respective severity of the penalties shall be determined in accordance with the following scale:

1. **Death,**
2. Reclusión perpetua,
3. Reclusión temporal,
4. Prisión mayor,
5. Prisión correccional,
6. Arresto mayor,
7. Arresto menor,
8. Destierro,
9. **Perpetual absolute disqualification,**
10. **Temporal absolute disqualification,**
11. **Suspension from public office, the right to vote and be voted for, the right to follow a profession or calling,**
12. **Public censure and**
13. **Fine.**

Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period.

Such maximum period shall in no case exceed forty years.

In applying the provisions of this rule the duration of perpetual penalties (pena perpetua) **shall be computed at thirty years.**[32]

[32] Based on the provisions of Art. 87 of the old Penal Code, as amended by Sec. 2 of Commonwealth Act No. 217.

The execution of two or more penalties imposed upon one and the same person gives rise to three different systems of penalty, namely: (1) the material accumulation system, (2) the juridical accumulation system, and (3) the absorption system.

THE MATERIAL ACCUMULATION SYSTEM—The material accumulation system takes place when all the penalties corresponding to the different violations of law, or crimes charged, have to be imposed upon and served by the culprit without any limitation whatsoever.

According to the provisions of Art. 70 of the Penal Code, paragraphs 1, 2 and 3, a person sentenced to two or more penalties must serve them all simultaneously if possible; or if the nature of the penalties will so permit. But if this is not possible, the most severe penalty shall be executed first in accordance with the table or scale of precedence established in the third paragraph of Art. 70, namely: death first; then **reclusion perpetua, reclusion temporal,** etc., etc.

THE JURIDICAL ACCUMULATION SYSTEM—This takes place when the court, following the provisions of paragraphs 4, 5 and 6 of Art. 70, cuts short the several penalties imposed upon one and the same culprit to not more than threefold of the most severe punishment, and in no case shall exceed 40 years.

Supposing an accused has been prosecuted and convicted in 27 different cases of estafa with falsification of public document to serve 17 years imprisonment in each of three cases and ten years in each of the 24 other cases. But applying the juridical accumulation system, the culprit will not serve the total duration of the accumulated penalties, which would be 291 years. Such penalty will be cut short to the maximum of 40 years only.

THE ABSORPTION SYSTEM—This is the system of penalty described in Art. 48, **ante.** It applies to complex crimes, continued crimes and the specific cases where the law fixes only one penalty for several violations of law.

As will be noticed, the court would not impose the different penalties fixed by law to the different crimes committed, but only one, namely: the **most severe penalty,** in its maximum degree. The theory here is that minor or lesser penalties are absorbed by the graver or serious one. Hence, the nomenclature, "Absorption System."

Paragraph 2 of Article 70 of the Revised Penal Code is applicable to both cases: namely, whether the accused is charged

with several violations of law in one and the same proceeding, or whether he is charged with different violations of law in several and distinct proceedings, the ruling of the Supreme Court in the case of **Celis vs. Warden of Bilibid**, 18 Phil. 373, notwithstanding. The reason is that the Philippine Code of Criminal Procedure does not only fail to provide for the prosecution of several offenses in one complaint, but on the contrary, it specifically provides in Section 12, Rule 106, R. C., that each information must not charge more than one crime. Hence, it seems quite obvious that the former view of the Supreme Court in the case of Celis vs. Warden of Bilibid, **supra**, to the effect that the second paragraph of Article 70 refers only to offenses prosecuted in the same proceeding, is not tenable.

The doctrines, therefore, laid down by the Supreme Court in the cases of **United States vs. Carrington**, 6 Phil. 20, and **United States vs. Galaraga**, G. R. No. 17197, August 23, 1921 (unpublished), are reaffirmed and maintained as the final opinion of the court on the subject. They are more in keeping with the ends of penalty and with the spirit of the provisions of this paragraph, which, by the way, was an innovation introduced in the Spanish Penal Code of 1870. It may be remembered in this connection that previous legislation, adopting the theory of absolute accumulation of crimes and penalties, established no limitation whatever and, accordingly, all the penalties for all the violations were imposed even if they reached far beyond the natural span of human life.

It is now established, once and for all, that the maximum duration of the sentence of a convict charged with different offenses, whether in the same proceeding or in several others, shall not be more than threefold the length of the time corresponding to the most severe of the penalties imposed upon him, and in no case shall such maximum period exceed 40 years.[33]

As to the different cases and examples of complex crimes, continued crimes and multiple crimes, see commentaries on Article 48, **ante**, and particularly the cases of Hernandez, Geronimo, Prieto and De Leon, cited in Art. 48.

Art. 71. GRADUATED SCALES.—In the cases in which the law prescribes a penalty lower or higher by one or more degrees than another given penalty, the

[33] People vs. Geralde, 50 Phil. 823; People vs. Lagoy et al., G. R. No. L-5112, May 14, 1954; People vs. Umali et al., G. R. No. L-5803, Nov. 29, 1954.

rules prescribed in article 61 shall be observed in graduating such penalty.

The lower or higher penalty shall be taken from the graduated scale in which is comprised the given penalty.

The courts, in applying such lower or higher penalty, shall observe the following graduated scales:

Scale No. 1

1. **Death,**
2. Reclusión perpetua,
3. Reclusión temporal,
4. Prisión mayor,
5. Prisión correccional,
6. Arresto mayor,
7. Destierro,
8. Arresto menor,
9. **Public censure,**
10. **Fine.**

Scale No. 2

1. **Perpetual absolute disqualification,**
2. **Temporary absolute disqualification,**
3. **Suspension from public office, the right to vote and be voted for, and the right to follow a profession or calling,**
4. **Public censure**
5. **Fine.**[34]

BASES FOR DETERMINING THE PENALTY CORRESPONDING TO EACH CRIME.—The Code of 1874 has taken as bases for determining the penalty corresponding to each crime the following: (a) the acknowledgment that crime consists of an abuse of freedom, whereby the penalty appears as a restraint on that freedom which was abused by the culprit; so the basis of this penal system is made up of penalties which take away and restrain freedom, while the others, the pecuniary ones, and those con-

[34] As amended by Sec. 3 of Commonwealth Act No. 217.

cerning rights are but complements of the former; (b) the unity of crimes, in accordance with which they are grouped, by reason of their similarity, in titles, chapters and sections, and the unity of penalties in graduated scales; and (c) the connection established between said groups of crimes and groups of penalties.

GRADUATED SCALES UNDER THE OLD CODE.—Graduated scales in the old Penal Code were formed by groups of penalties of an equal or analogous nature. Thus, under the provisions of Article 91 of said Code, there were six different graduated scales wherein a marked distinction was made between penalties affecting liberty, such as **cadena, reclusión, presidio, prisión** and **arresto,** those affecting the right of domicile, such as **relegación, extrañamiento, confinamiento,** and **destierro,** and those affecting political rights, such as disqualifications, whether absolute or temporary, **suspension** from office and the right to vote and be voted for.

GRADUATED SCALES UNDER THE PRESENT CODE.—The Revised Penal Code has done away with many of the penalties known in the old Penal Code, such as **relegación, extrañamiento** and **confinamiento,** and has wiped out the distinction between **cadena** and **reclusión,** and **presidio** and **prisión.**

Under the provision of Article 71 of the Revised Penal Code, as amended by Act No. 217 of the National Assembly, the different principal penalties provided for in Article 25 have been classified and grouped into two graduated scales, known as scales Nos. 1 and 2. Under scale No. 1 it was endeavored to group all personal penalties, such as deprivation of life and liberty, while under scale No. 2 there have been grouped all penalties consisting of deprivation of political rights, such as disqualification and suspension from office and the right to vote or be voted for.

Where a person, who has committed an offense to which the law attaches the penalty of **arresto menor,** voluntarily surrenders to the agents of the authorities after the commission of said offense, and spontaneously admits his guilt when accused and tried, in accordance with the provisions of this paragraph, the penalty next lower in degree shall be imposed. Under the provisions of Article 71, as amended by Commonwealth Act No. 217, the penalty next lower in degree than **arresto menor** is public censure.[35]

Art. 72. PREFERENCE IN THE PAYMENT OF THE CIVIL LIABILITIES.—The civil liabilities of a person found guilty of two or more offenses shall be

[35] People vs. Leynez, 65 Phil. 608.

satisfied by following the chronological order of the dates of the final judgments rendered against him, beginning with the first in order of time.[36]

SECTION THREE

Provisions common to the last two preceding sections

Art. 73. PRESUMPTION IN REGARD TO THE IMPOSITION OF ACCESSORY PENALTIES.—Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of articles 40, 41, 42, 43, 44, and 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict.[37]

Art. 74. PENALTY HIGHER THAN RECLUSION PERPETUA IN CERTAIN CASES.—In cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, if such higher penalty should be that of death, the same penalty and the accessory penalties of article 40, shall be considered as the next higher penalty.[38]

Art. 75. INCREASING OR REDUCING THE PENALTY OF FINE BY ONE OR MORE DEGREES.—Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced, respectively, for each degree, by one-fourth of the maximum amount prescribed by law, without, however, changing the minimum.

The same rules shall be observed with regard to fines that do not consist of a fixed amount, but are made proportional.[39]

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[36] Taken from the provisions of Art. 66 of the proposed Correctional Code of 1916.
[37] Based on the provisions of Art. 90 of the old Penal Code.
[38] Based on the provisions of Art. 93 of the old Penal Code.
[39] Based on the provisions of Art. 94 of the old Penal Code.

Let us suppose that a certain crime is punished with a fine of not less than ₱200.00 and not more than ₱6,000.00. One fourth of the maximum of ₱6,000.00 is ₱1,500.00. The fine immediately higher in degree in accordance with this Article will be from ₱200.00 to ₱7,500.00, and that immediately lower will be from ₱200.00 to ₱4,500.00.[40]

Art. 76. LEGAL PERIOD OF DURATION OF DIVISIBLE PENALTIES.[41]—The legal period of duration of divisible penalties shall be considered as divided into three parts, forming three periods, the minimum, the medium, and the maximum in the manner shown in the following table:

Under the provisions of this Article, it is clear that all divisible penalties are naturally and legally divided into three periods: minimum, medium and maximum. The procedure for determining the duration or length of time of each legal period is as follows: subtract the minimum from the maximum of the given penalty; divide the difference by three and the quotient will be the duration or length of each period. The minimum period shall consist of the minimum of the given penalty and one day, plus the quotient; the medium shall consist of the maximum of the minimum period and one day, plus the quotient; and the maximum shall consist of the maximum of the medium period and one day, plus the quotient. Example: supposing the given penalty is **prisión mayor.** The difference between the minimum and maximum of this penalty (from 6 years and one day to 12 years) is six years. Divide six years by three, you will have a quotient of 2 years. Therefore, 2 years is the duration or length of each period. The minimum period of **prisión mayor** shall be from 6 years and one day to 8 years; the medium, from 8 years and 1 day to 10 years; and the maximum, from 10 years and 1 day to 12 years.

Art. 77. WHEN THE PENALTY IS A COMPLEX ONE COMPOSED OF THREE DISTINCT PENALTIES.—In cases in which the law prescribes a penalty composed of three distinct penalties, each one shall form a period; the lightest of them shall be the minimum, the next the medium, and the most severe the maximum period.

[40] See People vs. Quinto, 60 Phil. 351.
[41] Based on the provisions of Art. 96 of the old Code.

TABLE SHOWING THE DURATION OF DIVISIBLE PENALTIES AND THE TIME INCLUDED IN EACH OF THEIR PERIODS

Penalties	Time included in the penalty in its entirety	Time included in its minimum period	Time included in its medium period	Time included in its maximum period
Reclusión temporal . . .	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years, 8 months and 1 day to 17 years and 4 months.	From 17 years, 4 months and 1 day to 20 years.
Prisión mayor, temporary absolute disqualification and temporary special disqualification.	From 6 years and 1 day to 12 years.	From 6 years and 1 day to 8 years.	From 8 years and 1 day to 10 years.	From 10 years and 1 day to 12 years.
Prisión correccional, suspension and **destierro.**	From 6 months and 1 day to 6 years.	From 6 months and 1 day to 2 years and 4 months.	From 2 years, 4 months and 1 day to 4 years and 2 months.	From 4 years, 2 months and 1 day to 6 years.
Arresto mayor	From 1 month and 1 day to 6 months.	From 1 to 2 months.	From 2 months and 1 day to 4 months.	From 4 months and 1 day to 6 months.
Arresto menor	From 1 to 30 days.	From 1 to 10 days.	From 11 to 20 days.	From 21 to 30 days.

Whenever the penalty prescribed does not have one of the forms specially provided for in this Code, the periods shall be distributed, applying by analogy the prescribed rules.[42]

Supposing that the penalty is **prisión correccional** to **reclusión temporal**; such penalty will be composed of three distinct penalties: **prisión correccional, prisión mayor** and **reclusión temporal.** According to the provisions of this Article, the minimum period of this penalty will be **prisión correccional,** the medium period, **prisión mayor,** and the maximum period, **reclusión temporal.**

[42] Same as Art. 97 of the old Penal Code.

CHAPTER FIVE

EXECUTION AND SERVICE OF PENALTIES

SECTION ONE

General Provisions

Art. 78. WHEN AND HOW A PENALTY IS TO BE EXECUTED.—No penalty shall be executed except by virtue of a final judgment.

A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.

In addition to the provisions of the law, the special regulations prescribed for the government of the institutions which the penalties are to be suffered shall be observed with regard to the character of the work to be performed, the time of its performance, and other incidents connected therewith, the relations of the convicts among themselves and other persons, the relief which they may receive, and their diet.

The regulations shall make provision for the separation of the sexes in different institutions, or at least into different departments, and also for the correction and reform of the convicts.[1]

Chapter 45 of Act. No. 2711 (generally known as the Administrative Code) provides rules for the regulation of insular penitentiaries.

Art. 79. SUSPENSION OF THE EXECUTION AND SERVICE OF THE PENALTIES IN CASE OF INSANITY.—When a convict shall become insane or an imbecile after final sentence has been pronounced, the execution of said sentence shall be suspended only

[1] Taken from the provisions of Arts. 98 and 99 of the old Penal Code.

with regard to the personal penalty, the provisions of the second paragraph of circumstance number 1 of Article 12 being observed in the corresponding cases.

If at any time the convict shall recover his reason, his sentence shall be executed, unless the penalty shall have prescribed in accordance with the provisions of this Code.

The respective provisions of this section shall also be observed if the insanity or imbecility occurs while the convict is serving his sentence.[2]

Art. 80. SUSPENSION OF SENTENCE OF MINOR DELINQUENTS.—Whenever a minor of either sex, under sixteen[3] years of age at the date of the commission of a grave or less grave felony, is accused thereof, the court, after hearing the evidence in the proper proceedings, instead of pronouncing judgment of conviction, shall suspend all further proceedings and shall commit such minor to the custody or care of a public or private, benevolent or charitable institution, established under the law for the care, correction or education of orphaned, homeless, defective, and delinquent children, or to the custody or care of any other responsible person in any other place subject to visitation and supervision by the Director of Public Welfare or any of his agents or representatives, if there be any, or otherwise by the superintendent of public schools or his representatives, subject to such conditions as are prescribed hereinbelow until such minor shall have reached his majority or for such less period as the court may deem proper.

The court, in committing said minor as provided above, shall take into consideration the religion of such minor, his parents or next of kin, in order to avoid his commitment to any private institution not under the

[2] Taken from the provisions of Art. 100 of the old Penal Code.
[3] As amended by R. A. No. 47.

control and supervision of the religious sect or denomination to which they belong.

The Director of Public Welfare or his duly authorized representatives or agents, the superintendent of public schools or his representatives, or the person to whose custody or care the minor has been committed, shall submit to the court every four months and as often as required in special cases, a written report on the good or bad conduct of said minor and the moral and intellectual progress made by him.

The suspension of the proceedings against a minor may be extended or shortened by the court on the recommendation of the Director of Public Welfare or his authorized representatives or agents, or the superintendent of public schools or his representatives, according as to whether the conduct of such minor has been good or not and whether he has complied with the conditions imposed upon him, or not. The provisions of the first paragraph of this article shall not, however, be affected by those contained herein.

If the minor has been committed to the custody or care of any of the institutions mentioned in the first paragraph of this article, with the approval of the Director of Public Welfare and subject to such conditions as this official in accordance with the law may deem proper to impose, such minor may be allowed to stay elsewhere under the care of a responsible person.

If the minor has behaved properly and has complied with the conditions imposed upon him during his confinement, in accordance with the provisions of this article, he shall be returned to the court in order that the same may order his final release.

In case the minor fails to behave properly or to comply with the regulations of the institution to which he has been committed or with the conditions imposed

upon him when he was committed to the care of a responsible person, or in case he should be found incorrigible or his continued stay in such institution should be inadvisable, he shall be returned to the court in order that the same may render the judgment corresponding to the crime committed by him.

The expenses for the maintenance of a minor delinquent confined in the institution to which he has been committed, shall be borne totally or partially by his parents or relatives or those persons liable to support him, if they are able to do so, in the discretion of the court:

Provided, **That in case his parents or relatives or those persons liable to support him have not been ordered to pay said expenses or are found indigent and cannot pay said expenses, the municipality in which the offense was committed shall pay one-third of said expenses; the province to which the municipality belongs shall pay one-third; and the remaining one-third shall be borne by the National Government:** Provided, however, **That whenever the Secretary of Finance certifies that a municipality is not able to pay its share in the expenses above mentioned, such share which is not paid by said municipality shall be borne by the National Government. Chartered cities shall pay two-thirds of said expenses; and in case a chartered city cannot pay said expenses, the internal revenue allotments which may be due to said city shall be withheld and applied in settlement of said indebtedness in accordance with section five hundred and eighty-eight of the Administrative Code.**[4]

APPLICATION OF THE LAW UPON A MINOR AT THE TIME OF THE COMMISSION OF THE OFFENSE BUT OF LEGAL AGE AT THE TIME OF THE SENTENCE.—If the offender was under sixteen at the time of the commission of the

[4] Taken from the provisions of Act No. 3203 of the Philippine Legislature, known as the Juvenile Delinquency Act, as amended by Commonwealth Act No. 99.

crime, but over twenty-one at the time of the trial of this case, shall the Court suspend all further proceedings against him and commit such offender to the custody or care of a public or private charitable institution, as provided for in Art. 80 of the Revised Penal Code as amended by Commonwealth Act No. 99, instead of pronouncing judgment of conviction?

We don't think so. In the first place, Art. 80 of this Code specifically provides that the confinement of the minor offender in such institutions shall last only "until such minor shall have reached his **majority**, or for such **less** period, as the Court may deem proper." In the second place, the Juvenile Offenders Act (now incorporated in the Revised Penal Code as Art. 80) was promulgated primarily with a view to snatch young offenders and convicts, not only from intimidatory influence of criminal law, but also from the baneful and deleterious company of mature and hardened criminals. Hence, the time limit set forth by the first paragraph of Art. 80, "until such minor shall have reached his **majority**," meaning, naturally, that after reaching majority, an offender can no longer expect the protection of the Juvenile Courts, and he should be treated like any other mature offender. Besides, we should not lose sight of the fact that our Judges of the Court of First Instance are acting as Juvenile Courts in the trial of offenders under sixteen; and as such Juvenile Courts, they are clothed with special jurisdiction, of a paternal nature, over delinquent and neglected children. It is not a criminal court; its practice and procedure not being governed by the rules applicable to proceedings strictly criminal, but rather by those applicable in civil cases.[5] Now, if an offender is no longer a child, if he is over twenty-one at the time of his trial or his conviction, the Juvenile Court will find no occasion to exercise its power of **parens patriae** over the accused.

It is therefore our opinion that the provisions of Art. 80 of the Revised Penal Code are applicable only to those offenders who are **under sixteen**, not only at the commission of the offense, but also at the time of the trial against them.[6] If an offender was over twenty-one at the time of the trial of his case, even though he was under sixteen at the time of the perpetration of the offense, he is not entitled to the provisions of Art. 80, but only to a reduction of one or two degrees in the penalty prescribed by law, in accordance with the provisions of Art. 68 of the Revised Penal Code.

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[5] 31 C. J., 989.

[6] See People vs. Celespara, 46 O. G. 2052 (1950); People vs. Estefa, G. R. No. L-1753, April 12, 1950; People vs. Capistrano, G. R. No. L-4546, Oct. 22, 1952.

MEANING OF THE PHRASE "SHALL SUSPEND ALL FURTHER PROCEEDINGS."—In the case of **Bactoso vs. The Provincial Governor of Cebu,** 48 Phil. 25, the question was raised whether, in accordance with the provisions of Act No. 3203, now incorporated in the Article under consideration, when a minor under sixteen years of age is charged with the commission of a crime, the court "before passing sentence of conviction shall suspend all further proceedings in the case and shall commit such minor to the custody of any of the institutions, etc.," the usual trial during which both the prosecution and the defense offer evidence should take place. The Supreme Court held that the phrase used in the law "shall suspend all proceedings" does not mean that the court shall not receive evidence to determine the liability of the offender. "If the minor is innocent," said the Court, "Act No. 3203 is of course not applicable; but if he proves to be guilty, then the competent court, instead of finding him guilty, shall **suspend the judgment** and order the confinement of the minor in a reformatory to remain there until he attains majority or for a shorter period, as the court may deem fit, or may direct said minor to stay and be taken care of elsewhere under the supervision of the probation officer. The trouble seems to arise from the words of the law 'before passing sentence of conviction, shall suspend all further proceedings.' But if it is taken into account that a court cannot pronounce a verdict of guilty without having previously received conclusive incriminatory evidence, it appears that the words 'before passing sentence of conviction' mean after the filing of the complaint against the minor and the introduction of evidence sufficient to support conviction. That is to say, the minor accused of a crime or misdemeanor should be submitted to a due process of law, but the competent court, before finding him guilty, must suspend all further proceedings in order to take the measures prescribed by Act No. 3203 in question."

This Article somewhat modifies Act No. 3203 of the Philippine Legislature in that it makes no exception, as Act No. 3203 did, of crimes punished with capital penalties. Under the provisions of Act No. 3203, if a minor 17 years of age committed parricide, murder, robbery with homicide, or any other crime punished with death, such minor was tried in accordance with the provisions of this Article.

FINAL RELEASE OF MINOR.—It is the duty of the trial judge to order the final release of a minor who has remained and behaved properly in the training school for the full period for which

he was committed, and where final release has been recommended by the Director of Public Welfare.[7]

SECTION TWO

Execution of principal penalties

Art. 81. WHEN AND HOW THE DEATH PENALTY IS TO BE EXECUTED.—The death sentence shall be executed with preference to any other and shall consist in putting the person under sentence to death by electrocution. The death sentence shall be executed under the authority of the Director of Prisons, endeavoring so far as possible to mitigate the sufferings of the person under sentence during electrocution as well as during the proceedings prior to the execution.

If the person under sentence so desire, he shall be anaesthetized at the moment of the electrocution.[8]

Art. 82. NOTIFICATION AND EXECUTION OF THE SENTENCE AND ASSISTANCE TO THE CULPRIT.—The court shall designate a working day for the execution, but not the hour thereof; and such designation shall not be communicated to the offender before sunrise of said day, and the execution shall not take place until after the expiration of at least eight hours following the notification, but before sunset. During the interval between the notification and the execution, the culprit shall, in so far as possible, be furnished such assistance as he may request in order to be attended in his last moments by priests or ministers of the religion he professes and to consult lawyers, as well as in order to make a will and confer with members of his family or persons in charge of the management of his business, of the administration of his property, or of the care of his descendants.[9]

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[7] People vs. De la Cruz, 62 Phil. 116.
[8] Taken from the provisions of Act No. 3104, Sec. 2, of the Philippine Legislature.
[9] Taken from the provisions of Sec. 3 of Act No. 3104 of the Philippine Legislature.

Art. 83. SUSPENSION OF THE EXECUTION OF THE DEATH SENTENCE.—The death sentence shall not be inflicted upon a woman within the three years next following the date of the sentence or while she is pregnant, nor upon any person over seventy years of age. In this last case, the death sentence shall be commuted to the penalty of reclusión perpetua **with the accessory penalties provided in Article 40.**[10]

POWER OF THE COURT TO SUSPEND EXECUTION OF SENTENCE.—The Court of First Instance which imposes a death penalty has the power to suspend temporarily the execution of the sentence, after the judgment has become final, and after the date has been fixed for execution, in order to secure and conserve any legal right asserted on behalf of the prisoner held under such sentence, based upon grounds arising after judgment has become final, the adjudication of which does not challenge the validity of the judgment convicting and sentencing the convict, nor involve a review or reconsideration of the proceedings upon which it rests.

Among such grounds are the alleged insanity or pregnancy of the convict, the alleged non-identity of the prisoner with the person actually convicted and sentenced, the alleged lack of a suitable opportunity to be heard on an application for executive clemency, and the like.

LIMITATION OF POWER.—It does not lie within the power of the courts to grant indefinite, permanent or conditional suspensions of the execution of sentences pronounced in criminal cases. The exercise of such power is in effect a grant of a pardon more or less absolute. It is not expressly conferred upon the courts in this jurisdiction, nor is it inherent in the judicial function.

Under the Spanish law in force in these Islands prior to the American occupation, judges of Courts of First Instance were clothed with power to grant temporary suspensions of executions of capital sentences, not merely to secure the legal rights of a prisoner under sentences of death arising after the judgment imposing sentence had become final, but also in any case wherein a suspension was deemed necessary to secure the orderly and decorous course of the proceedings.[11]

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[10] Taken from the provisions of Sec. 4 of Act No. 3104 of the Philippine Legislature.

[11] Director of Prisons vs. Judge of Court of First Instance of Cavite, 29 Phil. 265.

Art. 84. PLACE OF EXECUTION AND PERSONS WHO MAY WITNESS THE SAME. — The execution shall take place in the penitentiary of Bilibid in a space closed to the public view and shall be witnessed only by the priest assisting the offender and by his lawyers and by his relatives, not exceeding six, if he so request, by the physician and the necessary personnel of the penal establishment, and by such persons as the Director of Prisons may authorize.[12]

Art. 85. PROVISION RELATIVE TO THE CORPSE OF THE PERSON EXECUTED AND ITS BURIAL.—Unless claimed by his family, the corpse of the culprit shall, upon the completion of the legal proceedings subsequent to the execution, be turned over to the institute of learning or scientific research first applying for it, for the purpose of study and investigation, provided that such institute shall take charge of the decent burial of the remains. Otherwise, the Director of Prisons shall order the burial of the body of the culprit at government expenses, granting permission to be present thereat to the members of the family of the culprit and the friends of the latter. In no case shall the burial of the body of a person sentenced to death be held with pomp.[13]

Art. 86. RECLUSION PERPETUA, RECLUSION TEMPORAL, PRISION MAYOR, PRISION CORRECCIONAL, AND ARRESTO MAYOR.—The penalties of reclusión perpetua, reclusión temporal, prisión mayor, prisión correccional **and** arresto mayor, **shall be executed and served in the places and penal establishments provided by the Administrative Code in force or which may be provided by law in the future.**

The sections of the Administrative Code having reference to

[12] Taken from the provisions of Sec. 5 of Act No. 3104 of the Philippine Legislature.

[13] Taken from the provisions of Sec. 6 of Act No. 3104 of the Philippine Legislature and of Art. 103 of the old Penal Code.

this Article are: 1708, 1709, 1720, 1721, 1722, 1729, 1737, 1738, 1739, 1740, 1741, 1742, and 1743.

Art. 87. DESTIERRO.—Any person sentenced to destierro **shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall be not more than 250 and not less than 25 kilometers from the place designated.**[14]

The Supreme Court in **Legarda vs. Valdez,** 1 Phil. 562, held that banishment is not a cruel and unusual punishment.

Art. 88. ARRESTO MENOR. — The penalty of arresto menor **shall be served in the municipal jail, or in the house of the defendant himself under the surveillance of an officer of the law, when the court so provides in its decision, taking into consideration the health of the offender and other reasons which may seem satisfactory to it.**

Taken from the provisions of Art. 117 of the old Penal Code with a slight modification, which consists in this Article providing for the surveillance by an officer of the law of the offender who serves the penalty of **arresto menor** in his house. Such a provision was not included in the old Code.

[14] Taken from the provisions of Art. 114, last paragraph of the old Penal Code.

TITLE FOUR

Extinction of Criminal Liability

CHAPTER ONE

TOTAL EXTINCTION OF CRIMINAL LIABILITY[1]

Art. 89. HOW CRIMINAL LIABILITY IS TOTALLY EXTINGUISHED.—Criminal liability is totally extinguished:[2]

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

Supposing a person accused of **estafa** is sentenced by the Court of First Instance to suffer six months imprisonment and to indemnify the aggrieved party in the sum of ₱200. On appeal and before final judgment could be rendered, the accused died. Under the provisions of this paragraph, both liabilities of the accused, penal and civil, are extinguished.

However, the Rules of Court (Rule 107, Section 1, paragraph d) provides:—

> "Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. In the other cases, the person entitled to the civil action may institute it in the jurisdiction and in the manner provided by law against persons who may be liable for restitution of the thing and reparation or indemnity for the damage suffered."

As will be seen from the provisions of the Rules of Court above quoted, the aggrieved party in the hypothetical example would not be barred from enforcing his right to be indemnified in the effect of the **estafa**, while under the provisions of this Article, he is. There is no gainsaying that the provisions of the Rules of Court above quoted are more in accord with equity

[1] As amended by Act 4116.
[2] Rule 107, Sec. 1, Par. (d), R. C.

and justice. But unfortunately, the provisions of the Rules of Court, besides being procedural in nature, cannot prevail over and above the provisions of the Article under consideration in view of the saving clause of Section 1 of Rule 107 which says:— **"Except as otherwise provided by law,** x x x."

Therefore, if we choose to enforce the provisions of paragraph (**d**) of Section 1 of the Rule above quoted in a situation similar to that given in the hypothetical example, a repeal of the second clause of Par. 1 of this Article would be necessary.

2. By service of the sentence.

Crime, according to the expiatory or retributive theory upon which the Penal Code is based, is nothing short of a debt incurred by the offender as a consequence of his wrongful act, and penalty is but the amount of this debt. When payment is made, the debt is extinguished, there are no longer a creditor and a debtor, and the juridical relation binding them disappears.

And the fact that the defendant's co-accused have already served their sentences is not a bar for applying the law to the defendant according to the result of the prosecution against him.[3]

3. By amnesty, which completely extinguishes the penalty and all its effects.

Amnesty is that mercy granted by the head of the State, whereby a certain kind of offense is forgiven and pardoned. It is distinguished from pardon in that the former is generally granted to persons who have committed political offenses, while the latter is granted for common offenses. Furthermore, amnesty completely extinguishes the penalty and all its effects, that is, wipes out all traces and vestiges of the crime, while pardon affects only the future of the offender. Moreover, amnesty is not personal; it is not usually granted to some or many convicts but to all those who have committed certain crimes, whoever they may be, or whatever their conditions or particular situation, for it is not properly granted to their benefit but in consideration of the peace and convenience of the state.[4]

Amnesty, however, does not extinguish the civil liability of the offender.[5]

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[3] People vs. Castro, 54 Phil. 101.
[4] Silvela, 2 Derecho Penal, 349-350.
[5] U. S. vs. Madlangbayan, 2 Phil. 246; Art. 248, Compilation of the provisions regarding Criminal Procedure of the Philippines.

In connection with amnesty, the Amnesty Proclamation of the President of the United States on July 4, 1900, whereby all political offenders during the insurrection were pardoned and discharged from criminal liability, may be remembered.

4. By absolute pardon.

PARDON; ITS DEFINITION.—A pardon may be defined as an act of grace proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed. It is a private, though official, act of the chief magistrate, delivered to the individual, for whose benefit it is intended.[6]

KINDS OF PARDON.—Pardon may be **absolute** or **conditional.** If it is conditional, it is in the nature of a deed, for the validity of which delivery is an indispensable requisite, according to the provisions of Act No. 1524. Until accepted, all that may have been done is a matter of intended favor and may be cancelled to accord with the change of intention.[7]

PAROLE.—Pursuant to the provisions of Act No. 1561, the Chief Executive of the Philippines may also discharge a convict from penal liability by granting him freedom under parole. This consists in the suspension of the sentence of a convict by the President of the Philippines who, without granting a pardon, discharges such convict from custody and prescribes the terms upon which the sentence shall be suspended. If the convict fails to observe the conditions of his parole, the President of the Philippines is authorized to direct the arrest and return of such convict to custody, and thereupon said convict shall be required to carry out his sentence without deduction of the time elapsed between the parole and subsequent arrest for computing the period of his confinement.[8]

REVOCATION OF PAROLE.—The power to pardon given to the President by the Constitution, upon such conditions and with such restrictions and limitations as he may deem proper to impose, includes the power to grant and revoke paroles (20 R. C. L. 577; 46 C. J., 1205). If the omission of the power of parole in the Constitution is to be construed as a denial thereof to the President, the effect would be to unconditionally discharge parolees, who, before the adoption of the Constitution, have been released

[6] De Leon vs. Director of Prisons, 31 Phil. 60.
[7] De Leon vs. Director of Prisons, **supra.**
[8] See Secs. 1 and 2 of Act No. 1561.

conditionally by the Chief Executive. That such effect was never intended by the Constitutional Convention is obviously beyond question.

CONVICTION NOT NECESSARY FOR REVOCATION OF PAROLE.—It had been held that the mere commission, not his conviction by the court, of any other crime, is sufficient to warrant a parolee's arrest and re-incarceration, because he violated a condition of the parole specifically providing that the parolee "will not commit any other crime and will conduct himself in an orderly manner."[9]

BASIS OF PARDON AND AMNESTY.—Both pardon and amnesty must be based upon two distinct ideas, to wit: **First,** that the public power or the supreme authority, in enacting and enforcing the law, is entitled to set it aside in certain cases; and, **second,** that clemency, oblivion, or pardon is sometimes necessary, expedient in many cases, to erase so far as possible the memory of certain crimes, especially those of a political character, or to correct judicial errors when evidenced by facts subsequent to the sentence, or to prepare the reformation of the criminal law by not applying certain penalties which the legislature, from fear of becoming disarmed, does not dare abolish definitely, or to make them equal and just by taking into account certain facts of which the legislature had been unmindful or which have not been given due weight in framing the criminal law.

5. By prescription of the crime.

Prescription of the crime may be considered as the natural and necessary effect of lapse of time. It is a common saying that everything is changed and altered by time, and it must therefore exert its influence on crime. Indeed, the lapsing of time cannot but be reckoned with in all human things which by necessity live and develop within it.[10]

6. By prescription of the penalty.

There are two conditions in the prescription of penalties, to wit: (a) that there be final judgment, and (b) that the period of time prescribed by law for its enforcement has elapsed.

7. By the marriage of the offended woman, as provided in Article 344 of this Code.[11]

[9] Tesoro vs. Director of Prisons, 68 Phil. 154.
[10] Silvela, 1 Derecho Penal, 335.
[11] Taken from the provisions of Sec. 2 of Act No. 1773.

The marriage referred to in this Article is that one contracted in good faith. A marriage contracted through deceit and only for the purpose of avoiding penal liability is deprived of legal effects and shall not extinguish the penal liability of the offender.[12]

Art. 90. PRESCRIPTION OF CRIMES. — Crimes punishable by death, reclusión perpetua **or** reclusión temporal **shall prescribe in twenty years.**

Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, **which shall prescribe in five years.**

The crime of libel or other similar offenses shall prescribe in two years.

The offenses of oral defamation and slander by deed shall prescribe in six months.

Light offenses prescribe in two months.

When the penalty fixed by law is a compound one the highest penalty shall be made the basis of the application of the rules contained in the first, second and third paragraphs of this article.[13]

Slight oral defamation, punishable by **arresto menor** (Art. 358), prescribes in two months and not in six months, according to Art. 90 of the Revised Penal Code.[14]

Art. 91. COMPUTATION OF PRESCRIPTION OF OFFENSES.—The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the

[12] People vs. Santiago, 51 Phil. 68.
[13] Based on the provisions of Art. 131 of the old Penal Code.
[14] People vs. Maceda, 73 Phil. 679.

accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.[15]

WHEN PRESCRIPTION OF OFFENSES COMMENCES TO RUN.—Prescription shall commence to run not from the very day on which the crime was committed or discovered but on the day following. The term "month" found in Art. 90 should be taken to mean the regular 30-day month and not the solar or calendar month.[16] A crime may be committed and may remain undiscovered. For example, the manager or cashier of a bank may embezzle funds belonging to the bank and may conceal the commission of the crime for three or four years. In such a case, the period of prescription does not commence to run from the time the embezzlement was committed, that is, three or four years ago, but from the time it is discovered.

However, the discovery of the crime should not be confused with the discovery of the offender. For example, if murder is committed now, the fact that the murderer was unknown will not prevent the period of prescription from commencing to run.

Where it appears that the appellant was convicted of a misdemeanor in a justice's court and took an appeal by virtue of which the case was duly sent to the Court of First Instance on the 11th day of August, 1915, with due notice to the prosecuting attorney, but nothing was done with the case until the 19th day of October, 1915, when the prosecuting attorney filed an information in the Court of First Instance; and that the appellant was tried in the Court of First Instance on the 8th day of March, 1916—Held: That prescription did not run against the crime under Article 91 of the Penal Code which declares that "misdemeanors prescribe in two months" and that "this prescription shall be interrupted from the commencement of the proceedings against the offender, and the term of prescription shall commence to run again when such proceedings terminate without the accused being convicted or the proceedings are suspended by reason of some cause other than the fault of the defendant," in conjunction with the provisions of Article 91 which declares that criminal liability is extinguished by prescription of the crime as well as of the penalty. The reason for the provisions of Article 91 was primarily the negligence of

[15] Taken from the provisions of the last paragraph of Art. 131 of the old Penal Code.
[16] People vs. Del Rosario, 51 O. G. 2868, June 1955.

the prosecuting officials, and secondarily, the unimportant nature of the crime to which the Article refers. The sessions of the court being continuous and the prosecuting officials failing to prosecute the crime within two months, or the proceedings having been instituted but suspended through the inactivity of the prosecuting officials for a like period, the proceedings were considered abandoned. Where, however, as in the present case, the case was brought on for trial at the first term of the court at which it could be heard, the reason for the rule fails and the rule itself is not applicable.[17]

PRESCRIPTION IN FALSE TESTIMONY.—With regard to the crime of false testimony, considering that the penalties provided therefor in Art. 180 of the Revised Penal Code are, in every case, made to depend upon the conviction or acquittal of the defendant in the principal case, the act of testifying falsely does not constitute an actionable offense until the principal case is finally decided. And before an act becomes a punishable offense, it cannot possibly be discovered as such by the offended party, the authorities, or their agents.[18]

Art. 92. WHEN AND HOW PENALTIES PRESCRIBE. — The penalties imposed by final sentence prescribe as follows:

1. Death and reclusión perpetua, **in twenty years;**

2. Other afflictive penalties, in fifteen years;

3. Correctional penalties, in ten years; with the exception of the penalty of arresto mayor, **which prescribes in five years;**

4. Light penalties, in one year.[19]

Two conditions are necessary for the prescription of the penalty to take place, to wit: (a) that there be final judgment and (b) that the period prescribed by law has elapsed.

Art. 93. COMPUTATION OF THE PRESCRIPTION OF PENALTIES.—The period of prescription of penalties shall commence to run from the date when

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[17] Cabuñag vs. Jocson, 35 Phil. 220. See U. S. vs. Lozada, 9 Phil. 509; U. S. vs. Serapio, 23 Phil. 584.
[18] People vs. Maneja, 72 Phil. 256.
[19] Taken from the provisions of Art. 132 of the old Penal Code.

the culprit shall evade the service of his sentence, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government has no extradition treaty, or should commit another crime before the expiration of the period of prescription.[20]

WHEN PRESCRIPTION OF PENALTIES COMMENCES TO RUN.—Hence, prescription shall commence to run from the date on which the convict was able to evade the service of the sentence.

There are two causes which interrupt the running of the prescriptive period, to wit: (a) the escape of the convict to a foreign country with which the Government does not have extradition treaties, or in case it has, the crime committed is not included in any treaty; and (b) the commission of another crime before the expiration of the period of prescription.

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[20] Taken from the penultimate and last paragraphs of Art. 132 of the old Penal Code.

CHAPTER TWO

PARTIAL EXTINCTION OF CRIMINAL LIABILITY[1]

Art. 94. PARTIAL EXTINCTION OF CRIMINAL LIABILITY.—Criminal liability is extinguished partially:

1. By conditional pardon;

A conditional pardon has no force until accepted by the condemned. In this respect it differs from commutation.[2]

2. By commutation of the sentence; and

3. For good conduct allowances which the culprit may earn while he is serving his sentence.[3]

Art. 95. OBLIGATION INCURRED BY PERSON GRANTED CONDITIONAL PARDON. — Any person who has been granted conditional pardon shall incur the obligation of complying strictly with the conditions imposed therein; otherwise, his non-compliance with any of the conditions specified shall result in the revocation of the pardon and the provisions of article 159 shall be applied to him.[4]

A conditional pardon remits the penalty to be served but not the sentence itself. A conditional pardon has the effect of suspending the enforcement of a sentence, or exempting the culprit from serving the unexpired portion of the penalty, if he does not violate the conditions under which pardon was granted. Consequently, if a culprit violates the conditions of the contract of conditional pardon, this is set aside, and the original punitive sentence, which has not been nullified but only suspended in its force and effect by such pardon, shall have to be enforced against him.[5]

A violation of the conditions of a conditional pardon by the

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[1] As amended by Act No. 4116.
[2] Cabantag vs. Wolfe, 6 Phil. 273.
[3] Taken from the provisions of Act No. 1524 and of Art. 72 of the proposed Correctional Code of 1916.
[4] Taken from the provisions of Act No. 1524 and of Art. 73 of the proposed Correctional Code of 1916.
[5] People vs. Santos, 75 Phil. 612.

person pardoned, by which said person obtains his liberty, has the effect of forfeiting his rights to liberty thereunder, and he is left in the exact situation where he was when the pardon was issued, and the original sentence may be enforced. The pardon thereby becomes void and the person may be arrested and compelled to undergo as much of the original sentence as he has not suffered.[6]

The Governor General granted V. a pardon from the unexecuted portion of his sentence (imprisonment of 8 years and one day) for an illegal marriage on the condition that he should not be guilty of any infraction of law punishable by imprisonment for one year or more. V. was released and afterward was convicted of **estafa** and sentenced to six months' imprisonment. The question is whether or not there has been a violation of the condition. The limits of imprisonment for the crime of **estafa** under which V. was convicted are from two months and one day to two years and four months. "Punishable" means deserving of or liable to punishment. The term refers to the **possible**, not to the actual sentence. V. was liable to the greater punishment and so must be held to have violated the condition of his pardon the same as if he had been sentenced to the greater term.[7]

Art. 96. EFFECT OF COMMUTATION OF SENTENCE.—The commutation of the original sentence for another of a different length and nature shall have the legal effect of substituting the latter in the place of the former.[8]

Art. 97. ALLOWANCE FOR GOOD CONDUCT.—The good conduct of any prisoner in any penal institution shall entitle him to the following deductions from the period of his sentence:

1. During the first two years of his imprisonment he shall be allowed a deduction of five days for each month of good behavior;

2. During the third to the fifth year, inclusive, of his imprisonment, he shall be allowed a deduction of eight days for each month of good behavior;

[6] U. S. vs. Ignacio, 33 Phil. 202.
[7] U. S. vs. Villalon, 37 Phil. 322.
[8] Taken from the provisions of Art. 74 of the proposed Correctional Code of 1916.

3. During the following years until the tenth year, inclusive, of his imprisonment, he shall be allowed a deduction of ten days for each month of good behavior; and

4. During the eleventh and successive years of his imprisonment, he shall be allowed a deduction of fifteen days for each month of good behavior.[9]

Act No. 2489 of the Philippine Legislature also authorizes special compensations and credits to prisoners as a reward for exceptional conduct and workmanship. The benefits accruing under said Act and under this Article are, however, not made applicable to any prisoner who has previously been convicted twice or oftener for any crime or misdemeanor. But recidivists and habitual delinquents who have observed excellent conduct and behaviour for a period of not less than one year and who have acquired skill in any of the industrial shops of the Bureau of Prisons may receive the compensation authorized by Act 2489.[10]

Art. 98. SPECIAL TIME ALLOWANCE FOR LOYALTY.—A deduction of one-fifth of the period of his sentence shall be granted to any prisoner who, having evaded the service of his sentence under the circumstances mentioned in article 158 of this Code, gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the passing away of the calamity or catastrophe referred to in said article.[11]

Art. 99. WHO GRANTS TIME ALLOWANCES.—Whenever lawfully justified, the Director of Prisons shall grant allowances for good conduct. Such allowances once granted shall not be revoked.[12]

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[9] Taken from Acts Nos. 1533 and 2489, and from Art. 72 of the proposed Correctional Code of 1916.
[10] Commonwealth Act No. 81.
[11] Taken from the provisions of Art. 77 of the proposed Correctional Code of 1916.
[12] Same as Art. 77 of the proposed Correctional Code of 1916.

TITLE FIVE

Civil Liability

CHAPTER ONE

PERSONS CIVILLY LIABLE FOR FELONIES

Art. 100. CIVIL LIABILITY OF A PERSON GUILTY OF FELONY.—Every person criminally liable for a felony is also civilly liable.

CLASSES OR TYPES OF INJURIES.—As a general rule, an offense causes two classes of injuries: a **social** injury produced by the disturbance and alarm which are the outcome of the offense; and a **personal** injury, caused to the victim of the crime who may suffer damage, either in his person, in his property, in his honor, in his chastity, or in his freedom, etc. The social injury is sought to be repaired thru the imposition of the corresponding penalty, while the personal injury, thru indemnity, which is civil in nature.

PROCEDURAL LAW IMPLEMENTING ART. 100 OF THE REVISED PENAL CODE.—Rule 107 of the Rules of Court provides that:

(a) When a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately;

(b) Criminal and civil actions arising from the same offense may be instituted separately, but after the criminal action has been commenced the civil action cannot be instituted until final judgment has been rendered in the criminal action;

(c) After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted; and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered;

(d) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. In the other cases, the person entitled to the civil action may institute it in the jurisdiction and in the

manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damages suffered;

(e) A final judgment rendered in a civil action absolving the defendant from civil liability is no bar to a criminal action.

CIVIL AND CRIMINAL LIABILITIES; WHEN THEY DO NOT CO-EXIST.—Does civil liability exist at all if the defendant has been found not guilty of the act out of which the civil liability arises? This question was answered in the negative by the United States Supreme Court for the following reasons:

1. By the positive legislation of the Philippine Codes, civil and criminal, a distinction is drawn between a civil liability which results from the mere negligence of the defendant and liability for the civil consequences of a crime by which another has sustained loss or injury.

2. The plain inference from this article is that civil liability springs out of and is dependent upon facts which, if true, would constitute a crime or misdemeanor.

3. The Rules of Court plainly contemplate that the civil liability of the defendant shall be ascertained and declared in the criminal proceedings.

For this reason, a civil action for damages against the defendant on the ground that he burned a certain building, does not lie after said defendant has been acquitted in a criminal case for arson based on the same facts upon which the civil complaint was based.[1]

And the reason for this is because in this jurisdiction, once the criminal action is instituted, the civil action is deemed to have been brought unless the person injured or prejudiced has waived the same or made express reservation for bringing the same after the termination of the criminal action, should he have a right thereto.[2]

EXCEPTION TO THE RULE.—But may civil liability arising from the perpetration of illegal act be enforced without previously instituting criminal action or, better still, without a prior legal determination of the defendant's guilt? This important question was answered in the affirmative by the Supreme Court of the Philippines in the case of **National City Bank of New York vs. Cu Unjieng et al.**, G. R. 41927, December 18, 1937.

A civil action—said the Supreme Court in the above-mentioned case—may be validly instituted, without the necessity of first instituting the criminal action, not only for the restitution of

[1] Almeida et al. vs. Abaroa, 8 Phil. 178; 40 Phil. 1056.
[2] Francisco vs. Onrubia, 46 Phil. 327.

what has been taken or otherwise illegally appropriated, but also for the reparation of any damage caused, and the indemnity for losses by reason of the commission of the criminal act, the provisions of Art. 100 which prescribe that "every person criminally liable for felony is also civilly liable" notwithstanding. Art. 100 of the Revised Penal Code does not give inference that in no case may one be declared civilly liable without first being declared liable criminally in a criminal prosecution. Such an inference would clearly nullify the provisions of Arts. 110, 111, 114, and 116 of the law of Criminal Procedure of Spain which is a supplementary law to General Orders No. 58. Such legal provisions expressly permit the institution of a civil action to demand civil responsibility arising from a crime before the criminal prosecution, without any other limitation than that once the criminal action is instituted, the civil action must be suspended, if the same has already been begun.[3]

The criminal action is extinguished by the death of the guilty party; but in such cases the civil action subsists against his heirs or successors in interest, being enforceable civilly only.[4]

DAMAGES CAUSED THROUGH CRIMINAL NEGLIGENCE; DISTINGUISHED FROM CIVIL NEGLIGENCE.—Damages caused by criminal fault or negligence cannot likewise be recovered after the acquittal of the defendant in a criminal action, in spite of the provisions of Art. 1902 of the Civil Code. Said Article presupposes, in the first place, the existence of a fault or negligence upon which the action is based; and second, it refers to a fault or negligence **not punishable** by law. This is because, if the fault or negligence is punishable by law, it ceases to be the quasi-crime of negligence having purely civil effects, and becomes a crime or misdemeanor according to the gravity of the penalty imposed by law, and in that case it does not come within the provisions of Art. 1902 of the Civil Code.[5]

DECISION IN CRIMINAL CASE; WHEN IT IS A BAR, AND WHEN NOT, IN CIVIL ACTION.—As a general rule, an employer may maintain a civil action against his employee to recover money misappropriated by the latter, without the prior institution of a criminal proceeding. Nevertheless, if a criminal prosecution based on the same misappropriation is in fact instituted against

[3] See also Alba vs. Acuña, 53 Phil. 380; Rakes vs. Atlantic Gulf & Pacific Company, 7 Phil. 359; Wise & Co. vs. Larion, 45 Phil. 314; Francisco vs. Onrubia, 46 Phil. 327; People vs. Moreno, 60 Phil. 712.
[4] Art. 115 of Criminal Procedure of Spain.
[5] Francisco vs. Onrubia, 46 Phil. 327.

the employee and he is acquitted, such acquittal operates as a bar to any subsequent civil action.[6]

Hence, it may be laid down as a rule that civil liability arising from the criminal act wholly depends upon the fact that there be criminal liability previously established by a competent court. For this reason, if a person supposedly injured by a criminal act institutes separately both actions, civil and criminal, the former must be suspended until the latter is definitely decided.

Exception to the Rule.—This rule, however, has its exceptions, to wit: when in the criminal case the prejudicial question is raised.

PREJUDICIAL QUESTION DEFINED.—The prejudicial question is understood to be that which must precede the criminal action or that which requires decision before final judgment is rendered in the principal action with which said question is closely connected. Not all previous questions are prejudicial, although all prejudicial questions are necessarily previous.

The Compilation of the Laws of Criminal Procedure of Spain as amended in 1880 did not contain any provisions concerning questions requiring judicial decision before the institution of a criminal prosecution. Wherefore, in order to decide said questions, in case they are raised before the court of these Islands, it will be necessary to see the Law of Criminal Procedure of 1882, which repealed the former procedural laws and was the only law in force in Spain when the Penal Law was made applicable to these Islands. This Procedural Law of 1882 is therefore clothed with the character of supplementary law containing respectable doctrines, inasmuch as there is no law in this country on said prejudicial question.[7]

The prejudicial question may be illustrated by the following example: A prosecuted a newspaperman, B, for libel because the latter published an article in which it was said that A was the keeper of a gambling house. Subsequent to the filing of the information for libel, A was criminally prosecuted for keeping a gambling house. The criminal case against A is a real prejudicial question in the case for libel against B, because the acquittal of B depends upon the circumstance of whether or not A was really keeping a gambling house, and the decision in the criminal case against A thus becomes of paramount importance.

But in another case where A was sued by B in a civil action for the recovery of a certain sum of money, and subsequently A instituted a criminal action against B for another sum of money

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[6] Wise & Co. vs. Larion, 45 Phil. 314. See Alba vs. Acuña, 53 Phil. 380; Orbeta vs. Sotto et al., 58 Phil. 505.
[7] Berbari vs. Concepcion et al., 40 Phil. 837.

involved in that claim in the civil action, said civil action did not constitute a prejudicial question which should suspend the criminal action brought by A against B until after the valid action instituted by B against A is definitely decided.[8]

PRELIMINARY ATTACHMENT OF THE PROPERTY OF AN ACCUSED.—In **U. S. vs. Namit,** 38 Phil. 926, and in **People vs. Moreno,** 60 Phil. 674, the Supreme Court held that the preliminary attachment of the property of an accused in a criminal case cannot be granted either under Art. 589 of the Spanish Law of Criminal Procedure or under Sections 424 and 442 of the old Code of Civil Procedure, the reason being that the remedy of attachment available under Spanish system of criminal procedure was abrogated by G. O. No. 58 (the old Code of Criminal Procedure) and was not perpetuated by the reservation contained in Section 107 of the said Code.

After the enactment of the Rules of Court, particularly Rule 124, Section 6 thereof, a new situation was developed. Under the provisions of said section, Courts of First Instance may employ "all auxiliary writs, processes and other means to carry into effect" their jurisdiction. If, as per provisions of Section 1, Rule 107 Rules of Court, "when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted, unless the offended party expressly waives the civil action or reserves his right to institute it separately," the granting of the auxiliary writ of preliminary attachment of the property of an accused should not be denied, otherwise, the denial would smack of unjust discrimination against that party who had chosen to enforce his civil redress in a criminal case. We see no reason why the victim of a robbery, for example, may obtain a writ of attachment of his stolen property if he maintains a separate civil action for the recovery of said property, while if he consolidates his actions in one criminal case, the remedy is not available. In fact, the Supreme Court during the Japanese occupation, by a vote of 3 to 1, abandoned the ruling in the Namit and Moreno cases, and granted preliminary attachment in an estafa case.[9]

Art. 101. RULES REGARDING CIVIL LIABILITY IN CERTAIN CASES.—The exemption from criminal liability established in subdivisions 1, 2, 3, 5, and 6 of article 12 and in subdivision 4 of article 11 of this Code

[8] Berbari vs. Concepcion et al., 40 Phil. 837.
[9] Eraña et al. vs. Vera and Panzani, 74 Phil. 272.

does not include exemption from civil liability, which shall be enforced subject to the following rules:

First. **In cases of subdivisions 1, 2, and 3 of article 12 the civil liability for acts committed by an imbecile or insane person, and by a person under nine years of age, or by one over nine but under fifteen years of age, who has acted without discernment, shall devolve upon those having such person under their legal authority or control, unless it appears that there was no fault or negligence on their part.**

Should there be no person having such insane, imbecile or minor under his authority, legal guardianship, or control or if such person be insolvent, said insane, imbecile, or minor shall respond with their own property, excepting property exempt from execution, in accordance with the civil law.

Second. **In cases falling within subdivision 4 of article 11, the persons for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which they may have received.**

The courts shall determine, in their sound discretion, the proportionate amount for which each one shall be liable.

When the respective shares can not be equitably determined, even approximately, or when the liability also attaches to the Government, or to the majority of the inhabitants of the town, and, in all events, whenever the damage has been caused with the consent of the authorities or their agents, indemnification shall be made in the manner prescribed by special laws or regulations.

Third. **In cases falling within subdivisions 5 and 6 of article 12, the persons using violence or causing the fear shall be primarily liable and secondarily, or, if**

there be no such persons, those doing the act shall be liable, saving always to the latter that part of their property exempt from execution.[10]

Exemption from criminal liability does not always include exemption from civil liability. Where some justifying circumstance is present, the exemption from criminal liability carries with it exemption from civil liability for the obvious reason that one who acts within the law does not cause any unlawful injury or damage upon another. But in case of circumstances which exempt from criminal liability, or the non-imputability referred to in Nos. 1, 2, 3, 5 and 6 of Art. 12 and No. 4 of Art. 11 of this Code, the question does not seem to be so simple because the injury in such case is occasioned without just cause.

For that reason the law imposes in the first place, upon the guardians of the irresponsible insane or minor, or upon those causing the fear, the obligation to indemnify the injured party, and in the absence of such person, the property of the insane or irresponsible minor or of the one who acted under the influence of fear, is made to answer for whatever injury or damage is occasioned to the offended party.[11]

Art. 102. SUBSIDIARY CIVIL LIABILITY OF INNKEEPERS, TAVERNKEEPERS AND PROPRIETORS OF ESTABLISHMENTS. — In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees.

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the

[10] Based on the provisions of Art. 18 of the old Penal Code.
[11] See U. S. vs. Baggay, 20 Phil. 142.

directions which such innkeeper or his representative may have given them with respect to the care of and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.[12]

Thus, for example, if homicide is committed in an inn or bar on Sunday which, according to the municipal ordinances, should be closed, since the innkeeper in this case violates the ordinances by opening his establishment for business on a prohibited day, he shall be subsidiarily liable for the indemnity or civil liability to the heirs of the deceased.

Art. 103. SUBSIDIARY CIVIL LIABILITY OF OTHER PERSONS.—The subsidiary liability established in the preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.[13]

REQUISITE OF THE LIABILITY ESTABLISHED BY THIS ARTICLE.—It must be understood that the crime or misdemeanor must be committed by the servants, wards, employees, apprentices or workmen while in the discharge of their duties; otherwise, the subsidiary liability provided in this Code cannot be enforced. Let us suppose that a workman of a construction company stole some things while he was making minor repairs on a house, and after being prosecuted was found guilty by the court. Under such circumstances, the company will be subsidiarily liable for the restitution of the things or for the payment of their value.

LIABILITY OF THE EMPLOYER AFTER SUBSIDIARY IMPRISONMENT OF THE EMPLOYEE.—Where a motorman was convicted for reckless imprudence and sentenced to indemnify the offended party, with subsidiary imprisonment in case of insolvency, but the latter was not able to collect the indemnity from said motorman and so began an action to obtain payment from the master, it is held that said action is enforceable under the provisions of this Article, the provisions of Art. 1903 of the Civil Code notwithstanding.[14]

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[12] Taken from the provisions of Art. 19 of the old Penal Code.
[13] Taken from the provisions of Art. 20 of the old Penal Code.
[14] The City of Manila vs. Manila Electric Company, 52 Phil. 586.

A certain helmsman was killed by one of the passengers of the boat while the former was in the performance of his duty. Held: That the shipowner was liable to the heirs of the deceased to the extent fixed by said act irrespective of the circumstance that the killer was already sentenced to indemnify the same heirs.[15]

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[15] Nava vs. Ynchausti & Co., 57 Phil. 751.

CHAPTER TWO

WHAT CIVIL LIABILITY INCLUDES

Art. 104. WHAT IS INCLUDED IN CIVIL LIABILITY.—The civil liability established in articles 100, 101, 102, and 103, of this Code includes:

1. Restitution;

2. Reparation of the damage caused;

3. Indemnification for consequential damages.[1]

The first remedy granted by law is **restitution** of the thing taken away; if restitution cannot be made, the law allows the offended party reparation.[2] In either case, indemnity for consequential damages may be given.

Before the enactment of this Code, the injured party in the crime of libel was entitled to recover from the offender not only the real and material damages which he might have suffered because of the libel but also damages to his feelings and reputation.

The provisions of Act No. 277 regarding libel were incorporated in Arts. 353 and 359 of this Code, and in prescribing in Art. 360 the action available of the offended party, nothing was said regarding the indemnity for damages to the feelings and reputation of the injured person. However, under the new Civil Code, moral damages may now be recovered.[3]

There are crimes which do not give rise to civil liability, among which may be mentioned contempt of persons in authority, seditious speeches, etc.

Art. 105. RESTITUTION—HOW MADE. — The restitution of the thing itself must be made whenever possible, with allowance for any deterioration or diminution of value as determined by the court.

The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him.

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[1] Taken from the provisions of Art. 119 of the old Penal Code.
[2] People vs. Mostasosa et al., G. R. No. L-5684, Jan. 22, 1954.
[3] Arts. 2217, 2219, New Civil Code.

This provision is not applicable in cases in which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery.[4]

Restitution is the ordinary remedy of the offended party in the crimes against property (robbery, theft, estafa, etc.). The provisions of this Article are based on the old maxim "**Ubicumque res sit pro domino suo clamat.**"[5]

Hence, pursuant to the provisions of this Article, any person deprived of his property by the execution of a crime is entitled to recover it although it is in possession of a third person who acquired it by legal means other than those expressly stated in Article 464 of the Civil Code.[6]

Article 559, (formerly Art. 464) of the Civil Code in part provides as follows:

> "The possession of personal property acquired in good faith is equivalent to a title thereto. Nevertheless one who has lost any movable or has been unlawfully deprived thereof, may recover it from any person in possession of the same.
>
> If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor."

Where the owner of personal property delivers it to another for the purpose of sale, fixing the price at which the sale is to be made, the fact that the latter sells it at a price lower than that fixed does not prevent the passing of title to the purchaser, and the property cannot be recovered by the previous owner.[7]

In case of theft of a ring, the offense was duly proven but the offender was not identified. The defendant was therefore acquitted, and it was ordered that the ring be returned to its owner, who was not a party to the proceeding.[8]

Art. 106. REPARATION—HOW MADE. — The court shall determine the amount of damage, taking into consideration the price of the thing, whenever pos-

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[4] Same as Art. 128 of the old Penal Code.
[5] An object or thing calls for its master wherever it is found.
[6] Varela vs. Finnick, 9 Phil. 482.
[7] U. S. vs. Torres, 11 Phil. 606.
[8] People and Concepcion vs. Alejano, 54 Phil. 987.

sible, and its special sentimental value to the injured party, and reparation shall be made accordingly.[9]

This is the remedy ordinarily granted to the victim of a crime when, among other things, he also suffers injury to his property. For example, in case of robbery, it is necessary not only to substitute with another the thing stolen and not recovered but also to repair the material damage caused by the offender in breaking doors, wardrobes, etc. The amount of the reparation shall be determined by the court after hearing competent evidence with regard thereto.

The civil damages which may be recovered in a criminal action are limited to consequential damages caused by, and flowing from, the commission of the crime of which the accused is convicted in that action. For example, if a person was convicted of the crime of estafa for not having returned a bicycle which he had rented at the rate of ₱1.50 a day, the court may only impose as indemnity or reparation the value of the bicycle, but cannot further order him to pay the rents of said bicycle corresponding to the days during which the owner of the same was deprived of its use. The indebtedness on account of the unpaid hire of the bicycle arose under the contract of hire and did not result from the commission of the crime of which the accused was convicted. The indebtedness is recoverable in a civil action and not in a criminal action charging estafa of the bicycle.[10]

Art. 107. INDEMNIFICATION — WHAT IS INCLUDED.—Indemnification for consequential damages shall include not only those caused the injured party, but also those suffered by his family or by a third person by reason of the crime.[11]

The value of an insurance policy abstracted in the course of a robbery should not be included in the indemnity which the defendant must pay to the injured party, because such policy may be replaced and its value recovered by the beneficiary at maturity.[12]

Indemnity is ordinarily the remedy granted to the victims of crimes against persons. It has for its purpose to indemnify the injured party for the damage suffered by him and the loss

[9] Same as Art. 131 of the old Penal Code.
[10] U. S. vs. Dionisio, 35 Phil. 141.
[11] Same as Art. 122 of the old Penal Code.
[12] People vs. Gonzales, 56 Phil. 253.

of profit which he should have earned had it not been for the injurious act. For example, in physical injuries, the injured party is entitled to be paid for whatever he spent for the treatment of his wounds, doctor's fees, and for medicine, and furthermore, to his salary or wages unearned by him because of his inability to work due to the injuries received by him, the damages sustained by him because of the loss of a limb or the lessening of his earning capacity, etc.

Art. 108. OBLIGATION TO MAKE RESTORATION, REPARATION FOR DAMAGES, OR INDEMNIFICATION FOR CONSEQUENTIAL DAMAGES AND ACTION TO DEMAND THE SAME—UPON WHOM IT DEVOLVES.—The obligation to make restoration or reparation for damages and indemnification for consequential damages devolves upon the heirs of the person liable.

The action to demand restoration, reparation, and indemnification likewise descends to the heirs of the person injured.[13]

If in accordance with Art. 659 (now Art. 776) of the Civil Code, the "inheritance" includes all the property and the obligations of a person which are not extinguished by his death, it follows that civil liability arising from the commission of a crime is transmissible and is in fact transmitted to the heirs of the offender.

There are two ways of making effective the obligation imposed by the article which we are now discussing, depending upon whether the obligation is liquidated or is about to be liquidated.

If it is liquidated, if the offender before his death was condemned to restitution, reparation or indemnification provided in this Article, the offended party may make effective his claim by following the procedure provided for in Rule 87 of the Rules of Court by filing a copy of the judgment of conviction against the deceased with the Court taking cognizance of testate or intestate proceedings.

If the death of the offender took place before any final judgment of conviction was rendered against him, the action for the restitution, reparation, or indemnification must necessarily be

[13] Same as Art. 123 of the old Penal Code.

dismissed, in accordance with the provisions of Art. 89, par. 1, of this Code.

Art. 109. SHARE OF EACH PERSON CIVILLY LIABLE.—If there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond.[14]

Let us suppose a case of homicide committed by A and B, wherein A is the principal and B the accomplice. Both are sentenced to pay an indemnity of ₱1,000 to the heirs of the deceased. By the provisions of this Article, the court is empowered to determine the amount for which each must answer, taking into account not only the degree of liability of each but also the financial condition of the offenders.

Art. 110. SEVERAL AND SUBSIDIARY LIABILITY OF PRINCIPALS, ACCOMPLICES, AND ACCESSORIES OF A FELONY—PREFERENCE IN PAYMENT.—Notwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally (in solidum) **among themselves for their quotas, and subsidiarily for those of the other persons liable.**

The subsidiary liability shall be enforced, first against the property of the principals; next, against that of the accomplices, and, lastly, against that of the accessories.

Whenever the liability in solidum **or the subsidiary liability has been enforced, the person by whom payment has been made shall have a right of action against the others for the amount of their respective shares.**[15]

Let us suppose, in the example given above, the court fixed at ₱600.00 the indemnity which A should pay as principal and ₱400.00 that which B should pay as accomplice. It appears, however, that A is insolvent, while B has property valued at ₱10,000.00. Pursuant to the provisions of this Article, B will have to pay not

[14] Taken entirely from the provisions of Art. 124 of the old Penal Code.
[15] Taken entirely from the provisions of Art. 125 of the old Penal Code.

only his share of ₱400.00 but also that of his co-accused A, amounting to ₱600.00.

The sole principal in the commission of the offense of homicide or murder is primarily liable for his own part of the indemnity and is subsidiarily liable for the portion adjudged against his accomplices, in case of their insolvency; while the several accomplices are jointly and severally liable for the portion adjudged against them and subsidiarily liable for the portion of their principal in case of his insolvency.[16]

Where three persons cooperated in the commission of a homicide, one as principal and the others as accomplices, the trial court should have determined the amount of indemnity for which the principal and accomplices should be respectively liable. In such case the individuals in either class (where there are more than one) are liable in solidum for the indemnity imposed upon those of the particular class and they are subsidiarily liable for the indemnity imposed upon the other class.[17]

In **U. S. vs. Domingo**, 37 Phil. 446, no distinction whatever was made between the liability of a principal and that of an accomplice.

Art. 111. OBLIGATION TO MAKE RESTITUTION IN CERTAIN CASES.—Any person who has participated gratuitously in the proceeds of a felony shall be bound to make restitution in an amount equivalent to the extent of such participation.[18]

This Article has reference to a case of an innocent person who has participated in the proceeds of a felony thru the liberality of the offender. Let us suppose that A after having stolen a diamond ring gives it to B who, not knowing the illegal origin of the same, accepts it. Later B sells the ring for ₱500.00 to a foreigner, who immediately leaves the country. As can be seen, the return of the ring cannot be ordered. The remedy available to the offended party is to obtain from the offender the reparation or indemnity equivalent to the value of the ring. In case A, who committed the robbery, is insolvent, B shall be subsidiarily liable in a sum not exceeding ₱500.00 which is his gratuitous share in the commission of the crime.

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[16] People vs. Bantagan, 54 Phil. 834.
[17] People vs. Cortes, 55 Phil. 143.
[18] Taken entirely from Art. 126 of the old Penal Code.

CHAPTER THREE

EXTINCTION AND SURVIVAL OF CIVIL LIABILITY

Art. 112. EXTINCTION OF CIVIL LIABILITY.—Civil liability established in articles 100, 101, 102, and 103 of this Code shall be extinguished in the same manner as other obligations, in accordance with the provisions of the Civil Law.[1]

According to the new Civil Code, obligations are extinguished by their payment or fulfillment; by the loss of the thing due; by the remission of the debt; by the merger of the rights of the creditor and debtor; by compensation; by novation (Art. 1231), and likewise by prescription (Art. 1106).

Art. 113. OBLIGATION TO SATISFY CIVIL LIABILITY.—Except in case of extinction of his civil liability as provided in the next preceding article, the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact that he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon, commutation of sentence, or any other reason.[2]

In accordance with the provisions of Art. 52 of the old Penal Code, the fact that the convict had served subsidiary imprisonment because of insolvency, would not relieve him of the obligation of repairing the injury caused, nor from paying the indemnity for damages if his financial condition improved.

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[1] Based on the provisions of Art. 133 of the old Penal Code.
[2] Taken from the provisions of Art. 78 of the proposed Correctional Code of 1916.

BOOK TWO

CRIMES AND PENALTIES

TITLE ONE

Crimes Against National Security and the Law of Nations

CHAPTER ONE

CRIMES AGAINST NATIONAL SECURITY

SECTION ONE

Treason and Espionage

Art. 114. TREASON. — Any person who, owing allegiance to the [United States or the] Government of the Philippines, not being a foreigner, levies war against them or adheres to their enemies, giving them aid or comfort within the Philippines or elsewhere, shall be punished by reclusión temporal **to death, and shall pay a fine not to exceed 20,000 pesos.**

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

Likewise, any alien, residing in the Philippines, who commits acts of treason as defined in paragraph 1 of this article shall be punished by prisión mayor **to death and shall pay a fine not to exceed 20,000 pesos.**

Reclusión Temporal to death.
Minimum: From 12 years and I day to 20 years.
Medium: Reclusión Perpetua.
Maximum: Death.
Prisión Mayor to death.
Minimum: From 6 years and 1 day to 20 years.
Medium: Reclusión Perpetua.
Maximum: Death.

1. REQUISITES OF THE OFFENSE.—There are three requisites for treason to exist: (a) That the offender should be a national, or at least, a person owing allegiance to the Government of the Philippines; (b) That he should have levied war against the Government; or (c) That he should adhere to the enemy, giving them aid or comfort.

On May 31, 1945, the Commonwealth Government enlarged the scope of treason so as to include **foreigners** who would levy war against the Philippine government or furnish aid or comfort to the enemy.

2. PUNISHMENT FOR TREASON.—The punishment in case of the national who commits treason is from 12 years and one day to death. If the offender is a foreigner, the penalty is from 6 years and one day to death.

3. LEGAL ANTECEDENTS:—This Article is a merger of Sections 1 and 9 of Act 292, which in turn, were reproduced from Section 3 of Art. III, of the Constitution of the United States, which reads as follows:—

> "Treason against the United States, shall consist only in levying war against them, or in adhering to their enemy, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

4. MAY FOREIGNERS BE LIABLE FOR TREASON?—The last paragraph of this Article is an amendment introduced by Executive Order No. 44 dated May 31, 1945 to forestall the pernicious activities of several alien residents of the Philippines who, betraying the hospitality of the country, have indulged in traitorous collaboration with the enemy.

Allegiance to the sovereignty of the country being the essential ingredient of the crime, it would be interesting to ascertain whether a foreigner could ever be punished for treason against the Philippines.

In **U. S. vs. Wong Kim Ark,** 169 U. S. 649, the United States Supreme Court held that:—"Every citizen or subject of another country, while domiciled here (in the United States), is within the allegiance and protection, and consequently subject to the jurisdiction of the United States. His allegiance to the United States is direct and immediate, and, although but local and temporary, continuing only as long as he remains within our territory, is yet, in the word of Lord Coke, in Calvins Case, 7 Ret. 6, 'strong enough to make a natural subject, for if he hath issue here, that issue is a natural born subject'; and his child, as said by Mr.

Binney in his essay before quoted, 'if born in the country, is as much a citizen as the natural born child of a citizen, and by operation of the same principle.' It can hardly be denied that an alien is completely subject to the **political jurisdiction of the country** in which he resides—seeing that, as said by Mr. Webster, when Secretary of State, in his report to the President on Thraser's case in 1851, and since repeated by this court, 'independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing of any former allegiance, it is well known that by the public law, an alien or a stranger born for so long a time as he continues within the dominions of a foreign government, **owes obedience to the laws** of that government, and may be **punished for treason,** or other crimes, as if native born subject might be, unless his case is varied with some treaty stipulation'."

It is, therefore, our confirmed belief that foreigners who commit acts of treasons under our laws may be lawfully convicted as provided in the above amendment. See People vs. Marcaida, 450 O. G. 1294.

5. ELEMENTS OF THE OFFENSE:—They are (a) allegiance to the Government of the Philippines; (b) levying war against it or (c) adhering to its enemies, giving them aid or comfort.

(a) Allegiance to the Government of the Philippines.

Prior to the proclamation of the Philippine Independence on July 4, 1946, all citizens of the Philippines owed dual allegiance to the United States and to the Government of the Philippines.[1]

Since the element of allegiance to the United States or to the Government of the Philippines is merely alternative, the withdrawal of the sovereignty of the United States from the Philippines is nil or of no effect upon existing or pending treason cases as of the date of the proclamation of Philippine Independence, since the alternative element of allegiance to the Government of the Philippines still subsists.

Nature and effect of allegiance.

Allegiance has been defined to be, x x x "The obligation of fidelity and obedience which the individual owes to the government or the sovereign under which he lives, in return for the protection he receives; that duty which is reciprocal to the right of protection

1. Sec. 2, (A) par. 1 of the Tydings-McDuffy Act, commonly known as the Philippine Independence Act.

arising from political relation between the Government and the citizen."[2]

Or, as in the language of Blackstone:

> "Natural allegiance is perpetual, and for this reason, evidently founded on the nature of government: that allegiance is a debt due from the subject, upon an implied contract with the prince, that **so long as the one affords** protection, so long will the other demean himself faithfully. x x x".[3]

Suspended allegiance.

The above-quoted authorities on the nature and effect of allegiance has given rise to the interesting question of whether or not the United States and the Commonwealth Government, which could not afford any protection to the Filipino nationals in the Philippines during the Japanese Occupation, could lawfully demanded from them the full measure of fidelity and obedience, so as to exact criminal responsibility for treason upon those who cooperated one way or another with the enemy during the military occupation of the Philippines.

The answer seems to be in the negative if we have to rely on the well known **Castine Case.** As will be remembered the State of Maine, U. S. A., was reduced by force by the British Army and remained in her exclusive possession and military control from Sept. 1, 1814 until the Treaty of Peace in February 1815. The Supreme Court of the United States, in deciding the question of the validity of the official acts done by the British officials during the occupation said, among others, the following:—

> "By the conquest and military occupation of Castine, the enemy acquired that firm possession which enabled him to exercise the fullest right of sovereignty over the place. The sovereignty of the United States over the territory was of course suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained or submitted to the conqueror. By the surrender, the inhabitants pass under a temporary allegiance to the British Government, and were bound by such laws and such only as they choose to recognize and imposed. From the nature of the case, no such laws could be obligatory upon them, for where there is no protection or allegiance or sovereignty, there can be no claim of obe-

[2] 21 C. J. 1150.
[3] Per Spencer, C. J. in Jackson vs. Goodbell, 20 Johns (N. J. 1891).

dience. x x x The subsequent evacuation by the enemy, and the resumption of authority by the United States, did not and could not change character of the previous transactions. The doctrine respecting the **jus postliminii** is wholly inapplicable to the case.[4]

The above doctrine, however, is vigorously contested by the Solicitor General in several treason cases now pending adjudication before the Supreme Court. Among them is People vs. Carlos, G. R. L-239.

The Attorney General contends that, **first**, the doctrine in Castine Case, **supra**, cannot any longer prevail after the approval of the Regulations for the Conduct of War on Land at the Hague Convention in 1907, wherein restrictions are imposed upon military occupants which are designed to protect the **individuals' allegiance** to the **de jure** sovereign;[5] **second**, that the doctrine in the Castine Case can only be applied, if at all, to cases where the territory invaded has been **conquered** more or less **permanently** by the enemy; and **thirdly**, mere military occupation did not confer upon the occupation forces of Japan the right to demand temporary allegiance upon the inhabitants of the Philippines.

The Supreme Court has not as yet said the last word on this ticklish question which if decided in the affirmative, would mean wholesale exoneration of all those who lent cooperation with Japan whether willingly or under compulsion.

Unless otherwise decided by the Court of last resort in the Philippines, the safe rule is that no criminal liability can be exacted from a Filipino citizen for lending service or cooperation to the enemy so long as it can be proven that such service or cooperation was not voluntary or proffered to the enemy: that is to say, so long as it can be proven that the accused lent his service or cooperation in obedience to the command of the army of occupation.[6]

(b) **Levying War**

On page 915, Vol. 63 of Corpus Juris, we read:—

"The definition of treason in the Federal Constitution having been borrowed from an English statute, the expression 'levying war' contained therein has been interpreted and applied in the sense in which it was employed in such statute. So interpreted, it means that a mere conspiracy to overthrow

[4] Thorington vs. Smity, 8 Wall (U. S.) 1, 11, 19 L. ed. 361. See also U. S. vs. Rice, for Wheat. (U. S.) 246, 253, 4 L. ed. 542, 33 C. J. 413.)
[5] Art. 23, 44, 45 and 52.
[6] 28 C. J., 751; Stockton Outline on International Law p. 90; Moore's Digest Vol. 1, p. 41.

the Government by force is not sufficient to constitute the crime of treason by levying war, but there must be an actual assemblage of men for the purpose of executing a treasonable design by force."

In the early case of **United States vs. Lagnason,** 3 Phil. 473, the Supreme Court held that:—

> "An organized attempt on the part of persons joined together in a band to overthrow and destroy the established government is a **levying of war** against that government and constitutes treason.
>
> It is not necessary that there be any formal declaration of the existence of a state of war or that those attempting to overthrow the government by force of arm should have the apparent power to succeed in their design in whole or in part to justify the conclusion that those engaged in such an attempt are levying war and therefore guilty of treason."

In one case the defendant accepted from one self-styled "Secretary of War" of the Katipunan Society as Captain of the "Filipino Army", but never made any attempt to act as such: **Held,** that the mere acceptance of the commission by the defendant, nothing else being done, was not an overt act of treason within the meaning of the law.[7]

The testimony of one witness to a confession to the effect that the defendant had joined the insurrectionary forces, and that there had been found upon his person a commission making him a lieutenant of such forces, is insufficient to support a conviction for the crime of treason, as such conviction can be secured only upon testimony of at least two witnesses to the same overt act of treason.[8]

(c) **Adherence to the enemy** is both comprehensive and indeterminate. It may be predicated on intellectual or emotional sympathy with the foe, or merely lack of zeal in the cause of one's own country. This is not however the kind of disloyalty contemplated in the law of treason. Latest decision has restricted it to cases where actual conspiracy, communion of idea with the enemy, existed.[9]

Aid and **comfort** was defined by Lord Reading in the Casement trial comprehensively, as it should be and yet probably with as much precision as the nature of the matter will permit: "x x x an

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[7] U. S. vs. de los Reyes, 3 Phil. 349.
[8] U. S. vs. Magtibay, 2 Phil. 703.
[9] Cramer vs. U. S., 65 S. Ct. 918. April 23, 1945.

act which strengthens or tends to strengthen the enemies of the King in the conduct of a war against the King, that is in law the giving of aid and comfort" and "an act which weakens or tends to weaken the power of the King and of the country to resist or to attack the enemies of the King and the country x x x is x x x giving of aid and comfort." Lord Reading explained it, as we think of a way in which "aid and comfort" can be "given" to an enemy except by some kind of action. Its very nature partakes of a deed or physical activity as opposed to a mental operation.[10]

Adherence and aid or comfort, must concur together. Adherence alone, without giving aid or comfort to the enemy, is not sufficient to constitute the essential element of the crime of treason. And conversely, aid and comfort alone, without adherence, cannot constitute either such element. A citizen intellectually or emotionally may favor the enemy and harbor sympathies or convictions disloyal to his country's policy or interest, but so long as he commits no act of aid or comfort to the enemy, there is no treason. On the other hand, a citizen may take actions which do aid and comfort to the enemy—such as making a speech critical of the government or opposing such measures, profiteering, striking in defense plants or essential works, and the hundreds of other things which impair the cohesion or strength of his country—but if there is no adherence to the enemy, if there is no **intent** to betray, there is no treason. **Adherence** in this respect, is synonymous to traitorous intention, to understanding or conspiracy with the enemy.[11]

The facts upon which the above ruling was predicated were as follows: Cramer, a German by birth, was naturalized as American citizen in 1936. Prosecution resulted from his association with two German saboteurs, who in June 1942 landed on American shores from enemy submarines to disrupt industries in the United States. One of these, spared from execution, appeared as a Government witness in the trial against Cramer. He testified that Warner Thiel and Edward Kerling were members of that sabotage crew, detailed their plot, and described their preparation for its consummation.

There was no evidence that Cramer had foreknowledge that the saboteurs were coming to America or that he came into association with them by pre-arrangement. Cramer, however had known intimately the saboteur Warner Thiel while the latter lived in the United States. They had worked together, roomed

[10] Cramer vs. U. S., 65 S. Ct. 918, April 23, 1945. See People vs. Labra, 81 Phil. 377; People vs. Abarintos, 81 Phil. 238; People vs. Espiritu, 81 Phil. 235.
[11] Cramer vs. U. S., **supra.**

together and jointly had ventured in a small and luckless delicatessen enterprise. Testifying on the witness stand, Cramer stated that in response to a cryptic note left under his door, which did not mention Thiel, he went to the Grand Central Station. There Thiel appeared. Cramer had supposed that Thiel was in Germany, knowing that he had left the United States shortly before the war to go there. Together they went to public places and had some drinks. Cramer denied that Thiel revealed his mission of sabotage. Cramer said to Thiel that he must have come to America by submarine, but Thiel refused to confirm it although his attitude increased Cramer's suspicion. Thiel asked about a girl who was a mutual acquaintance and whom Thiel had engaged to marry previous to his going to Germany. Cramer knew where she was, and offered to and did write to her to come to New York without disclosing in the letter that Thiel had arrived. Thiel said that he had in his possession about $3,600 but did not disclose that it was provided by the German government, saying only that one could get money in Germany if he had the right connections. Thiel owed Cramer an old debt of $200. He gave Cramer his money belt containing some $3,600, from which Cramer was to be paid. Cramer agreed to and did place the rest in his own safe-deposit box, except a sum which he kept in his room in case Thiel should want it quickly. **Held:** Above facts insufficient to support a conviction for treason.[12]

Reasoning out its decision the United States Supreme Court said among others:—"By direct testimony of two or more agents, it was established that Cramer met Thiel and Kerling on the occasions and at the places charged and that they drank together and engaged long and earnestly in conversation. This is the sum of the overt acts as established by the testimony of two witnesses. There is no two-witness proof of what they said nor in what language they conversed. There is no showing that Cramer gave them any information whatever of value to their mission or indeed, that he had any to give. No effort of secrecy is shown, for they met in public places. Cramer furnished them no shelter, nothing that can be called sustenance or supplies, and there is no evidence that he gave them encouragement or counsel, or even paid for their drinks."

x x x x x x

"Questions of intent in a treason case are even more complicated than in most criminal cases because of the peculiarity of the two different elements which together make the offense. Of course the overt acts of aid and comfort must be intentional as

[12] Cramer vs. U. S., **supra.**

distinguished from merely negligent or undesigned act. Intent in that limited sense is not in issue here. But to make treason, the defendant not only must intend the act, but he must intend to betray his country by means of the act x x x."

x x x x x x

"Bearing in mind that the constitutional requirement in effect is one of direct rather than circumstantial evidence, we must give it a reasonable effect in the light of its purpose both to preserve the offense and to protect citizens from its abuse. What is designed in the mind of an accused never is susceptible of proof by direct testimony."

"If we were to hold that the disloyal and treacherous intention must be proved by the direct testimony of two witnesses, it would be to hold what is never probable. It seems obvious that adherence to the enemy, in the sense of a disloyal state of mind, cannot be, and is not required to be, proved by the deposition of two witnesses."

Treasonable adherence to the enemy.

The prosecution of the Japanese spies and collaborators has given opportunity to the Supreme Court for laying down a doctrine on treasonable adherence to the enemy.

In the case of People vs. Prieto decided in January 29, 1948, 45 Off. Gaz. 3329, the accused, besides being a Japanese spy, took part in the execution of some of the guerrilla suspects and in the infliction of physical injuries on others. Upon conviction by the People's Court of complex crime of treason with murder, the Supreme Court modified the judgment and held that murder and physical injuries were inherent in the crime of treason characterized by the giving of aid and comfort to the enemy. The Court, speaking through Justice Tuason, said, among others, "In the nature of things the giving of aid and comfort can only be accomplished by some kind of act. Its very nature partakes of a deed or physical activity as opposed to a mental operation (Cramer vs. U. S., **ante.**) *This deed or physical activity may be, and* often is, in itself a criminal offense under another penal statute or provision. Even so, when the deed is charged as an element of treason it becomes identified with the latter crime and cannot be the subject of a separate punishment, or used in combination with treason to increase the penalty as Article 48 of the Revised Penal Code provides. Just as one can not be punished for possessing opium in a prosecution for smoking the identical drug, and a robber cannot be held guilty of coercion or trespass to a dwelling in a prosecution for robbery, because possession of opium and

force and trespass are inherent in opium smoking and in robbery respectively, so may not a defendant be made liable for murder as a separate crime or in conjunction with another offense where, as in this case, it is averred as a constitutive ingredient of treason. x x x Where murder or physical injuries are charged as overt acts of treason x x x they cannot be regarded separately under their general denomination."

Same doctrine was repeated in the case of People vs. Roble, 46 Off. Gaz., 4207, and People vs. Vilo, 46 Off. Gaz., 2517.

With all due respect, we believe the above doctrine of the Supreme Court is not in accord with the principle of penal sciences and established criminal jurisprudence. A Japanese spy who, besides giving information to the enemy, takes part in the execution and torture of the Filipino patriots commits two distinct and separate crimes, springing up from two distinct and different criminal resolutions and aimed at also distinct and different unlawful purposes. What Article 114 punishes as treason is the giving of aid or comfort to the enemy by a Filipino national; and this normative element of the crime is fully satisfied or complete the very moment the defendants in cases above cited have joined the service of the enemy as spies. The joining in the Japanese Army as an informer or spy was the product of one criminal resolution. The act was in itself sufficient to constitute the crime of treason. But when the informers or spies step yonder, and murder or torture their victims, another criminal resolution was brewed, aimed at a different unlawful purpose, namely, the death of their victims.

The presence of different criminal resolutions and distinct unlawful aims makes the cases of Prieto, Roble and Vilo not a single offense, neither a complex crime, but plural crime of real or material type which, under the provisions of Article 70 of the Penal Code, must be dealt with and punished separately.

> "The courts have experienced some difficulty in specifying the precise acts which constitute treason against the United States by adhering to their enemies, giving them aid and comfort", but have construed the expression clearly to include such acts as furnishing the enemy with arms, troops, supplies, information, or means of transportation, and to include in a general way any act indicating disloyalty, and sympathy with the enemy, and which is directly in furtherance of their hostile designs, regardless of whether the motive prompting the act is merely sympathy or pecuniary gain. It seems that it is not essential, however, that the effort to aid be successful, provided overt acts are done which, if successful, would advance the interests of the ene-

my, but, under a statute which makes the persuasion of another to enlist in the army of the enemy, to constitute treason, the actual enlistment of the person persuaded is necessary. An act which weakens, or tends to weaken the power of the government to resist or attack its enemies, is giving them aid and comfort. To be treason, the aid and comfort given the enemy must be after the declaration of war between the countries, and the term "enemies" applies only to the subjects of a foreign power in a state of open hostility with this country, and it does not embrace rebels in insurrection against their own country. Both adherence and giving aid to the enemy are necessary, and to favor or support the enemy is insufficient. The intent in giving aid and comfort to the enemies must be to render such assistance to an enemy of the government, and not merely to assist another as an individual. "Adhering" to the enemies, under the British statute, includes giving aid and comfort outside the territorial limits of the country, as well as such acts done within the territorial limits of the jurisdiction."[13]

6. SCOPE OF THE TWO-WITNESS REQUIREMENT.—In the case of U. S. vs. Cramer, **supra**, it was decided once and for all that the subject matter of the two-witness testimony must refer to one and the same overt act of treason. Explaining the **raison d'etre** of the rule, the court said, among others:—"The very 'minimum function' that an overt act must perform in a treason prosecution is that it show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy. Every act, movement, deed, and word of the defendant charged, to constitute treason, must be **supported by the testimony of two witnesses.** The two-witness principle is to interdict imputation of **incriminating** acts to the accused by circumstantial evidence or by the testimony of a single witness. The prosecution cannot rely on evidence which does not meet the constitutional test for overt acts to create any inference that the accused did other acts or did something more than was shown in the overt act, in order to make a giving of aid and comfort to the enemy. The words of the Constitution were chosen not to make it hard to prove merely routine and everyday acts but to make the proof of acts that convict of treason as sure as trial processes may allow. When the prosecution's case is thus established, the Constitution does not prevent the presentation of corroborative or cumulative evidence of any admissible character either to strengthen direct case or to rebutt the testimony or inferences

[13] Vol. 63, 816 C. J.

on behalf of the defendant. The government is not prevented from making a strong case; it is denied a conviction on a weak one."

(a) **Duress:**—A person accused of treason may naturally avail himself of any of the exempting circumstances enumerated in Art. 13, such as performance of a lawful duty (par. 4), compulsion or irresistible force (par. 5) or uncontrollable fear (par. 6).

But, duress in treason cases is not a defense if not proved to be irresistible.[14]

(a) **Obedience to *de facto* Government not treason.**—In addition to the defense of duress and irresistible fear, lawful obedience to a **de facto** Government, and that of having acted under coercion are also good defenses.

The Philippine Executive Commission, as well as the puppet Republic established by the Japanese occupation army in the Philippines had all the characteristics of a **de facto** Government.[15]

Obedience, and even adherence to a **de facto** Government against the government **de jure** does not create criminal responsibility.[16]

8. May a traitor who commits other common offenses besides treason be sentenced for the former?

This very important question was decided in the negative by the Supreme Court in the case of People vs. Prieto, 45 Off. Gaz., p. 3329.

Prieto was prosecuted for the complex crime of treason with murder, under the provisions of Art. 114 of the Penal Code, for not only having acted as a spy for the Japanese Army during the occupation, but also for having taken part in the execution of some members of the guerrilla or underground resistance.

The People's Court convicted the accused of the crimes as charged in the complaint and sentenced him to death. On appeal, however, the Supreme Court, speaking through Justice Tuason, held that Prieto could not be sentenced for the complex crime of treason with murder, reasoning out, among others, that —

> "Under the Philippine Treason Law and under the United States Constitution defining treason, after which the former was patterned, there must concur both adherence to the enemy and giving him aid and comfort. One without the other does not make treason.
>
> "In the nature of things, the giving of aid and comfort can only be accomplished by some kind of action. Its very

[14] People vs. Bogalawis, 44 O. G. 2655 (1948).
[15] Go Kim Chan vs. Valdez et al., 75 Phil. 113.
[16] 28 C. J. 751; Stockton Outline on International Law p. 90; Moore's Digest Fo. I p. 41; Wharton on Criminal Law, Vol. III par. 2307 & 2308.

nature partakes of a deed or physical activity as opposed to a mental operation. This deed or physical activity may be, and often is, in itself a criminal offense under another penal statute or provision. Even so, when the deed is charged as an element of treason, it becomes identified with the latter crime and cannot be the subject of a separate punishment or used in combination with treason to increase the penalty as Article 48 of the Penal Code provides."

The Supreme Court was certainly right when it held that the crime committed by Prieto was not a complex one, but in our opinion it committed a grave error when it held that murder was absorbed by, or inherent in, the crime of treason.

The crime of treason is well defined in Article 114. It is committed by any person who, owing allegiance to the Government of the Philippines, should levy war against them or adhere to their enemy, giving them aid or comfort.

While we have no quarrel with the writer of the above-quoted decision in the proposition that the giving of **aid** or **comfort** to the enemy necessarily involves bodily movement or physical action, and not merely a mental operation, still we maintain that such aid or comfort should and must be limited to acts which would facilitate the design of the enemy, such as for instance, the giving out of news about the movement of the resistance troops, the supplying of food and war materials, etc. But when a renegade Filipino, besides acting as informer or spy to the enemy, harbors another criminal intention, i. e., of murdering somebody, and resolves to carry out such intention, by actually killing or murdering someone, the actions of the culprit, involving as they do, two different criminal intentions and two different criminal resolutions, each one of which entailing different criminal responsibility and penalty, we would be doing violence to established principles of criminal jurisprudence and penal science if we hold that only one, and not two separate crimes, has been committed. All the normative and subjective elements of the crime of treason were present the very moment a person, owing allegiance to the Republic, consented to act as informer or spy of the enemy. If, in addition to being a spy, the culprit harbors another criminal resolution and commits murder, sound and well settled principles of criminal jurisprudence and penal sciences demand that the subject be dealt with and prosecuted for treason and for as many other common offenses as were committed by him.

Art. 115. CONSPIRACY AND PROPOSAL TO COMMIT TREASON—PENALTY.—The conspiracy or

proposal to commit the crime of treason shall be punished, respectively, by prisión mayor **and a fine not exceeding 10,000 pesos, and by** prisión correccional **and a fine not exceeding 5,000 pesos.**[17]

Prisión mayor:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.
Prisión correccional:
Minimum: From 6 months and 1 day to 2 years and 4 months;
Medium: From 2 years 4 months and 1 day to 4 years and 2 months.

Maximum: From 4 years, 2 months and 1 day to 6 years.

Proof that the defendants met together and made complaints showing discontent with the Government on account of real or fancied evils is not sufficient to sustain a conviction for the crime of conspiracy to overthrow the Government.[18]

The discovery of a document purporting to be a commission appointing one charged with "conspiracy" as an officer of the armed forces, which it is alleged the conspirators were organizing, is not competent evidence against him where it is not shown that he received or accepted such commission.[19]

A complaint charged that Acabado gave shelter to Artemio Ricarte, while he was armed with a revolver, upon his return from Hongkong; that he stated to one Manuel Castino that Ricarte had written to the brigand leaders Felizardo and Montalan; and that he failed to notify the authorities of Ricarte's presence in town before the latter left, although it was publicly known that efforts were being made by the police to arrest Ricarte. He did notify the police, however, after Ricarte's departure.

These facts were held not sufficient to show that the defendant was implicated in any plans which Ricarte may have had. Much less did they constitute the crime defined and punished in section 4 of Act 292 of the Philippine Commission, which provides "if two or more persons conspire to overthrow, put down, or destroy by force the Government," etc. None of the facts hereinbefore set out constituted such conspiracy as is penalized in the above-mentioned act.[20]

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[17] Based on the provisions of section 4 of Act 292.
[18] U. S. vs. Figueras et al., 2 Phil. 491.
[19] U. S. vs. Villariño et al., 5 Phil. 697.
[20] U. S. vs. Asuncion et al., 6 Phil. 9.

The fact that one accused of conspiracy to overthrow the Government has actually and voluntarily accepted appointment by the conspirators as an officer of armed forces, raised or to be raised for the furtherance of the designs of the conspirators, may be taken into consideration as evidence of the criminal connection of the accused with the conspiracy.[21]

In another case, under the facts stated in the opinion, it was held that the appellants were properly convicted of the crime of violating section 4 of Act No. 292, relating to conspiracy to destroy the Government of the United States in the Philippines.[22]

Art. 116. MISPRISION OF TREASON. — Every person owing allegiance to the [United States or the] Government of the Philippines, without being a foreigner, and having knowledge of any conspiracy against them, who conceals or does not disclose and make known the same, as soon as possible to the governor or fiscal of the province, or the mayor or fiscal of the city in which he resides, as the case may be, shall be punished as an accessory to the crime of treason.[23]

Prisión correccional:
Minimum: 6 months and 1 day to 2 years and 4 months;
Medium: 2 years, 4 months and 1 day to 4 years and 2 months;

Maximum: 4 years, 2 months and 1 day to 6 years.

Under the general rule laid down by Art. 19, of this Code, a person who keeps silent as to what he knows about the perpetration of an offense or crime is not criminally liable, neither as a principal nor as accomplice, nor as an accessory after the fact.[24]

However, in view of the grave nature of the crime of treason, the law makes it a duty of all Filipino citizens, on threat of penalty, to report to the proper authority any information they may have about treason or conspiracy to commit treason.

Art. 117. ESPIONAGE.—The penalty of prisión correccional **shall be inflicted upon any person who:**

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[21] U. S. vs. Bautista et al., 6 Phil. 581.
[22] U. S. vs. Cabola et al., 16 Phil. 657; see also U. S. vs. Vergara, **supra.**
[23] Similar to the provisions of section 2 of Act No. 292.
[24] U. S. vs. Caballeros, 4 Phil. 350.

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

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

The penalty next higher in degree shall be imposed if the offender be a public officer or employee.[25]

Prisión correccional:

Minimum: From 6 months and 1 day to 2 years and 4 months;

Medium: From 2 years, 4 months and 1 day to 4 years and 2 months;

Maximum: From 4 years, 2 months and 1 day to 6 years.

Under the first paragraph of this Article it is not necessary that the offender should obtain the information, plans, photographs, etc., for the offense to be consummated; it is enough that he should have entered the places mentioned herein, without any authority therefor, for the **purpose** of obtaining such information, etc.

SECTION TWO

Provoking war and disloyalty in case of war

Art. 118. INCITING TO WAR OR GIVING MOTIVES FOR REPRISALS. — The penalty of reclusión temporal **shall be imposed upon any public officer or employee, and that of** prisión mayor **upon any private individual, who, by unlawful or unauthorized acts provokes or gives occasion for a war involving or liable to involve the Philippines or exposes Filipino citizens to reprisals on their persons or property.**[26]

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[25] Same as Article 83 of the proposed Correctional Code of 1916. See also Commonwealth Act No. 616 (An Act to Punish Espionage and other offenses against national security.)

[26] Similar to Art. 145 of the old Penal Code.

Reclusión temporal:
Minimum: 12 years and 1 day to 14 years and 8 months;
Medium: 14 years, 8 months and 1 day to 17 years and 4 months;
Maximum: 17 years, 4 months and 1 day to 20 years.

Art. 119. VIOLATION OF NEUTRALITY. — The penalty of prisión correccional **shall be inflicted upon anyone who, on the occasion of a war in which the Government is not involved, violates any regulation issued by competent authority for the purpose of enforcing neutrality.**[27]

Prisión mayor: See Art. 115.
Prisión correccional: See Art. 117.
In time of war it is customary among nations not involved in the conflict to declare its neutrality. Such declaration is done by the head of the State by means of a proclamation containing a set of rules. The present Article establishes penal sanction for any violation of such rules.

Art. 120. CORRESPONDENCE WITH HOSTILE COUNTRY.—Any person who, in time of war, shall have correspondence with an enemy country or territory occupied by enemy troops shall be punished:

1. **By** prisión correccional, **if the correspondence has been prohibited by the Government;**

2. **By** prisión mayor, **if such correspondence be carried on in ciphers or conventional signs; and**

3. **By** reclusión temporal, **if notice or information be given thereby which might be useful to the enemy. If the offender intended to aid the enemy by giving such notice or information he shall suffer the penalty of** reclusión temporal **to death.**[28]

Prisión correccional: See Art. 117.
Prisión mayor: See Art. 115.
Reclusión temporal: See Art. 118.

Art. 121. FLIGHT TO ENEMY'S COUNTRY.—

[27] Similar to Art. 85 of the proposed Correctional Code of 1916.
[28] Similar to Art. 149 of the Penal Code and Art. 86 of the proposed Correctional Code of 1916.

The penalty of arresto mayor **shall be inflicted upon any person who, owing allegiance to the Government, attempts to flee or go to an enemy country when prohibited by competent authority.**[29]

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months.

SECTION THREE

PIRACY AND MUTINY ON THE HIGH SEAS

Art. 122. PIRACY IN GENERAL AND MUTINY ON THE HIGH SEAS.—The penalty of reclusión temporal **shall be inflicted upon any person who, on the high seas, shall attack or seize a vessel or, not being a member of its complement nor a passenger, shall seize the whole or part of the cargo of said vessel, its equipment or personal belongings of its complement or passengers.**

The same penalty shall be inflicted in case of mutiny on the high seas.[30]

Reclusión temporal: See Art. 118.

DEFINITION AND NATURE OF PIRACY.—Piracy is robbery or forcible depredation on the high seas, without lawful authority and done **animo furandi** and in the spirit and intention of universal hostility. It is a crime not against any particular State but against all mankind. It may be punished in the competent tribunal of any country where the offender may be found or into which he may be carried. The jurisdiction of piracy, unlike all other crimes, has no territorial limits. It does not matter that the crime was committed within the jurisdictional 3-mile limit of a foreign State, "for those limits, though neutral to war, are not neutral to crimes" (**U. S. vs. Furlong,** 5 Wheat, 184).[31]

Piracy has two aspects: (1) as a violation of the common right of nations, it is punishable under the common law of nations by the seizure and condemnation of the vessel only in prize courts;

[29] Similar to the provisions of Art. 150 of the old Penal Code and Art. 87 of the proposed Correctional Code of 1916.
[30] Same as Art. 191 of the proposed Correctional Code of 1916.
[31] 48 C. J. 1206; People vs. Lol-lo et al., Phil. 19.

and (2) its criminal liability to punishment by the municipal law of the place where the offender is tried. Accordingly, the definitions of "piracy," aside from statutory piracy, fall naturally into two classes, according as the offense is viewed more especially as it affects the right of nations, or as amenable to criminal punishment under the municipal law. Piracy, by the common law, consists in the commission of robbery and depredation upon the high seas, which, if committed on shore, would amount to felony there.

DISTINGUISHED FROM OTHER OFFENSES.—Piracy may be distinguished from common robbery committed in the high seas, both in the manner of the execution of the crime and in the object. In the crime of piracy the offender must come from without, that is, must not be either a passenger or a member of the complement of the boat, and its object or purpose must be either to attack or get hold of the ship or its cargo. The absence of any of the above elements will make the forcible depredation committed in the high seas a common robbery.

MUTINY; WHAT IT IS.—As will be seen, Art. 122 places piracy and mutiny under the same footing as far as punishment is concerned.

Mutiny is the unlawful resistance to a superior officer, or the raising of commotions and disturbances on board of ship against the authority of its commander; or if in the army, in opposition to the authority of the officers.[32]

Art. 123. QUALIFIED PIRACY.—The penalty of reclusión temporal **to death shall be imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances:**

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

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

3. Whenever the crime is accompanied by murder, homicide, physical injuries, or rape.[33]

Reclusión temporal to death:
Minimum: Reclusión temporal;
Medium: Reclusión perpetua;
Maximum: Death

[32] Bouvier's Law Dic., Vol. 2, p. 2283, 1914 Ed.
[33] Same as Art. 154, pars. 1 and 4, of the old Penal Code, and Art. 92 of the proposed Correctional Code of 1916.

TITLE TWO

Crimes Against the Fundamental Laws of the State

CHAPTER ONE

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

SECTION ONE

ARBITRARY DETENTION AND EXPULSION

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

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

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

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

4. That of reclusión temporal, **if the detention shall have exceeded six months.**

The commission of a crime, or violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital, shall be considered legal grounds for the detention of any person.[1]

Arresto mayor in its maximum period to **prisión correccional** in its minimum period: See Art. 129.

[1] Similar to the provisions of Art. 200 of the old Penal Code.

Prisión correccional in its medium and maximum periods: See Art. 128.

Prisión mayor: See Art. 115.

Reclusión temporal: See Art. 118.

A peace officer can justify an arrest without warrant if there is reasonable ground for suspicion that a person has committed or is about to commit any crime or breach of the peace, and if he acts in good faith. Under such condition, even though the suspected person is later found to be innocent, the peace officer is not liable. The courts should not expect too much of an ordinary policeman. In one case, a policeman, acting under the order of his chief who desired to put an end to pilfering in a certain locality, patrolled this district, and about mid-night, seeing two persons in front of an uninhabited house entering an uninhabited **camarin,** arrested them without warrant. Although no crime had been committed, he was held not guilty of coercion or arbitrary detention.[2]

The following was a lawful arrest made under suspicious circumstances: Two persons, who turned out to be secret agents of the Bureau of Internal Revenue, were hiding in a corner at night in a market place. A woman saw these men acting in a suspicious way. When they saw her, they ran. Both men were arrested without warrant by the municipal police upon report of the woman. This was held to be justified or lawful arrest. The Supreme Court also held that municipal police officers in the Philippines have substantially the same powers as the police officers of the City of Manila, "in making arrests without warrant," and they "may pursue and arrest without warrant any person found in suspicious places or under suspicious circumstances, reasonably tending to show that such person has committed or is about to commit any crime or breach of the peace, and may arrest or cause to be arrested, without warrant, any offender when the offense is committed in the presence of a peace officer or within his view.[3]

An offense is committed in the presence or within the view of an officer, within the meaning of the rule authorizing an arrest without warrant, when the officer sees the offense, although at a distance, or hears the disturbance created thereby and proceeds at once to the scene thereof; or when the offense is continuing, or has not been consummated, at the time the arrest is made.[4]

The legality of the detention does not depend upon the

[2] U. S. vs. Santos, 36 Phil. 853.
[3] U. S. vs. Batallones, 23 Phil. 46.
[4] U. S. vs. Samonte, 16 Phil. 516.

actual commission of the crime, but upon the nature of the deed when such characterization may reasonably be inferred by the officer or functionary to whom the law at that moment leaves the decision for the urgent purpose of suspending the liberty of the citizen.[5]

But peace officers are not authorized to make arrests without warrant when there is no other reason or motive for the arrest than a desire to know, on the part of the peace officer, whether the arrested person had committed a crime.[6]

Art. 200 of the old Penal Code (equivalent to Art. 124 of the present Code), has no application to a case where the person arrested is charged with a crime and is arrested on account thereof.[7]

Art. 125. DELAY IN THE DELIVERY OF DETAINED PERSONS TO THE PROPER JUDICIAL AUTHORITIES.—The penalties provided for in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: six hours, for crimes or offenses punishable by light penalties, or their equivalent; nine hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.[8]

Under the old Penal Code (Art. 202) a public officer other than a judicial officer was entitled to hold under custody for investigation, any person caught in the act of committing some offense or under suspicious circumstances, for a period not exceeding 24 hours.

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[5] Dec. of Sup. Ct. of Spain, January 27, 1885.
[6] U. S. vs. Hachaw, 21 Phil. 514.
[7] U. S. vs. Gonzaga, 4 Phil. 364.
[8] Based on the provisions of Arts. 202 of the old Penal Code and 94 of the proposed Correctional Code of 1916, as amended by Act 3940, and by R. A. No. 1083.

The police officers are in duty bound to deliver the person arrested or detained by them to the City Fiscal in the City of Manila, or to the Justice of the Peace of the corresponding municipality outside of the city, as the case may be.

The illegality of the detention is not cured by the filing of the information by the City Fiscal.[9]

Art. 126. DELAYING RELEASE.—The penalties provided for in article 124 shall be imposed upon any public officer or employee who delays for the period of time specified therein the performance of any judicial or executive order for the release of a prisoner or detention prisoner, or unduly delays the service of the notice of such order to said prisoner or the proceedings upon any petition for the liberation of such person.[10]

Public officers who are most likely to commit the offense penalized in this Article are wardens and peace officers temporarily in charge of the custody of prisoners or detained persons.

Art. 127. EXPULSION.—The penalty of prisión correccional **shall be imposed upon any public officer or employee who, not being thereunto authorized by law, shall expel any person from the Philippines or shall compel such person to change his residence.**

Prisión correccional: See Art. 116.

Under the provisions of the Administrative Code, the Chief Executive is authorized to expel from the country any undesirable alien.[11]

SECTION TWO

VIOLATION OF DOMICILE

Art. 128. VIOLATION OF DOMICILE.—The penalty of prisión correccional **in its minimum period shall be imposed upon any public officer or employee who,**

[9] Lino vs. Javalera, 77 Phil. 933.

[10] Based on the provisions of Arts. 201 and 203, par. 7, of the old Penal Code, and Art. 95 of the proposed Correctional Code of 1916.

[11] Section 69, Administrative Code.

not being authorized by judicial order, shall enter any dwelling against the will of the owner thereof, search papers or other effects found therein without the previous consent of such owner, or, having surreptitiously entered said dwelling, and being required to leave the premises, shall refuse to do so.

If the offense be committed in the night-time, or if any paper or effects not constituting evidence of a crime be not returned immediately after the search made by the offender, the penalty shall be prisión correccional **in its medium and maximum periods.**[12]

Prisión correccional in its minimum period:

Minimum: From 6 months and 1 day to 1 year, 1 month and 10 days;

Medium: From one year, 1 month and 11 days to 1 year, 8 months and 20 days;

Maximum: From 1 year, 8 months and 21 days to 2 years and 4 months.

Prisión correccional in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 20 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

May a public peace officer enter a private dwelling without the consent of its owner, on pretext that he has received reliable information that some contraband is being kept in the premises?

This question was decided in the negative by the Supreme Court of the Philippines, holding that "no public officer or any other person of any country where that portion of the constitution of the United States against the unlawful searches and seizures or other similar provisions is in force has the right to enter the premises of another without the latter's consent for the purpose of search or seizure without first being provided with a proper search warrant for the purpose obtained in the manner provided for by law."[13]

But a peace officer may break into a private house or dwelling place even without the consent of its owner, and even without a

[12] Based on the provisions of Articles 205 of the old Penal Code and 95 of the proposed Correctional Code of 1916.

[13] U. S. vs. De los Reyes, 20 Phil. 467.

search warrant, provided some crime or act of disturbance of public order **has actually been committed** or **is being committed** therein.[14]

The right to search includes that of searching the person of him who is arrested in order to find and seize things connected with the crime as its fruits or the means by which it was committed.[15]

Art. 129. SEARCH WARRANTS MALICIOUSLY OBTAINED, AND ABUSE IN THE SERVICE OF THOSE LEGALLY OBTAINED.—In addition to the liability attached to the offender for the commission of any other offense, the penalty of arresto mayor **in its maximum period to** prisión correccional **in its minimum period and a fine not exceeding 1,000 pesos shall be imposed upon any public officer or employee who shall procure a search warrant without just cause, or, having legally procured the same, shall exceed his authority or use unnecessary severity in executing the same.**[16]

Arresto mayor in its maximum period to **prisión correccional** in its minimum period;

Minimum: From 4 months and 1 day to 1 year;

Medium: From 1 year and 1 day to 1 year and 8 months;

Maximum: From 1 year, 8 months and 1 day to 2 years and 4 months.

Under the provisions of section 106 of General Orders No. 58, two elements were necessary to constitute this offense, namely: **malice** and **lack of probable cause.**[17]

The present Code, however, does not require malice, since malice is presumed in every felonious act, but instead requires absence of just cause.

A search warrant is said to have been procured without just cause when it appears on the face of the affidavits filed in support of the application therefor, or through other evidence, that the applicant had every reason to believe that the search warrant sought for was unjustified. Suppose a certain peace officer wanted to verify a report to the effect that some corpse or dead body was unlawfully buried in the interior yard of a certain monastery.

[14] U. S. vs. Vallejo, 11 Phil. 193.
[15] Alvero vs. Dizon, 76 Phil. 637.
[16] Based on the provisions of Section 106 of General Orders No. 58.
[17] U. S. vs. Addison, 28 Phil. 566.

Instead of stating to that effect, he alleged in an affidavit filed in support of the application for a search warrant, that opium and other prohibited drugs were hidden in the premises. If a search warrant is issued on the strength of said affidavit and no opium is found in the premises, the party applying for the search warrant is obviously guilty of the offense described in this Article, for having procured the warrant **without just cause.**

Art. 130. SEARCHING DOMICILE WITHOUT WITNESSES.—The penalty of arresto mayor **in its medium and maximum periods shall be imposed upon a public officer or employee who, in cases where a search is proper, shall search the domicile, papers or other belongings of any person, in the absence of the latter, any member of his family, or in their default, without the presence of two witnesses residing in the same locality.**[18]

Arresto mayor in its medium and maximum periods:

Minimum: From 2 months and 1 day to 3 months and 10 days;

Medium: From 3 months and 11 days to 4 months and 20 days;

Maximum: From 4 months and 21 days to 6 months.

SECTION THREE

PROHIBITION, INTERRUPTION, AND DISSOLUTION OF PEACEFUL MEETINGS

Art. 131. PROHIBITION, INTERRUPTION, AND DISSOLUTION OF PEACEFUL MEETINGS.—The penalty of prisión correccional **in its minimum period shall be imposed upon any public officer or employee who, without legal ground, shall prohibit or interrupt the holding of a peaceful meeting, or shall dissolve the same.**

The same penalty shall be imposed upon a public officer or employee who shall hinder any person from

[18] Similar to Art. 207 of the old Penal Code and to Art. 98 of the proposed Correctional Code of 1916.

joining any lawful association or from attending any of its meetings.

The same penalty shall be imposed upon any public officer or employee who shall prohibit or hinder any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses or redress of grievances.[19]

Prisión correccional in its minimum period: See Art. 128.

SECTION FOUR

CRIMES AGAINST RELIGIOUS WORSHIP

Art. 132. INTERRUPTION OF RELIGIOUS WORSHIP.—The penalty of prisión correccional **in its minimum period shall be imposed upon any public officer or employee who shall prevent or disturb the ceremonies or manifestations of any religion.**

If the crime shall have been committed with violence or threats, the penalty shall be prisión correccional **in its medium and maximum periods.**[20]

Prisión correccional in its minimum period: See Art. 128.

Prisión correccional in its medium and maximum periods: See Art. 128.

As will be seen, this Article has been designed to punish acts of interference with the freedom of conscience in religious matters on the part of public officers or public employees.

Under the old Penal Code, it was indispensable, in order that this crime could exist, that it be clearly shown that religious hatred was the motive of the offense. Otherwise, an act of disturbing a religious ceremony would only fall under its Article 571, par. 1.[21] Under the new Code, no such distinction is found.

Art. 133. OFFENDING THE RELIGIOUS FEELINGS.—The penalty of arresto mayor **in its maximum**

[19] Based on the provision of Art. 218, pars. 1, 2, and 3, and Art. 100 of the proposed Correctional Code of 1916.

[20] Based on the provision of Arts. 129 and 223 of the old Penal Code and of Art. 102 of the proposed Correctional Code of 1916.

[21] U. S. vs. Balcorta, 25 Phil. 273.

period to prisión correccional **in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony, shall perform acts notoriously offensive to the feelings of the faithful.**[22]

Prisión Correccional in its minimum period: See Art. 128.

ELEMENTS OF THIS OFFENSE.—There are two essential elements of this offense, to wit: (1) That the acts complained of were performed in a place devoted to religious worship or during the celebration of any religious ceremony; and (2) that the act or acts must be notoriously offensive to the feelings of the faithful.

PLACE DEVOTED TO RELIGIOUS WORSHIP; CELEBRATION OF RELIGIOUS CEREMONY.—Places devoted to religious worship are undoubtedly churches and temples dedicated to the worship of God; while religious ceremonies are rites or practices of any religion or sect in conformity with their canon and belief.

ACTS NOTORIOUSLY OFFENSIVE TO RELIGIOUS FEELINGS.—For an act to be notoriously offensive to the religious feelings, it must be directed against religious practice or dogma or ritual for the purpose of ridicule; the offender, for instance, mocks, scoffs at or attempts to damage an object of religious veneration; it must be abusive, insulting and obnoxious.[23]

It has been held that the construction of a fence, even though irritating and vexatious under the circumstances to those present, is not such an act as can be designated as "notoriously offensive to the faithful," as normally such an act would be a matter of complete indifference to those not present, no matter how religious their turn of mind might be.[24]

CRITERION FOR DETERMINING WHETHER CERTAIN ACTS ARE NOTORIOUSLY OFFENSIVE TO RELIGIOUS FEELINGS OR NOT.—Is the determination of the offensiveness of the act committed objective or subjective? This interesting question was presented in the case of **People vs. Baes**, 68 Phil. 203. The majority opinion penned by Mr. Justice Concepcion and concurred in by Messrs. Justices Diaz and Villa-Real and Mr. Chief Justice Avanceña, held that it is rather subjective than objective, that is,

[22] Based on the provisions of Articles 220 and 222 of the old Penal Code and of Art. 103 of the proposed Correctional Code of 1916.
[23] Viada, Comentarios al Codigo Penal, 707-708; Pacheco, Codigo Penal, pag. 359.
[24] People vs. Reyes, 60 Phil. 369.

it is for the members of the particular religion concerned to determine whether the acts complained of are offensive to their feeling or not.

The minority opinion, however, penned by Mr. Justice Laurel and concurred in by Mr. Justice Imperial, seems to express the correct view on the subject. Hereunder are the convincing views of the minority opinion:

"I express the opinion that offense to religious feelings should not be made to depend upon more or less broad or narrow conception of any given particular religion, but should be gauged having in view the nature of the acts committed and after scrutiny of all the facts and circumstances which should be viewed through the mirror of an unbiased judicial criterion. Otherwise, the gravity or leniency of the offense would hinge on the subjective characterization of the act from the point of view of a given religious denomination or sect, and in such a case, the application of the law would be partial and arbitrary, withal, dangerous, especially in a country said to be 'once the scene of religious intolerance'."

TITLE THREE

CRIMES AGAINST PUBLIC ORDER

CHAPTER ONE

REBELLION, SEDITION AND DISLOYALTY

Art. 134. REBELLION OR INSURRECTION — HOW COMMITTED.—The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippines or any part thereof or of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.[1]

Rising publicly and **taking arms** against the Government is the **normative** element of the offense, while the **intent** or **purpose to remove** from the allegiance to the Government or its laws, the territory of the Philippines, or any part thereof or any body or land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives, is the **subjective** element.

The crime of rebellion, therefore, is complete the very moment a group of the rebels rise publicly and take up arms against the Government, for the **purpose** of seizing the same by force. It is not necessary, to consummate rebellion, that the rebels **succeed** in overthrowing the Government. Murder, rape, arson, kidnapping and other common offenses do not appear, even by remote inference, as elements of the above definition of the crime of rebellion. The rising publicly and taking arms against the Government do not involve, or necessarily presuppose, the commission of the crime of kidnapping or murder, arson, or rape of innocent civilians.

This is the reason why the penalty for the crime of rebellion is comparatively mild: only **prisión mayor** or from 6 to 12 years imprisonment and a fine of not exceeding ₱20,000. The framers

[1] Based on the provisions of Art. 229, par. 4, of the old Penal Code, and of Art. 105 of the proposed Correctional Code of 1916, and of Section 3 of Act 292.

of the present Code knew perfectly well that if any rebel, besides rising publicly and taking arms against the Government, should commit other common offenses, like murder, rape, etc., he would be prosecuted and punished for the latter offenses.

It is for this reason that the Commission in charge of revising the Penal Code of 1870 did not think it necessary to incorporate in the revised Code the provisions of Art. 244 of the old Code which run as follows:

> "All other crimes committed in the course of a rebellion or seditious movement, or on occasion thereof, shall be punished in accordance with the rules of this Code.
>
> "If the perpetrators of such crimes cannot be discovered, the principal leaders of the rebellion or sedition shall be punished therefor as principal."

It would be sheer naivete to believe that while an ordinary person committing murder, kidnapping or rape, may be sentenced to 20 years imprisonment, or death, a rebel perpetrating the same acts can only be sentenced to a maximum of 12 years imprisonment! This is tantamount to making the crime of rebellion a license to commit murder, rape, or other heinous crimes.

Is there such a thing as complex crime of rebellion with multiple murder, and/or arson, rape, robbery, etc.?

Art. 135. PENALTY FOR REBELLION OR INSURRECTION.—Any person who promotes, maintains, or heads a rebellion or insurrection, or who, while holding any public office or employment, takes part therein, engaging in war against the forces of the Government, destroying property or committing serious violence, exacting contributions or diverting public funds from the lawful purpose for which they have been appropriated, shall suffer the penalty of prisión mayor **and a fine not to exceed 20,000 pesos.**

Any person merely participating or executing the commands of others in a rebellion shall suffer the penalty of prisión mayor **in its minimum period.**

When the rebellion or insurrection shall be under the command of unknown leaders, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, or performed

similar acts on behalf of the rebels, shall be deemed the leader of such rebellion.

Prisión mayor:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.
Prisión mayor in its minimum period:
Minimum: From 6 years and 1 day to 6 years and 8 months;
Medium: From 6 years, 8 months and 1 day to 7 years and 4 months;
Maximum: From 7 years, 4 months and 1 day to 8 years.

For the purpose of gauging the **quantum** of penalty to be meted out to the rebels, Article 135 of the Penal Code classifies the participants in the crime into two groups, namely: (a) leaders, heads, promoters, or maintainers, or public officers who take part in the rebellion by engaging the forces of the Government, destroying property or committing serious violence, effecting contributions, or diverting funds from the lawful purpose for which they have been appropriated, and (b) persons merely participating or executing orders of the heads or leaders.

The penalty befalling upon the first group is **prisión mayor** in its full extent, that is to say, from 6 to 12 years and a fine not exceeding ₱20,000, while the punishment earmarked for the second group is only **prisión mayor** in the minimum period that is from 6 to 8 years.

The prosecuting agencies of the Government, particularly the Army, have consistently accused the participants in the subversive movement commonly known as "Hukbong Magpapalaya ng Bayan", "Huk" for short, of the complex crime of rebellion with murder, robbery, and other predatory acts too well known and felt by the people of the country during the last decade. In connection with this prosecution for complex crimes, the Supreme Court, in an important case, namely, People vs. Hernandez, 52 Off. Gaz., p. 5506, while holding that there is no such thing as a complex crime of rebellion with murder, arson, rape, etc., opined, however, that the latter common offenses may, and should, be considered as inherent in the crime of rebellion, citing in support of its conclusion the provisions of Article 135 which provides the penalty of "**prisión mayor** (6 years and one day to 12 years) and a fine not exceeding ₱20,000 shall be imposed upon any person who promotes, maintains or creates a rebellion x x x, or takes part therein, engaging in war against the forces of the government, destroying property, or committing **serious violence** x x x." It was the considered opinion of the Supreme

Court that "engaging in war against the forces of the Government," or "**committing serious violence**" may, and usually does, involve the commission of such heinous offenses like murder, arson, robbery and even rape.

With all due respect, we sincerely believe the ruling in the instant case was unfortunate. To begin with, the elements of the crime of rebellion are well defined in Article 134. It is characterized by rising publicly and taking arms against the Government, for the **purpose** of removing from its allegiance some territory of the country, or depriving the Chief Executive or the legislature of any of its powers or prerogatives.

On the other hand, murder, robbery, arson, rape and other acts of pillage charged against many a dissident or subversive element have likewise their own distinct and different characteristics and elements, for the realization of which different criminal intentions and different criminal resolutions must be conceived and harbored by the agent.

While waging or engaging in war against the forces of the Government may, and ordinarily does, entail **serious violence**, still, it is obvious that the framers of the Code could not have contemplated to include in it serious crimes like murder, highway robbery, etc., for otherwise, they would have treated rebellion as capital offense.

It is a healthy sign of the times that the Supreme Court, in a subsequent decision rendered in the case of People vs. Geronimo, G. R. No. L-8936, Oct. 23, 1956,[1a] made an attempt to rationalize the ruling in People vs. Hernandez, **supra**, by saying that a person accused of rebellion may be prosecuted and convicted for other common offenses committed by him, if it appears that the rebel, in committing other common offense, was prompted by some particular or personal motives.

While we believe that the doctrine in the Geronimo case is a decided improvement over that of People vs. Hernandez, still much is left to be desired, in the sense that it admits the possibility of some of these heinous offenses (murder, robbery, arson, rape and so on), when committed on the occasion or in the course of an assault against the forces of the Government, may be considered absorbed or included in the crime of rebellion. Rebellion is a minor offense, and as such, can never absorb any major or more serious offense like murder, kidnapping, robbery, arson and so on. We sincerely hope that the Supreme Court will again take pains in re-examining the ruling in this case, so as to make it comformable with the accepted and well known tenets of criminal jurisprudence and penal science.

1a See 52 O. G. 68, Jan. 15, 1957.

The defendants, who were members of the corps of volunteers organized by the Provincial Government of Bulacan, deserted with their arms and ammunitions, and joined the forces of the insurgent leader, San Miguel, and, as members of his forces, engaged in several skirmishes with the Constabulary: **Held,** such acts constituted the crime of insurrection under this Article.[2]

The defendant, a municipal policeman, deserted his post, in violation of his oath of office, and voluntarily joined a band of insurgents, taking an active part in the acts of rebellion against the constituted Government of these Islands committed by the band contrary to the provisions of law which guarantee peace and order. These facts constituted the crime of rebellion, defined and punished by this Article.[3]

A group of individuals rose in arms in the municipality of Vigan sometime in the year 1906, taking prisoners from jail, seizing the weapons and supplies of the constabulary, causing great terror, giving cheer for Ricarte and the liberty of the Philippines, tearing down the American flag, compelling the town councils to pass resolutions supporting and cooperating in the revolution initiated by them against the constituted Government and so forth. Held, such acts constituted rebellion or insurrection.[4]

Art. 136. CONSPIRACY AND PROPOSAL TO COMMIT REBELLION OR INSURRECTION.—The conspiracy and proposal to commit rebellion or insurrection shall be punished, respectively, by prisión correccional **in its maximum period and a fine which shall not exceed 5,000 pesos, and by** prisión correccional **in its medium period and a fine not exceeding 2,000 pesos.**[5]

Prisión correccional in its maximum period:

Minimum: From 4 years, 2 months and 1 day to 4 years, 9 months and 10 days;

Medium: From 4 years, 9 months and 11 days to 5 years, 4 months and 20 days.

Maximum: From 5 years, 4 months and 21 days to 6 years.

Several persons organized a society the purpose of which was to overthrow the Government by force, but the evidence failed to disclose any other act of insurrection. The conviction for insur-

[2] U. S. vs. Pineda, 3 Phil. 376.
[3] U. S. vs. Roraldo, 3 Phil. 716.
[4] U. S. vs. Ayala, 6 Phil. 150.
[5] Similar to Section 4 of Act 292.

rection cannot be sustained, but on the same information they may be convicted of the lesser crime of conspiracy to overthrow the Government.[6]

The defendant together with others organized a secret political society having for its purpose the promotion of rebellion against the authority of the Government of the Philippines and induced others to join the society. These facts, in the absence of overt acts constituting rebellion or insurrection, constituted a violation of this Article.[7]

Art. 137. DISLOYALTY OF PUBLIC OFFICERS OR EMPLOYEES.—The penalty of prisión correccional **in its minimum period shall be imposed upon public officers or employees who have failed to resist a rebellion by all the means in their power, or shall continue to discharge the duties of their offices under the control of the rebels or shall accept appointment to office under them.**[8]

Prisión correccional in its minimum period: See Art. 128.

Art. 138. INCITING TO REBELLION OR INSURRECTION.—The penalty of prisión mayor **in its minimum period shall be imposed upon any person who, without taking arms or being in open hostility against the Government, shall incite others to the execution of any of the acts specified in article 134 of this Code, by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end.**[9]

Art. 139. SEDITION—HOW COMMITTED.—The crime of sedition is committed by persons who rise publicly and tumultuously in order to attain by force, intimidation, or by other means outside of legal methods, any of the following objects:

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[6] U. S. vs. Vergara, 3 Phil. 432.
[7] U. S. vs. Sadian, 3 Phil. 323.
[8] Similar to Art. 110 of the proposed Correctional Code of 1916.
[9] Similar to Art. 172 of the old Penal Code and Art. 107 of the proposed Correctional Code of 1916.

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

2. To prevent the National Government, or any provincial or municipal government or any public officer thereof from freely exercising its or his functions, or prevent the execution of any administrative order;

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

4. To commit, for any political or social end, any act of hate or revenge against private persons or any social class; and

5. To despoil, for any political or social end, any person, municipality or province, or the National Government [or the Government of the United States], of all its property or any part thereof.[10]

If the purpose of the uprising is not exactly against the **Government** and for the purpose of doing the things defined in Art. 134 of the Revised Penal Code (which is **rebellion**) but merely to attain by force, intimidation, etc. **one object**, to wit, to inflict an act of hate or revenge upon the person or property of a public official like town mayor, it is **sedition.**[11]

The fact that several platoons of constabulary, for the purpose of avenging a fancied wrong escaped from the barracks, and armed with guns undertook a combined attack upon the police station and policemen patrolling the street, constituted the crime of sedition as provided for by section 5, par. 3, of Act 292,[12] now Art. 139 of this Code.

However, the provisions of this Article must not be interpreted to abridge the "freedom of speech" and "the right to peaceably assemble and petition the government for redress of grievances."[13]

Art. 140. PENALTY FOR SEDITION. — The leader of a sedition shall suffer the penalty of prisión mayor **in its minimum period and a fine not exceeding 10,000 pesos.**

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[10] Same as Art. 236 of the old Penal Code, Section 5 of Act 292, and Art. 111 of the proposed Correctional Code of 1916, as amended by Commonwealth Act No. 202.

[11] People vs. Umali et al., G. No. L-5803, Nov. 29, 1954.

[12] People vs. Cabrera et al., 43 Phil. 64.

[13] U. S. vs. Apurado et al., 7 Phil. 422.

Other persons participating therein shall suffer the penalty of prisión correccional **in its maximum period and a fine not exceeding 5,000 pesos.**

Prisión correccional in its maximum period:

Minimum: From 4 years, 2 months and 1 day to 4 years, 9 months and 10 days;

Medium: From 4 years, 9 months and 11 days to 5 years, 4 months and 20 days;

Maximum: From 5 years, 4 months and 21 days to 6 years.

Prisión mayor in its minimum period:

Minimum: From 6 years and 1 day to 6 years and 8 months;

Medium: From 6 years, 8 months and 1 day to 7 years and 4 months;

Maximum: From 7 years, 4 months and 1 day to 8 years.

Art. 141. CONSPIRACY TO COMMIT SEDITION. —Persons conspiring to commit the crime of sedition shall be punished by prisión correccional **in its medium period and a fine not exceeding 2,000 pesos.**

Prisión correccional in its medium period:

Minimum: From 2 years, 4 months and 1 day to 2 years, 11 months and 10 days;

Medium: From 2 years, 11 months and 11 days to 3 years, 6 months and 10 days;

Maximum: From 3 years, 6 months and 11 days to 4 years and 2 months.

Art. 142. INCITING TO SEDITION.—The penalty of prisión correccional **in its maximum period and a fine not exceeding 2,000 pesos shall be imposed upon any person who, without taking any direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending to the same end; or upon any person or persons who shall utter seditious words or speeches, write, publish, or circulate scurrilous libels against the Government** [of the United States or the Government of the Commonwealth] **of the**

Philippines, or any of the duly constituted authorities thereof, or which tend to disturb or obstruct any lawful officer in executing the functions of his office, or which tend to instigate others to cabal or meet together for unlawful purposes, or which suggest or incite rebellious conspiracies or riots, or which lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government, or who shall knowingly conceal such evil practices.[14]

Prisión correccional in its maximum period: See Art. 140.

Crisanto Evangelista and others, on the occasion of the 13th anniversary of the Union of the Socialist Republic of Soviet Russia, organized the so-called Communist Party of the Philippines. Among other things, the following aims and purposes of the party appeared in its constitution and by-laws:

1. To lead the movement for the immediate and complete independence of the Philippines;
2. To fight and bring about the downfall of American imperialism which oppresses the Philippines;
3. To stop the exploitation of the laborers and defend their rights and interest;
4. To establish in the Philippines a Soviet government under the laborers;
5. To bring about the downfall of capitalism; and
6. Under the dictatorship of the laborers, to emancipate and redeem the laborers and farm hands—to embrace communism.

Speeches were also delivered by said Evangelista and his four co-accused of the following import:

"Due to the success of Soviet Russia, revolutions were incited in the whole world. The idea of revolution spreads itself, struggles become more and more serious but the labor movement continues on the path travelled by the Russian laborers—the Bolsheviks. What is that path? The seizure of the power of government from the hands of the burgesses and the establishment of a government by the laborers.

"Only in this way would we be victorious in the revolutionary movement of the laboring class..."

Held: Such acts constitute a violation of the provisions of

[14] Based on the provisions of Section 8 of Act 292, as amended by Sec. 2 of Commonwealth Act No. 202.

Article 142 of the Revised Penal Code. Under the provisions of this Article, it is not necessary that disturbance or disorder should have taken place on account or because of the seditious speech. It is sufficient that it incites uprising or produces a feeling incompatible with the permanency of the government.[15]

However, when the citizens of the state become convinced that the administration of the affairs of the government is not carried on in accordance with the law, or is not conducted in the best interest of all concerned, they have not only a right but it is their duty to present the case of their grievances to the public and the free press of the state which affords the best avenue for that purpose. To that end the organic laws of all modern free states have wisely provided that "no law shall be passed abridging the freedom of the press," and that no person shall be punished except for an abuse of that freedom. The interest of civilized society and the maintenance of good government demand a full and free discussion of all affairs of public interest. Complete liberty to comment upon the administration of government, as well as the conduct of public men, is necessary for free speech and the free press. The people are not obliged, under modern civilized governments, to speak of the conduct of their officials, of their servants, in whispers or with bated breath. The freedom of the press consists in the right to publish the truth, with good motives and for justifiable ends, although said publication may be offensive to the government, to courts, or to individuals. It is the particular duty of the people of a state to wisely maintain and to watchfully protect their right to express fully, either verbally or by publication, their honest conviction regarding acts of public officials and the governing class. If the people of a free state should give up the right to free speech; if they are daunted by fear and threats, and abdicate their convictions; if the governing body of the state could silence all the voices except those that extol their acts; if nothing relating to the conduct of the governing class can reach the people except that which will uphold the men in power, then we may well say "Good-bye" to our liberties forever.[16]

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[15] People vs. Evangelista, 57 Phil. 354. See also People vs. Feleo, 57 Phil. 451.
[16] U. S. vs. Perfecto et al., 43 Phil. 58.

CHAPTER TWO

CRIMES AGAINST POPULAR REPRESENTATION

SECTION ONE

CRIMES AGAINST LEGISLATIVE BODIES AND SIMILAR BODIES

Art. 143. ACTS TENDING TO PREVENT THE MEETING OF THE ASSEMBLY AND SIMILAR BODIES.—The penalty of prisión correccional **or a fine ranging from 200 to 2,000 pesos, or both, shall be imposed upon any person who by force or fraud prevents the meeting of the National Assembly[2] or of any of its committees or sub-committees, constitutional commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board.[1]**

Prisión correccional. See Art. 117.

Art. 144. DISTURBANCE OF PROCEEDINGS.— The penalty of arresto mayor **or a fine ranging from 200 to 1,000 pesos shall be imposed upon any person who disturbs the meetings of the National Assembly[2] or of any of its committees or sub-committees, constitutional commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board, or in the presence of any such bodies should behave in such manner as to interrupt its proceedings or to impair the respect due to it.[3]**

Arresto mayor in its maximum period to **prisión correccional** in its minimum period: See Art. 129.

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[1] Similar to Section 1 of Act 1775 and Art. 113 of the proposed Correctional Code of 1916, as amended by Commonwealth Act No. 264.

[2] Now the Congress of the Philippines.

[3] Same as Section 1 of Act 1775, and Art. 116 of the proposed Correctional Code of 1916, as amended by Commonwealth Act No. 264.

"One, L, assaulted Representative D on October 23, 1929. The House of Representatives, of which Representative D was a member, then adopted a resolution on November 6, 1929, requiring the Speaker to order the arrest of L to be confined in Bilibid Prison for twenty-four hours. The House adjourned that session, the second, at midnight on November 8, 1929, without the order of arrest having been served on L. A confirmatory resolution was approved by the House on September 16, 1930, during the third session of the Philippine Legislature. Shortly thereafter, a new warrant of arrest was issued by the Speaker of the House of Representatives, and L was taken into custody by a constabulary officer. The trial Judge dismissed the petition for **habeas corpus** and remanded the petitioner to the custody of the respondent for compliance with the order of the House of Representatives. **Held:** Error in refusing to grant the writ of **habeas corpus**, and L ordered discharged from custody.

A limited power to punish non-members for contempt resides in the House of Representatives of the Philippine Congress. Imprisonment for a term not exceeding the session of the deliberative body in which the contempt occurred is the limit of the authority to deal directly by way of contempt, without criminal prosecution."[4]

SECTION TWO

VIOLATION OF PARLIAMENTARY IMMUNITY

Art. 145. VIOLATION OF PARLIAMENTARY IMMUNITY.—The penalty of prisión mayor **shall be imposed upon any person who shall use force, intimidation, threats, or fraud to prevent any member of Congress from attending the meetings of the Congress or of any of its committees or sub-committees, constitutional commissions or committees or divisions thereof, from expressing his opinions or casting his vote; and the penalty of** prisión correccional **shall be imposed upon any public officer or employee who shall, while the Congress is in regular or special session, arrest or search any member thereof, except in case such member has committed a**

[4] Lopez vs. De los Reyes, 55 Phil. 170.

crime punishable under this Code by a penalty higher than prisión mayor.[5]

Prisión mayor: See Art. 115.
Prisión correccional. See Art. 115.

The original draft of this Article as submitted by the Code Committee to the Secretary of Justice reads as follows:

"Art. 145—**Violation of parliamentary immunity.**—The penalty of **prisión mayor** shall be imposed upon any person who shall use force, intimidation, threats or fraud to prevent any member of either House of the Legislature from attending the meetings thereof, from expressing his opinions or casting his vote; and the penalty of **prisión correccional** shall be imposed upon any public officer or employee who shall, while the Legislature is in session, knowingly arrest any member thereof, except in case such member has committed a crime punishable under this Code by a penalty higher than **prisión mayor.**"

For some unknown reasons, however, the Legislature saw fit to include the term "or search" between the words "arrest" and "any" of the original draft. The original draft of this Article was drawn in conformity with the accepted canon and practice of the British Parliament and of the United States Congress.

The Constitution of the United States expressly provides that for any speech or debate, members of either House shall not be questioned in any place. This famous right, supposed by other persons to have been designed to guarantee full and free discussions of public matters in debates, is really derived from the practices of the English Parliament where it was originated to protect the members against arbitrary arrest for criticism of the King. According to Professor Ford,[6] it was placed in the American Constitution to protect members against responsibility to their constituents. The effect of this privilege is to free the members from the liability to prosecution for libel or slander, for anything said in Congress or committees, in official publications, or in the legitimate discharge of their legislative duties. Members of the Congress also constantly act upon the supposition that the privilege includes the right to circulate their speeches, not only among their own constituents, but anywhere throughout the United States.[7]

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[5] *Substantially the same as paragraph 2 of Art. 167 of the old Penal Code, and* Art. 117 of the proposed Correctional Code of 1916, and as amended by C. A. No. 264.
[6] **Rise and Growth of American Politics,** p. 63.
[7] Beard, **American Government and Politics,** pp. 245-246.

The privilege of members of Congress from arrest during their attendance at the session of their respective Houses and in coming to and in returning from the same, in all cases, except treason, felony, and breach of peace, is also amongst the well accepted canons of American parliamentary practice. This privilege, as Story points out, exempts Representatives and Senators from all processes, the disobedience of which is punishable by imprisonment; that is, a congressman, during the period above mentioned, cannot be compelled to testify in any court, serve on a jury, or respond to an action brought against him. The term "breach of the peace", however, extends to "all indictable offenses, as well as those which are in fact attended with force and violence as those which are only destructive to the peace of the government;" and, therefore, the members of Congress really enjoy no exemption from the ordinary processes of criminal law. In going to and in coming from Congress, the member is allowed reasonable delay, and reasonable deviation from the nearest course.[8]

As will be seen, while England and the United States of America exempt the members of their law-making bodies from arrest in all cases, except for treason, felony, and breach of peace, while said officers are attending or leaving the session of the Legislature, no attempt was ever made to exempt said officers from "search" during such period and under the same circumstances. There seems to be no plausible nor justifiable motive for exempting members of the Legislature from search under any circumstances, and the special protection given by this Article to all members of the Legislature savors of unjust discrimination or class legislation, to say the least.

[8] Id.

CHAPTER THREE

ILLEGAL ASSEMBLIES AND ASSOCIATIONS

Art. 146. ILLEGAL ASSEMBLIES. The penalty of prisión correccional **in its maximum period to** prisión mayor **in its medium period shall be imposed upon the organizers or leaders of any meeting attended by armed persons for the purpose of committing any of the crimes punishable under this Code, or of any meeting in which the audience is incited to the commission of the crime of treason, rebellion or insurrection, sedition, or assault upon a person in authority or his agents. Persons merely present at such meeting shall suffer the penalty of** arresto mayor, **unless they are armed in which case the penalty shall be** prisión correccional.

If any person present at the meeting carries an unlicensed firearm, it shall be presumed that the purpose of said meeting, insofar as he is concerned, is to commit acts punishable under this Code, and he shall be considered a leader or organizer of the meeting within the purview of the preceding paragraph.

As used in this article, the word "meeting" shall be understood to include a gathering or group, whether in a fixed place or moving.[1]

There are two ways of incurring criminal liability under the foregoing provisions, i.e., (a) by acting as **organizer or leader** of an illegal assembly, which is defined as a meeting of **armed** persons, the purpose of which is to commit any of the crimes punishable under this Code, or any meeting, **regardless** of whether the attendants are **armed** or **not**, so long as the audience is incited to the commission of any crime against public order; and (b) by merely attending said meeting.

As may be seen, the law creates three kinds of responsibilities upon persons attending or present in an illegal assembly, according to whether: (1) he is not armed, (2) he carries a **licensed** arm, or (3) he carries an **unlicensed** arm. In the first case, the

[1] Similar to Art. 179, and to pars. 2 and 3 of Art. 184 of the old Penal Code, and to Art. 117 of the proposed Correctional Code of 1916; as amended by R. A. No. 12.

actor shall be punished with **arresto mayor**, if the purpose of the meeting he attends is to incite the commission of any crime against public order, but not otherwise. In the second case, that is, when he carries a **licensed** arm, he shall be punished with **prisión correccional**, whether the purpose of the meeting is to commit any of the crimes punishable under this Code, or to incite crimes against public order. And in the third case, that is, when the actor carries an **unlicensed** firearm, he shall be considered as organizer or leader of the assembly and shall be punished by a penalty of from **prisión correccional** in its maximum period to **prisión mayor** in its medium period, that is, from four years and two months to ten years.

Art. 147. ILLEGAL ASSOCIATIONS.—The penalty of prisión correccional **in its minimum and medium periods and a fine not exceeding 1,000 pesos shall be imposed upon the founders, directors, and presidents of associations totally or partially organized for the purpose of committing any of the crimes punishable under this Code or for some purpose contrary to public morals. Mere members of said associations shall suffer the penalty of** arresto mayor.[2]

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

Arresto mayor: See Art. 121.

The crime of illegal association may be distinguished from that of illegal assembly in that for the latter to exist it is necessary that there be an actual meeting or assembly of armed persons or individuals, while such requisite is not necessary in the crime of illegal association. The crime would be consummated so long as a group of persons or individuals has organized and formed themselves into a society or association for the purpose of committing any of the crimes punishable under this Code, or for some purpose contrary to public morals.

[2] Similar to Arts. 188-189, No. 1, of the old Penal Code and Art. 118 of the proposed Correctional Code of 1916.

The act of affiliating with, and becoming members of, the communist party of the Philippines, whose principal purposes and objects are to bring about, by the use of force, the downfall of the present form of government, and establish, in place thereof, another patterned after the Soviet Government of Russia and run by those affiliated and in sympathy with said association; to incite a revolt of the laboring class, advocating and urging struggle between said laboring class and the so-called capitalists, and other similar object tending to combat the fundamental basis of the present social order and alter the regularity of its functions and to the commission of violations of the existing laws, constitutes the crime of illegal association defined and penalized in this Article.[3]

The alleged illegal acts of an officer of an association cannot be imputed to the association for the purpose of showing that the objects and purposes for which the association was organized were illicit and contrary to public morals. An officer was charged "with founding, directing, and presiding over an illegal association, the purpose and circumstances of which are contrary to public morals and whose object is to commit certain crimes punishable under the Penal Code." **Held:** that the evidence produced at the trial of the case was insufficient to support the charge as set forth in the complaint.[4]

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[3] People vs. Evangelista et al., 57 Phil. 375.
[4] U. S. vs. Gomez, 8 Phil. 630.

CHAPTER FOUR

ASSAULT UPON, AND RESISTANCE AND DISOBEDIENCE TO PERSONS IN AUTHORITY AND THEIR AGENTS

Art. 148. DIRECT ASSAULTS.—Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of prisión correccional **in its medium and maximum periods and a fine not exceeding 1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present the penalty of** prisión correccional **in its minimum period and a fine not exceeding 500 pesos shall be imposed.**[1]

Prisión correccional in its medium and maximum periods: See Art. 128.

Prisión correccional in its minimum period: See Art. 128.

TYPES OF DIRECT ASSAULT.—There are two different ways of committing direct assault under the provisions of this Article, namely:

I. By using force and intimidation upon and against a public officer or person in authority for the attainment of any of the purposes enumerated in the crime of rebellion and sedition, and

II. By using force or seriously intimidating or resisting any person in authority or his agent while engaged in the performance of an official duty.

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[1] Same as Arts. 249 and 250, Nos. 1 and 3, of the old Penal Code and Art. 119 of the proposed Correctional Code of 1916.

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FIRST TYPE OF ASSAULT.—An assault under the first form above described is similar to an act of rebellion or sedition. The latter, however, is distinguished from the former in that a public uprising is not present in it. An assault under such form is very rarely committed, for the reason that it is rather unusual to see an individual party challenging by force or violence the authority of constituted power or government.

The following is an example of this kind of assault or **atentado:** The salaries of the police not having been paid, the defendant, accompanied by four policemen, all armed, went to the house of the municipal president and compelled him to go to the municipal building, where they kept him for hours. His relatives having sent him money sufficient to pay the salaries, he was allowed to depart. **Held:** That the defendant was guilty of **atentado** or assault against a person in authority.[2]

PERSONS COMING UNDER THE PRIVILEGE OF THIS ARTICLE.—Under the old Code (Arts. 250 and 251), the crime of **atentado** was committed not only when the victim of an assault without justification was a person in authority or his agent, but also when said victim was any public officer. In other words, the protection given by the old Penal Code was not limited to persons in authority or their agents but extended to all kinds of public officers. The Revised Penal Code, however, limits the same protection only to such public officers as are persons in authority or their agents.

DISTINCTION BETWEEN AGENT OF A PERSON IN AUTHORITY AND A PUBLIC OFFICER.—A public officer is altogether different from a person in authority. While all persons in authority are necessarily public, not all public officers are persons in authority. The protection of the Revised Penal Code is limited to those officers of the Government who, by direct provisions of statutes, are vested with power and jurisdiction of their own, as distinguished from mere subordinates who have no power or jurisdiction at all, or who, apparently clothed with some degree of power and jurisdiction, in fact borrow such power and jurisdiction from persons in authority. In this respect, the latter may be classified or termed as public officers, but they are not agents of person in authority. For a person to be an agent of authority, it is not enough that he should aid or help such person in authority. It is necessary that his power as such helper of a person in authority be specially defined and prescribed by statute (like

[2] U. S. vs. Diraln, 4 Phil. 541.

the sheriff of the court, members of the police force and the **teniente del barrio**), and the power of such person in authority must be connected in some way in the preservation of law, peace and order. Such is the case with internal revenue agents, customs inspectors, municipal treasurers, etc., for the reason that they can arrest violators of internal revenue and customs laws, and so also with all members of the secret service and police forces.

PROVISIONS OF THIS CODE REGARDING ASSAULT UPON PERSONS IN AUTHORITY, CONSTITUTIONAL.—The question of whether or not, under our democratic form of Government, the present provisions of the Penal Code may stand a constitutional test has been decided in the affirmative by the Supreme Court, stating, among other things the following:—"The theory that those provisions of the Spanish Code concerning assault upon persons in authority were in the nature of a political law enacted and promulgated by a monarchy and were thus entirely incompatible with the democratic institution, fails to convince the majority of this Court, for the reason that a long line of decisions had been established by doctrine. It can, therefore, be taken for granted that until otherwise held by a higher tribunal or until repealed or revised by the Philippine Legislature, the Supreme Court of the Philippine Islands will continue to enforce the provisions of the Penal Code relating to persons in authority."[3]

PERSONS IN AUTHORITY; WHO THEY ARE.—A person in authority according to Art. 152, **infra**. means "any person directly vested with jurisdiction, whether as an individual or as a member of some court or Government corporation, board or commission."

Thus it has been held that justices of the peace[4] and municipal presidents,[5] and a division superintendent of schools,[6] are persons in authority.

Under the old Code, the word "authority" and the expression "public officer" were given limited meanings, and they only included persons employed in the Government of the Philippines. Consequently, the Supreme Court has held that an officer of the United States Army, stationed in these Islands, is not a person in authority nor a public officer within the meaning of this Article.[7]

After the advent of the Republic, however, and the enactment of the National Defense Act, the Philippine Army became a branch or instrumentality of the Government of the Republic. Officers

[3] U. S. vs. Smith, 39 Phil. 533.
[4] U. S. vs. Garcia, 20 Phil. 358.
[5] U S. vs. Gumban, 39 Phil. 76.
[6] People vs. Benitez, 73 Phil. 671.
[7] U. S. vs. Smith, **supra**.

of the Philippine Army, therefore, have the status of either a person in authority or a public officer.

AGENTS OF PERSONS IN AUTHORITY; WHO THEY ARE. —On the other hand, a policeman is only an agent of an authority, so is a lieutenant of the barrio,[8] a postal clerk,[9] an inspector of the Bureau of Public Works,[10] or a sanitary inspector.[11] But the president of a sanitary division is a person in authority.[12]

A municipal treasurer is an agent of a person in authority and an assault against him constitutes an offense described by Article 148 of the Revised Penal Code.[13]

A postmaster is an agent of authority.[14] So is also a sanitary inspector.[15]

II

SECOND TYPE OF ASSAULT.—ITS REQUISITES.—The crime of assault under the second form requires three requisites: (a) actual assault, or use of physical assault, or intimidation or serious resistance; (b) that such assault or physical force or intimidation should have been executed upon a person in authority or his agent; and (c) that at the time such assault or intimidation or resistance was made, the person in authority or his agent was engaged in the performance of his official duty, or at least that the assault, intimidation, or resistance was done by reason of the performance of said duty. In the absence of any of these requisites, there would be no **atentado.**

CASES OF ASSAULT.—Thus, one who resists and even assaults a policeman who interferes and mingles with his private affairs cannot be convicted of **atentado;**[16] nor the one who throws to the ground a drunken **president** who has made an unprovoked attack,[17] for the reason that in both cases the second element of the offense is lacking.

A school teacher is a person in authority by specific provision of Act 578 of the National Assembly, the ruling of the Supreme Court in the case of People vs. Mendoza[18] notwithstanding. The legislative measure was prompted by the alarming tendency of our students to ignore the moral authority of their teachers, and even to defy them in many instances.

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[8] U. S. vs. Fortaleza, 12 Phil. 472; U. S. vs. Taylor, Phil. 162.
[9] U. S vs. Capurro, 7 Phil. 24.
[10] People vs. Mijares, 44 Phil. 684.
[11] People vs. Garcia, 38 O. G. 2048.
[12] People vs. Quebral et al., 73 Phil. 641.
[13] People vs. Ramos, 57 Phil. 462.
[14] People vs. Acierto, 57 Phil. 614.
[15] People vs. Marquez, G. R. No. 41527.
[16] U. S. vs. Panaligan, 14 Phil. 46.
[17] U. S. vs. Fortin, 1 Phil. 299.
[18] 59 Phil. 163.

The defendant, against whom an action for **estafa** was pending in a court of the justice of the peace, incidentally met the justice of the peace in the railway station, and while talking to him there, gave the latter a blow and shove with the fist. It was not proved that the justice of the peace was then and there exercising his functions nor that the defendant, in so striking and pushing the justice of the peace, acted under the impulse of any resentment caused by the acts of the justice of the peace or his rulings in the proceedings for **estafa** then pending against the defendant before the same justice of the peace, or by any other act performed by the latter in the performance of his office with respect to the defendant. **Held:** That the defendant was not guilty of **atentado** under this Article, but of simple misdemeanor punished in par. 1 of Art. 589 of the old Penal Code[19] which is equivalent to Art. 266 of this Code.

A conviction of the offense of **atentado** cannot be sustained in any case in which a reasonable doubt arises as to whether the accused knew or ought to have known that the persons assaulted or resisted were in fact persons in authority or their agents; provided that the assault or resistance offered would have been justifiable in the event that the persons assaulted or resisted had not been persons in authority or their agents.[20]

But a policeman who enters a house after having known and heard of a quarrel therein is lawfully discharging his duty; and the violent laying of hands upon him under such circumstances constitutes the crime of **atentado**.[21]

MAY THIS CRIME EXIST IF BOTH OFFENDER AND OFFENDED PARTIES ARE PERSONS IN AUTHORITY?—It may be asked whether an assault upon a person in authority may be committed also by another person in authority. There can be no doubt about this, since the very Article commented upon (Art. 148), considers as an aggravating circumstance, among other things, that "the offender is a public officer or employee." Spanish jurisprudence, as well as Viada and Groizard, holds that the offense can not be committed by an officer of the same rank. In volume 2 of Viada's commentary on the old Penal Code, 4th edition, page 246, we find the following:

"We do not believe there can be assault upon or disobedience to one authority by another when they both **contend in the exercise of their respective duties.** If, in such a case, one of them abuses, defames, insults, or outrages the other, the offenses of abuse or

[19] U. S. vs. Sañiel, 33 Phil. 646.
[20] U. S. vs. Alvear, 35 Phil. 626; U. S. vs. Bautista, 31 Phil. 308.
[21] U. S. vs. Vallejo, 11 Phil. 193.

private defamation, or that of **lesiones**, if the outrage reaches that point, would be committed, but not the crimes of disobedience, nor that of assault, which involves **the exercise of authority** by the offended person **and the lack of this circumstance** on the part of the offending party. It would be otherwise if the person vested with authority, but not acting in the performance of his duty, should abuse, defame, or outrage the person exercising the official duties of his office; in this case, there actually being disobedience or assault, the **special aggravation** defined in this Article would be applicable."

In a case where a dispute or quarrel arose in the street between several persons, the municipal judge, accompanied by a constable, appeared on the scene to pacify the disputants. The **alcalde** also intervened and pushed aside the judge, telling him that he, the judge, was nothing there, that in the street he, the **alcalde**, alone commanded, with other unbecoming and threatening expressions which caused the judge to withdraw. The court of Soria, Spain, held that the facts constituted the offense of assault upon a public official and sentenced the defendant to the corresponding penalty in its maximum degree, taking into account for this purpose the circumstance of the offender being vested with authority. An appeal from that judgment was taken by the fiscal on the ground of violation of law, whereupon the Supreme Court, in its decision of November 4, 1890, sustained the appeal on the following grounds:

"That, in offenses of assault as in those of disobedience, the legislature has penalized disobedience to the authorities according to the nature of the greater or lesser violence employed in the act, whoever be the person who commits it and whatever be his capacity. Such capacity may give rise to greater liability, pursuant to the provisions of Article 279 of the Code.[22]

"That such special note of the offenses mentioned excludes the legal possibility of including among them either the outrage that a superior may commit upon an inferior in the course of their relations, even when both of them are public officials, or the abuses, of whatever nature they may be, which one authority commits against another in cases of actual conflict of jurisdiction, inasmuch as, in such cases, there is properly no disobedience against the principle of authority, but an endeavor to enforce the authority which each of the disputants represents; therefore, even though it is evident that all authorities owe each other mutual respect, and that the violence which they commit between themselves on the occasion of such conflicts might perhaps require a special

[22] Art. 265 of the old Code, now Art. 148.

correction, they do not, for the reasons stated, fall within the present conception of the offenses of assault and disobedience, and can only be punished, under the Code, according to their nature.

"That the fact that an **alcalde** in his character as such and on the occasion of the exercise of his powers, forcibly prevents a municipal judge from exercising his own powers, evidently constitutes the coercion mentioned in Article 510 of the Code."

In another case, a dispute having arisen in the yard of a penal establishment between a prisoner and a guard on duty, as the latter made a motion as if he would draw a weapon, another guard, also on duty, intervened, held the first guard fast and, assisted by several others, caused him to withdraw. The latter thereupon became angry, drew a knife and inflicted upon the guard who intervened an incised wound which was cured in seven days, leaving no deformity nor impediment to labor. The criminal court of Tarragona, Spain, classified the affair as an armed assault against an agent of the authorities, and convicted the defendant of said crime. The defendant, however, appealed from this judgment on the ground of violation of law, and the Supreme Court of Spain in its decision of January 9, 1890, sustained the appeal on the following ground:

"That the dispute between two guards of a penal establishment, on the occasion of which one of them inflicted a slight wound upon the other, bears none of the features properly appertaining to the crime of assault, if the quarrel was really of a private nature, because it did not affect the service at the moment it arose, and, on the other hand, it cannot be said that the principle of authority was violated or impaired as a consequence of the aggression, for the reason that both disputants were vested with the same official character."

QUALIFYING CIRCUMSTANCES OF ASSAULT.—Under the provisions of Art. 148, the crime of **atentado** is aggravated when the following circumstances are present, namely: (a) when the assault is committed with a weapon, (b) when the offender is a public officer or employee, or (c) when the offender lays hands upon a person in authority.

When any of these circumstances is present, the penalty is **prisión correccional** in its medium and maximum periods, and a fine not exceeding ₱1,000, while if none of said circumstances is present, that is to say, if the victim is only an agent of a person in authority, no weapon is used in the attack, and the offender is a private individual, the penalty is only **prisión correccional** in its minimum period, and a fine not exceeding ₱500.

Thus, a person who assaults a policeman should be punished with **prisión correccional** in its minimum period under the provisions of this Article, for the reason that he is only an **agent** of authority.[23]

The killing of a policeman while he is performing or discharging the duties of his office constitutes the complex crime of homicide and direct assault, and as such must be punished with the maximum degree of the penalty prescribed for homicide.[24]

COMPLEX CRIME OF ASSAULT AND PHYSICAL INJURIES.—Is there such a thing as complex crime of assault against a person in authority and slight physical injuries?[25]

The above question was the subject of two conflicting decisions of our Supreme Court.

In the case of People vs. Acierto, 57 Phil. 614, the aggrieved party who was at the time of the attack a Postmaster of the Municipality of Bacarra, Ilocos Norte, sustained slight injuries in the frontal region and under the left eye, which injuries were inflicted upon him by the accused on occasion or while in the performance of his official duty. The Court found the accused guilty of assault against an agent of a person in authority instead of the complex crime of assault with slight physical injury, for the reason that the slight injury in the opinion of the Court was a necessary consequence of the force or violence which is inherent in all kinds of assault. Same doctrine was reiterated in the case of **People vs. Refre**, G. R. No. 39937, promulgated Feb. 2, 1934, wherein the offended party, who was a policeman, sustained a slight physical injury on account of the violence inflicted upon him by the accused while the offended party was performing his official duty. In holding that the case was simple assault against an agent of a person in authority instead of the complex crime of assault with slight physical injuries, the Court, through Mr. Justice Abad Santos said, among others, the following:

"Under Article 48 of the Revised Penal Code, as amended by Act No. 400, a complex crime is committed when a single act constitutes two or more grave or less grave felonies. In the instant case, the physical injuries inflicted on the offended parties....do not constitute either a grave or a less grave felony."

In a subsequent case, however, **People vs. Marquez**, G. R. No. 41527, the same Tribunal, through Mr. Chief Justice Avanceña, held that the accused who inflicted upon a policeman injuries which

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[23] U. S. vs. Taylor, 6 Phil. 162.
[24] People vs. Hernandez, 43 Phil. 104.
[25] In the case of **People vs. Goode**, G. R. No. L-6358, May 25, 1955, the accused was convicted of murder with assault upon agent of authority.

required medical treatment for nine days, is guilty not only of the crime of assault against a person in authority, but likewise of the crime of less serious physical injuries.

We believe, however, that the former rulings of the Supreme Court in the cases of Acierto and Refre, **supra**, should prevail. So long as the force or violence used by the offender in case of assault does not constitute either grave or less grave felony, only one crime is committed, that of an assault against a person in authority, since it is only natural that force or violence should produce some suffering or injury.

Art. 149. INDIRECT ASSAULTS.—The penalty of prisión correccional **in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon any person who shall make use of force or intimidation upon any person coming to the aid of the authorities or their agents on occasion of the commission of any of the crimes defined in the next preceding article.**[26]

Prisión correccional in its minimum and medium periods: See Art. 147.

A private person who comes to the rescue of an authority or its agent enjoys the privileges of the latter, and any person who lays hand upon such person under such circumstance is guilty of **atentado** under this Article.

Art. 150. DISOBEDIENCE TO SUMMONS ISSUED BY THE NATIONAL ASSEMBLY, ITS COMMITTEES OR SUB-COMMITTEES, BY THE CONSTITUTIONAL COMMISSIONS, ITS COMMITTEES, SUB-COMMITTEES OR DIVISIONS.—The penalty of arresto mayor **or a fine ranging from two hundred to one thousand pesos, or both such fine and imprisonment, shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly, its special or standing committees and sub-committees, the Constitutional Commissions and its committees, sub-committees or divisions, or before any commission or**

[26] Based on the provisions of Art. 251 of the old Penal Code.

committee chairman or member authorized to summon witnesses, refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions. The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summons or refusal to be sworn by any such body or official.[27]

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months.

Books of account, private documents and private papers are property which a person may lawfully possess and cannot be seized under search warrant, especially if their seizure is for the purpose of using them as evidence of intended crime, or for a crime already committed. The seizure or compulsory production of one's private papers to be used as evidence against him is equivalent to compelling him to be a witness against himself.[28]

Such being the case, it is doubtful whether a committee of Congress may lawfully compel a private citizen by **subpoena duces tecum** to produce the documents above described.[29]

Art. 151. RESISTANCE AND DISOBEDIENCE TO A PERSON IN AUTHORITY OR THE AGENT OF SUCH PERSON.—The penalty of arresto mayor **and a fine not exceeding 500 pesos shall be imposed upon any person who not being included in the provisions of the preceding articles shall resist or seriously disobey any person in authority, or the agents of such person, while engaged in the performance of official duties.**

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[27] Similar to Section 102 of the Administrative Code, and Section 3 of Act 1755 of the Philippine Legislature, as amended by Commonwealth Act No. 52. National Assembly now Congress of the Philippines.
[28] Uy Kheytin vs. Villareal, 42 Phil. 886.
[29] See Regidor vs. Araullo, 5 Off. Gaz., 955.

When the disobedience to an agent of a person in authority is not of a serious nature the penalty of arresto menor **or a fine ranging from 10 to 100 pesos shall be imposed upon the offender.**[30]

Arresto mayor: See Art. 150.
Arresto menor:
Minimum: From 1 to 10 days;
Medium: From 11 to 20 days;
Maximum: From 21 to 30 days.

DISTINCTION BETWEEN DIRECT ASSAULT AND RESISTANCE OR DISOBEDIENCE.—The Supreme Court of the Philippines, in speaking of the difference between the provisions of Arts. 249 and 252 of the old Code, equivalent to Arts. 148 (direct assault) and 151 of the present Code, said the following: "The greatest hesitancy which we have felt in applying Article 252 instead of Article 249 to this case arises from the words 'shall employ force against them' (**emplearen fuerza contra ellos**) contained in the context, which would make absolutely necessary the application of Article 249 in every case where any degree of force is exerted. We believe, however, that the words quoted are to be understood as applying to force of a more serious character than that employed in the present instance. We are led to this conclusion not only because of the grave penalty attached, as indicated above, but for the further reason that the Code mentions grave resistance further on in the same paragraph and also makes special provision for the offense of simple resistance in Article 252. Now practically and rationally considered in connection with the subject of arrest, resistance is impossible without the employment of some force. A man may abscond or evade or elude arrest, or may disobey commands of an officer without using force of some kind or in some degree. If at the ultimate moment no force is employed to resist, there is no resistance but submission; and if it had been intended that every manifestation of force, however slight, against the authorities and their agents should bring the case under Article 249, it was an idle waste of words to make other provisions to cover grave resistance and simple resistance. It therefore seems reasonable to hold that the words in Art. 249 relating to the employment of force are in some degree limited by the connection in which they are used and are less peremptory than they at first seem. Reasonably

[30] Similar to Art. 252 of the old Penal Code, and to Art. 111 of the proposed Correctional Code of 1916.

interpreted, they appear to have reference to something more dangerous to civil society than a simple blow with the hands at the moment a party is taken into custody by a policeman."[31]

CASES OF DISOBEDIENCE.—One Jose Ma. Veloso, manager or maintainer of a club named "Parliamentary Club," was arrested by the police on the strength of a search warrant issued against "John Doe." The warrant did not describe the person of Jose Ma. Veloso, but simply authorized any member of the police force of the city of Manila to "make search on the person of said John Doe and in the house situated at No. 124 Calle Arzobispo," the very place of the so-called **Club Parlamentario.** Because the search warrant failed to mention any particular name, Jose Ma. Veloso, claiming that he was not John Doe, refused to be searched by the police, and finally offered violence and resistance to his arrest. He was then prosecuted for the crime of resistance and serious disobedience against the agent of a person in authority, and sentenced to 4 months **arresto mayor** under this Article of the Penal Code. On appeal, much stress was relied by the accused on the proposition that the police officers had no authority to search and arrest Mr. Veloso, for the reason that the warrant was null and void.[32] The Supreme Court, however, held that the warrant in question, under the peculiar circumstances of this case, was sufficiently valid, and that Veloso was not justified in offering resistance to the police officers. "To authorize resistance to the agents of the authority, the illegality of the invasion must be clearly manifest. Here, there was possibly a proper case for protest. There was no case for excessive violence to enforce the defendant's idea of a debatable legal question."[33] So the judgment of the lower court was modified, and the accused sentenced to two months and one day **arresto mayor** and a fine of ₱200 and cost.

A person who resists and refuses to obey and surrender to his captors, the police officers, is guilty of resistance and disobedience under this Article.[34]

The disobedience contemplated by this Article consists in the failure or refusal to obey a direct order from a person in authority and not an order which is merely declaratory of the rights of the parties. Thus, a writ of execution issued by a justice of the peace to the sheriff, directing the latter to place the plaintiff in possession of property held by the de-

[31] U. S. vs. Tabiana et al., 37 Phil. 515.
[32] Commonwealth vs. Crotty, 1865, 10 Allen, Mass., 403.
[33] People vs. Veloso, 48 Phil. 169.
[34] U. S. vs. Resaba, 1 Phil. 311; U. S. vs. Balmes, 37 Phil. 504; U. S. vs. Tabiana, 37 Phil. 515.

fendant, is not an order addressed to the defendant. Such an order must be addressed to an officer of the court and not to either the plaintiff or the defendant. The party in possession may have been unwilling to deliver the land, but such unwillingness does not constitute an act of disobedience as defined and punished by this Article. While the order in a writ of execution does direct that the party in possession shall surrender the property, it does not and could not order him so to do. The act of restoration is one which pertains to the sheriff alone, to whom the law intrusts the execution of judgment. And a person cannot be punished for contempt because of his alleged disobedience to an order of court not addressed to him.[35]

Nor does the failure of the party in possession himself to surrender the property constitute a disobedience to an order of an agent of the authorities. The duty of the sheriff was to place the proper person in possession. Instead of doing so, the sheriff merely ordered the defendant to deliver the property. A sheriff has no power to require any person to perform an act which he is himself bound to perform. Under such circumstances, disobedience on the part of the person to whom the sheriff gave such an order does not constitute a crime.[36]

Section 1338 of the Administrative Code, providing that all persons coming into the Philippine Islands from foreign countries shall be liable to detention and search by the customs authorities, does not authorize the said authorities to search a foreigner who, having been permitted by them to land at the port of his destination, has entered and begun to reside in the Philippine Islands. A resistance by force against such search does not constitute the crime of disobedience to public authority as defined by this Article.[37]

A Chinese, who, after having been deported to China by virtue of a judicial sentence, returns to the Philippines in violation of the term of said sentence is not guilty of contempt under section 232 of Act 190, nor under any provision of the Penal Code. When he was deported, the judgment was final; the sentence, executed. The Court lost all jurisdiction. If the defendant has escaped the penalty imposed by the Court, the executive department of the government has its remedy of enforcing the term of the sentence again.[38]

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[35] U. S. vs. Ramayrat, 22 Phil. 183.
[36] U. S. vs. Ramayrat, **supra.**
[37] People vs. Chan Fook, 42 Phil. 231.
[38] U. S. vs. Loo Hoe, 36 Phil. 867.

Art. 152. PERSONS IN AUTHORITY — WHO SHALL BE DEEMED AS SUCH.—In applying the provisions of the preceding and other articles of this Code, any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board, or commission, shall be deemed a person in authority.

In applying the provisions of articles one hundred forty-eight and one hundred fifty-one of this Code, teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges, and universities, shall be deemed persons in authority.[39]

For illustration of persons in authority and their agents and public officers, see comments on Art. 148, especially the case of **U. S. vs. Smith**, 39 Phil. 533.

Prior to the enactment of Commonwealth Act No. 578, a school-teacher, according to the Supreme Court, was neither a person in authority nor an agent thereof,[40] for the reason that a teacher does not exercise any jurisdiction. With the amendment introduced in this Article by Commonwealth Act 578 there is no longer any question that a professor or a teacher in public or duly recognized private school or college is a person in authority.

Agents of a person in authority are those persons who, by direct provisions of law, or by appointment by competent authority, are charged with the maintenance of public order and the protection and security of life and property, and those who come to the aid of a person in authority.[41]

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[39] Same as Art. 264 of the old Penal Code as amended by Com. Act 578.
[40] Phil. vs. Mendoza, 59 Phil. 163.
[41] U. S. vs. Fortaleza, 12 Phil. 472.

CHAPTER FIVE

PUBLIC DISORDERS

Art. 153. TUMULTS AND OTHER DISTURBANCES OF PUBLIC ORDER — TUMULTUOUS DISTURBANCE OR INTERRUPTION LIABLE TO CAUSE DISTURBANCE.—The penalty of arresto mayor **in its medium period to** prisión correccional **in its minimum period and a fine not exceeding 1,000 pesos shall be imposed upon any person who shall cause any serious disturbance in a public place, office, or establishment, or shall interrupt or disturb public performances, functions or gatherings, or peaceful meetings, if the act is not included in the provisions of articles 131 and 132.**

The penalty next higher in degree shall be imposed upon persons causing any disturbance or interruption of a tumultuous character.

The disturbance or interruption shall be deemed to be tumultuous if caused by more than three persons who are armed or provided with means of violence.

The penalty of arresto mayor **shall be imposed upon any person who in any meeting, association, or public place, shall make any outcry tending to incite rebellion or sedition or in such place shall display placards or emblems which provoke a disturbance of the public order.**

The penalty of arresto menor **and a fine not to exceed 200 pesos shall be imposed upon those persons who in violation of the provisions contained in the last clause of article 85 shall bury with pomp the body of a person who has been legally executed.**[1]

Arresto mayor in its medium period to **prisión correccional** in its minimum period:

Minimum: From 2 months and 1 day to 4 months;

[1] Same as Arts. 258 and 260 of the old Penal Code.

Medium: From 4 months and 1 day to 6 months;
Maximum: From 6 months and 1 day to 2 years and 4 months;
Arresto menor: See Art. 151.

Among other acts constituting public disorder under the provisions of the fourth paragraph of this Article is the displaying of placards or emblems and the making of any outcry tending to incite rebellion or sedition.

Arts. 138 and 142 of the Revised Penal Code, as amended by Commonwealth Act No. 202, punish as guilty of inciting to rebellion or sedition any person who should incite others to the execution of acts constituting rebellion or sedition.

It may be asked then when the making of a seditious speech or proclamation or the displaying of emblems, banners or cartoons of rebellious or seditious nature, would constitute rebellion or sedition, and when it would be considered as simple public disorder under the provisions of Art. 153, par. 4 of the Revised Penal Code.

In our opinion, for a writing or speech or the displaying of some emblems or placards to constitute provocation to commit rebellion or sedition, it is necessary that the offender should have done the act with the idea aforethought of inducing his hearers or readers to commit the crime of rebellion or sedition; while the speeches or other acts of seditious nature in par. 4 of Art. 153 are more or less unconscious outbursts which, although rebellious or seditious in nature, are not intentionally calculated to induce others to commit rebellion or sedition.

Art. 154. UNLAWFUL USE OF MEANS OF PUBLICATION AND UNLAWFUL UTTERANCES.[2]— The penalty of arresto mayor **and a fine ranging from 200 to 1,000 pesos shall be imposed upon:**

1. Any person who by means of printing, lithography, or any other means of publication shall publish or cause to be published as news any false news which may endanger the public order, or cause damage to the interest or credit of the State;

2. Any person who by the same means, or by words, utterances or speeches, shall encourage disobedience to

[2] As amended by Commonwealth Act No. 202, Sec. 3.

the law or to the constituted authorities or praise, justify, or extol any act punished by law;

Red propaganda would fall either under the provisions of this Article, par. 2, or under sedition and rebellion.

3. Any person who shall maliciously publish or cause to be published any official resolution or document without proper authority, or before they have been published officially; or

4. Any person who shall print, publish, or distribute or cause to be printed, published or distributed books, pamphlets, periodicals, or leaflets which do not bear the real printer's name, or which are classified as anonymous.[3]

Arresto mayor: See Art. 150.

Art. 155. ALARMS AND SCANDALS. — The penalty of arresto mayor **or fine not exceeding 200 pesos shall be imposed upon:**

1. Any person who within any town or public place shall discharge any firearm, rocket, firecracker, or other explosive calculated to cause alarm or danger;

2. Any person who shall instigate or take an active part in any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility;

3. Any person who, while wandering about at night or while engaged in any other nocturnal amusements, shall disturb the public peace; or

4. Any person who, while intoxicated or otherwise, shall cause any disturbance or scandal in public places, provided that the circumstances of the case shall not make the provisions of article 153 applicable.[4]

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[3] Similar to Arts. 193, No. 1 and 569, Nos. 1 and 3, of the old Penal Code and Art. 123 of the proposed Correctional Code of 1916.

[4] Similar to Arts. 572 574, Nos. 1 and 3, and to Art. 124 of the proposed Correctional Code of 1916.

Under the old Code, the acts prohibited and punished by this Article were simple misdemeanors.

Art. 156. DELIVERING PRISONERS FROM JAILS. —The penalty of arresto mayor **in its maximum period to** prisión correccional **in its minimum period shall be imposed upon any person who shall remove from any jail or penal establishment any person confined therein or shall help the escape of such person, by means of violence, intimidation or bribery. If other means are used the penalty of** arresto mayor **shall be imposed.**

If the escape of the prisoner shall take place outside of said establishments by taking the guards by surprise, the same penalties shall be imposed in their minimum period.

Arresto mayor in its maximum period to **prisión correccional** in its minimum period:

Minimum: From 4 months and 1 day to 1 year;

Medium: From 1 year and 1 day to 1 year and 8 months;

Maximum: From 1 year, 8 months and 1 day to 2 years and 4 months.

Arresto mayor: See Art. 150.

This crime is to be distinguished from that of infidelity in the custody of prisoners as defined and punished by Art. 223, **infra**, among other things in that the offender under this Article must always be a strange person to the penal institution, while the offender in infidelity in the custody of prisoners to which Art. 223 refers must necessarily be a public officer entrusted with the custody of the fugitives.

CHAPTER SIX

EVASION OF SERVICE OF SENTENCE

Art. 157. EVASION OF SERVICE OF SENTENCE.—The penalty of prisión correccional **in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by escaping during the term of his imprisonment by reason of final judgment. However, if such evasion or escape shall have taken place by means of unlawful entry, by breaking doors, windows, grates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution, the penalty shall be** prisión correccional **in its maximum period.**[1]

Prisión correccional in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

Prisión correccional in its maximum period:

Minimum: From 4 years, 2 months and 1 day to 4 years, 9 months and 10 days;

Medium: From 4 years, 9 months and 11 days to 5 years, 4 months and 20 days;

Maximum: From 5 years, 4 months and 21 days to 6 years.

IS JAIL-BREAKING A CRIME?—In practically all jurisdictions, and even at common law, jail breaking is considered a crime.[2]

Groizard, however, is of the opinion that evasion of service of sentence should not be considered a crime, because freedom is a natural instinct of man, and the blame of the escape of a prisoner should be put on his guards, or safer buildings should be provided to

[1] Similar to Art. 127 of the proposed Correctional Code of 1916.

[2] State vs. Brown, 82 N. C., 585; Commonwealth vs. Farrel, 5 Allen (Mass.) 130; U. S. vs. Loo Hoe, 36 Phil. 867.

prevent it. Viada says, on his part: "But does evasion of sentence constitute a crime? Undoubtedly, for if crime is any voluntary act or omission punished by law, such evasion cannot but be held as a crime which has penal sanction attached to it by the Code. It may be questioned whether it should be a crime or not, especially in case of penalties consisting in deprivation of liberty, because in evading service of his sentence, the culprit, like a person preventively imprisoned, obeys the same powerful and irresistible instinct against which there is no barrier other than a good jail and better jailers, but inasmuch as the lawmakers believed it proper to punish such evasion of service of sentence, it cannot be denied that they are crimes, even though the same has not been, as they should, included in Book III of the Code."[3]

CASES OF JAIL-BREAKING.—Does a person, who has been sentenced to deportation and who returns to the Islands after said sentence has become final, commit the crime of contempt under section 232 of Act No. 190, or that of evasion of sentence defined and penalized under this Article of the Penal Code? The Supreme Court answered this question by holding that since the judgment of deportation became final, the court had lost all jurisdiction over the defendant, and that if the latter has escaped the penalty imposed by the court, the executive department of the Government has its remedy by enforcing the terms of the sentence again.[4]

The substitution of a prisoner by another person is in fact an evasion of service of sentence punished by this Article, characterized by deceit.

EVASION OF "DESTIERRO" AND OTHER PENALTIES NOT INVOLVING IMPRISONMENT.—The Revised Penal Code fails to provide penal sanction for the evasion of service of sentences other than imprisonment. Chapter VI, which is devoted to Evasion Of Service of Sentence, contains only three Articles, and all of them pre-suppose the existence of the following elements, namely: First, final sentence or judgment; Second, imprisonment and penal institution wherein the sentence is being served; and Third, evasion or escape from such penal institution. Under the old Penal Code, the penalty for the evasion of service of sentence consisted in the aggravation of the penalty originally inflicted upon the subject, so that if the culprit is undergoing sentence other than imprisonment, say for example, **destierro** or **suspensión**, the punishment for the evasion in such cases would be an additional term of **destierro** or **suspensión**. Under the provisions of Arts. 157 and

[3] Viada, Cod. Penal, 552.
[4] U. S. vs. Loo Hoe, 36 Phil. 867.

158 of the new Penal Code, however, the punishment for evasion of service of sentence is either **prisión correccional** in its medium period or **prisión correccional** in its maximum period, according to whether or not there had been unlawful entry, breaking of windows, doors, walls, or use of picklocks, disguise, intimidation, etc. Obviously, therefore, the penalty provided for in Article 157, 158 and 159 of the Revised Penal Code cannot be applied to persons evading service of sentence of **destierro** or other penalty not involving imprisonment.

Once more, therefore, our Revised Penal Code presents a gap which should be filed in without delay.

Art. 158. EVASION OF SERVICE OF SENTENCE ON THE OCCASION OF DISORDERS, CONFLAGRATIONS, EARTHQUAKES, OR OTHER CALAMITIES.—A convict who shall evade the service of his sentence by leaving the penal institution where he shall have been confined, on the occasion of disorder resulting from a conflagration, earthquake, explosion, or similar catastrophe, or during a mutiny in which he has not participated, shall suffer an increase of one-fifth of the time still remaining to be served under the original sentence, which in no case shall exceed six months, if he shall fail to give himself up to the authorities within forty-eight hours following the issuance of a proclamation by the Chief Executive announcing the passing away of such calamity.

Convicts who, under the circumstances mentioned in the preceding paragraph, shall give themselves up to the authorities within the above mentioned period of 48 hours, shall be entitled to the deduction provided in article 98.

As will be seen, the Code does not punish the escape of a prisoner from the jail during mutiny, disorder, etc., for it would be inhuman to do so, but rather the failure of the prisoner to give himself up to the authorities after the calamity or mutiny is over.

Art. 159. OTHER CASES OF EVASION OF SERVICE OF SENTENCE.—The penalty of prisión cor-

reccional **in its minimum period shall be imposed upon the convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon. However, if the penalty remitted by the granting of such pardon be higher than six years, the convict shall then suffer the unexpired portion of his original sentence.**[5]

Prisión correccional in its minimum period:

Minimum: From 6 months and 1 day to 1 year, 1 month and 10 days;

Medium: From 1 year, 1 month and 11 days to 1 year, 8 months and 20 days.

Maximum: From 1 year, 8 months and 21 days to 2 years and 4 months.

When a conditional pardon is violated, the prisoner is placed in the same state in which he was at the time the pardon was granted. He may be re-arrested and re-committed to prison. And the rule is well-settled that, in requiring the convict to undergo so much of the punishment imposed by his original sentence as he had not suffered at the time of his release, the Court should not consider the time during which the convict was at large by virtue of the pardon as time served on the original sentence.[6]

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[5] Based on the provision of Acts 1524 (conditional pardon) and 1561 (parole) of the Philippine Commission. Under the provisions of these Acts, a violator of a conditional pardon was liable to suffer and to serve the unexpired portion.

[6] People vs. Tapel, 64 Phil. 112.

CHAPTER SEVEN

COMMISSION OF ANOTHER CRIME DURING SERVICE OF PENALTY IMPOSED FOR ANOTHER PREVIOUS OFFENSE

Art. 160. COMMISSION OF ANOTHER CRIME DURING SERVICE OF PENALTY IMPOSED FOR ANOTHER PREVIOUS OFFENSE — PENALTY.—Besides the provisions of rule 5 of article 62, any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony.

Any convict of the class referred to in this article, who is not a habitual criminal, shall be pardoned at the age of seventy years if he shall have already served out his original sentence, or when he shall complete it after reaching said age, unless by reason of his conduct or other circumstances he shall not be worthy of such clemency.[1]

Supposing a person, while confined in Bilibid Prison for robbery, commits murder in said prison. Under the provisions of this Article in connection with Article 248, the culprit must be sentenced to death which is the maximum penalty prescribed for murder.[2]

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[1] Similar to the provision of Art. 129 of the old Penal Code.
[2] U. S. vs. Mohamad, 22 Phil. 524; People vs. Yabut, 58 Phil. 499.

TITLE FOUR

CRIMES AGAINST PUBLIC INTEREST

CHAPTER ONE

FORGERIES

SECTION ONE

FORGING THE SEAL OF THE GOVERNMENT OF THE PHILIPPINE ISLANDS, THE SIGNATURE OR STAMP OF THE CHIEF EXECUTIVE

Art. 161. COUNTERFEITING THE GREAT SEAL OF THE GOVERNMENT OF THE PHILIPPINE ISLANDS, FORGING THE SIGNATURE OR STAMP OF THE CHIEF EXECUTIVE.—The penalty of reclusión temporal **shall be imposed upon any person who shall forge the Great Seal of the Government of the Philippine Islands or the signature or stamp of the Chief Executive.**[1]

Reclusión temporal: See Art. 118.

Art. 162. USING FORGED SIGNATURE OR COUNTERFEIT SEAL OR STAMP.—The penalty of prisión mayor **shall be imposed upon any person who shall knowingly make use of the counterfeit seal or forged signature or stamp mentioned in the preceding article.**[2]

Prisión mayor: See Art. 115.

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[1] Based on the provisions of Article 269, par. 1, of the old Penal Code, and Art. 128 of the proposed Correctional Code of 1916.

[2] Based on the provisions of Arts. 268-269, par. 2 of the old Penal Code, and Art. 129 of the proposed Correctional Code of 1916.

SECTION TWO

COUNTERFEITING COINS

Art. 163. MAKING AND IMPORTING AND UTTERING FALSE COINS. — Any person who makes, imports, or utters false coins, in connivance with counterfeiters or importers, shall suffer:

1. Prisión mayor **in its minimum and medium periods and a fine not to exceed 10,000 pesos, if the counterfeited coin be gold or silver coin of the [United States or of the] Philippine Islands.**

2. Prisión correccional **in its minimum and medium periods and a fine not to exceed 2,000 pesos, if the counterfeited coin be any of the minor coinage of the [United States or of the] Philippine Islands.**

3. Prisión correccional **in its minimum period and a fine not to exceed 1,000 pesos, if the counterfeited coin be currency of a foreign country.**[3]

Prisión mayor in its minimum and medium periods:

Minimum: From 6 years and 1 day to 7 years and 4 months;

Medium: From 7 years, 4 months and 1 day to 8 years and 8 months;

Maximum: From 8 years, 8 months and 1 day to 10 years.

Prisión correccional in its minimum and medium periods: See Art. 149.

Prisión correccional in its minimum period: See Art. 159.

Art. 164. MUTILATION OF COINS—IMPORTATION AND UTTERANCE OF MUTILATED COINS.— The penalty of prisión correccional **in its minimum period and a fine not to exceed 2,000 pesos shall be imposed upon any person who shall mutilate coins of the legal currency of the [United States or of the] Philippine Islands or import or utter mutilated current coins, in connivance with multilators or importes.**[4]

Prisión correccional in its minimum period: See Art. 159.

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[3] Similar to the provisions of Sections 9, 10 and 13 of Act 1754 of the Philippine Commission.

[4] Same as Section 11 of Act 1954 of the Philippine Commission.

Art. 165. SELLING OF FALSE OR MUTILATED COIN, WITHOUT CONNIVANCE.—Any person who knowingly, although without the connivance mentioned in the preceding articles, shall possess false or mutilated coin with intent to utter the same, or shall actually utter such coin, shall suffer a penalty lower by one degree than that prescribed in said article.[5]

SECTION THREE

FORGING TREASURY OR BANK NOTES, OBLIGATIONS AND SECURITIES; IMPORTING AND UTTERING FALSE OR FORGED NOTES, OBLIGATIONS AND SECURITIES

Art. 166. FORGING TREASURY OR BANK NOTES OR OTHER DOCUMENTS PAYABLE TO BEARER; IMPORTING, AND UTTERING SUCH FALSE OR FORGED NOTES AND DOCUMENTS.—The forging or falsification of treasury or bank notes or certificates or other obligations and securities payable to bearer and the importation and uttering in connivance with forgers or importers of such false or forged obligations or notes, shall be punished as follows:

1. By reclusión temporal **in its minimum period and a fine not to exceed 10,000 pesos, if the document which has been falsified, counterfeited, or altered is an obligation or security of the [United States or of the] Philippine Islands.**

The words "obligation or security of the [United States or of the] Philippine Islands" shall be held to mean all bonds, certificates of indebtedness, national bank notes, coupons, [United States or] Philippine Islands notes, treasury notes, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the [United States or of

[5] Based on the provision of Art. 288 of the old Penal Code and Art. 136 of the proposed Correctional Code of 1916.

the] Philippine Islands, and other representatives of value, of whatever denomination, which have been or may be issued under any act of the Congress of the [United States or the] Philippines.

2. By prisión mayor **in its maximum period and a fine not to exceed 5,000 pesos, if the falsified or altered document is a circulating note issued by any banking association duly authorized by law to issue the same.**

3. By prisión mayor **in its medium period and a fine not to exceed 5,000 pesos, if the falsified or counterfeited document was issued by a foreign government.**

4. By prisión mayor **in its minimum period and a fine not to exceed 2,000 pesos, when the forged or altered document is a circulating note or bill issued by a foreign bank duly authorized therefor.**[6]

Reclusión temporal in its minimum period:

Minimum: From 12 years and 1 day to 12 years, 10 months and 20 days;

Medium: From 12 years, 10 months and 21 days to 13 years, 8 months and 20 days;

Maximum: From 13 years, 8 months and 21 days to 14 years and 8 months.

Prisión mayor in its minimum period: See Art. 135.

Prisión mayor in its medium period:

Minimum: From 8 years, and 1 day to 8 years and 8 months;

Medium: From 8 years, 8 months and 1 day to 9 years and 4 months;

Maximum: From 9 years, 4 months and 1 day to 10 years.

Prisión mayor in its maximum period:

Minimum: From 10 years and 1 day to 10 years and 8 months;

Medium: From 10 years, 8 months and 1 day to 11 years and 4 months;

Maximum: From 11 years, 4 months and 1 day to 12 years.

Art. 167. COUNTERFEITING, IMPORTING AND UTTERING INSTRUMENTS PAYABLE TO BEARER. —Any person who shall forge, import or utter, in con-

[6] Substantially the same as Section 1 of Act 1754 of the Philippine Commission.

nivance with the forgers or importers, any instrument payable to order or other document of credit not payable to bearer, shall suffer the penalties of prisión correccional **in its medium and maximum periods and a fine not exceeding 6,000 pesos.**[7]

Prisión correccional in its medium and maximum periods:
Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;
Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;
Maximum: From 4 years, 9 months and 11 days to 6 years.

Art. 168. ILLEGAL POSSESSION AND USE OF FALSE TREASURY OR BANK NOTES AND OTHER INSTRUMENTS OF CREDIT.—Unless the act be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession, with intent to use, any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles.[8]

Art. 169. HOW FORGERY IS COMMITTED.—The forgery referred to in this section may be committed by any of the following means:

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

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

By virtue of the provisions of this Article every technical description between forgery and counterfeiting is wiped out.

Under the old Penal Code, some distinction was established between counterfeiting and falsifying a note. For instance, in

[7] Based on the provisions of Section 293 of the old Penal Code and Art. 138 of the proposed Correctional Code of 1916.
[8] Based on the provisions of Art. 141 of the proposed Correctional Code of 1916, and Section 19 of Act 1954 of the Philippine Commission. See People vs. Quinto, 60 Phil. 351; People vs. Oliva, 36 O. G. 634.

U. S. vs. Gardner, 3 Phil. 398, the defendant raised a one dollar United States silver certificate by pasting a piece of paper with the figure "ten dollar" over the "one dollar" on the certificate, and passed it as of the value of ten dollars. Although the majority of the Court held that such an act constituted the crime of falsifying document payable to bearer, some in a dissenting opinion held that it constituted the crime of counterfeiting of money.

With the definition given by the present Article, the crime of counterfeiting or forging Treasury Bank Notes or other documents payable to bearer includes not only acts of counterfeiting and forgery but likewise acts of falsification of said instruments.

SECTION FOUR

FALSIFICATION OF LEGISLATIVE, PUBLIC, COMMERCIAL, AND PRIVATE DOCUMENTS, AND WIRELESS TELEGRAPH, AND TELEPHONE MESSAGES

Art. 170. FALSIFICATION OF LEGISLATIVE DOCUMENTS.—The penalty of prisión correccional **in its maximum period and a fine not exceeding 6,000 pesos shall be imposed upon any person who, without proper authority therefor, alters any bill, resolution, or ordinance enacted or approved or pending approval by either House of the Legislature or any provincial board or municipal council.**[9]

Prisión correccional in its maximum period: See Art. 157.

Art. 171. FALSIFICATION BY PUBLIC OFFICER, EMPLOYEE, OR NOTARY OR ECCLESIASTIC MINISTER.—The penalty of prisión mayor **and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:**

[9] Similar to Art. 130 of the proposed Correctional Code of 1916 and Section 2 of Act 1755 of the Philippine Commission.

1. Counterfeiting or imitating any handwriting, signature or rubric;

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy of statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record of document of such character that its falsification may affect the civil status of persons.[10]

Prisión mayor:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

PROVINCE OF THE PRESENT ARTICLE.—The provisions of this Article refer solely and exclusively to falsification of **public or official documents by public officials.**

[10] Same as Art. 300 of the old Penal Code and Art. 142 of the proposed Correctional Code of 1916.

REQUISITES OF THE CRIME.—It should be borne in mind that to constitute the crime of falsification of public documents by a public official, it is an indispensable requisite that the offender should have taken advantage of his office. Otherwise it will be a simple case of falsification of public documents by a **private** person. Thus, a court stenographer who deliberately and maliciously makes changes in the transcription of his notes on the statements of a witness taken by him is guilty of falsification under this Article; while any other officer, say a chief of police, who happens to make the same changes or alterations in the same document, is guilty of falsification of a public document committed by a private person.[11] It is because, in the former example, the stenographer misused his public office in committing the crime, while the policeman in the latter example, did not.

WHAT CONSTITUTE PUBLIC DOCUMENTS.—The cover of a criminal record wherein are set forth by administrative order certain data touching proceedings taken in the case, with the dates thereof, serving as a brief account of the case intended to expedite the work, forms a part of the record and is a public document. Alteration of any such data constitutes falsification.[12]

The following are regarded public or official documents:

(a) Any instrument authorized by a notary public;

(b) Any instrument authorized by a competent public official with the solemnities required by law;

(c) Forms prepared by the Auditors of the Philippines in accordance with Act No. 90 of the Philippine Commission;

(d) Receipts issued by the department of assessments and collections of the City of Manila for taxes collected;

(e) Burial permits issued by the Board of Public Health of the City of Manila;

(f) Receipts prescribed by the Government to be issued upon the receipt of money for public purposes;

(g) The official cash-book kept by the disbursing officer of the coast guard and transportation department;

(h) A cash-book of a public official, in which entries are made of accounts of public moneys received;

(i) An official receipt printed in accordance with the standard forms required by the Government.[13]

(j) Cover of judicial record.[14]

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[11] U. S. vs. Austero, 14 Phil. 377; Vida, 2 Cod. Pen. 314; People vs. Teves, 44 Phil. 275.
[12] People vs. Concepcion, 56 Phil. 240.
[13] U. S. vs. Asensi, 34 Phil. 750.
[14] People vs. Concepcion, **supra**.

(k) Register of Attorneys.[15]

(l) Municipal payroll.[16]

A mere blank form for an official document is not in itself a public document within the meaning of Art. 171 of this Code.[17]

The Register of Attorneys officially kept by the clerk of the Supreme Court and in which is inscribed the name of each attorney admitted to the practice of law, with a statement of the fact that he had taken the oath, signed the entry, and was inscribed as an attorney, is an official document, and the private person who falsifies an entry in said register is amendable to the penalty prescribed in Article 171 of the Penal Code.[18]

CASES OF FALSIFICATION.—One who cooperates with others in falsifying three different entries in the Roll of Attorneys, whereby it is made to appear that three different unqualified persons have been enrolled as attorneys, is guilty of three offenses and not merely of one, although the three acts of falsification were committed in succession upon the same occasion.[19]

Public officials, within the meaning of Art. 203 of this Code, includes every officer and employee of the Insular, provincial, or municipal Governments. The chief-clerk of a Bureau is as much a public official as the Chief Executive.

Thus, a customs-house clerk whose duty it is to make out notes showing tonnage and license fees of vessels is a public official within the meaning of Art. 203 of this Code, and a falsification committed by such employee in the discharge of his duty is to be punished under Art. 171 of this Code.[20]

A private person who cooperates with a public official in the falsification of a public document is guilty of this crime and incurs the same liability and penalty as the public official.[21]

Unless a close resemblance or similarity between the alleged counterfeit signature or handwriting and genuine one, or an attempt to simulate the genuine one, is established, there would be no forgery or counterfeiting under paragraph I of Art. 171.[22]

The doctrine announced in those decisions, however, has been somewhat modified, if not revoked, by later decisions in the cases of **U. S. vs. Braga,** 12 Phil. 202 and **U. S. vs. Cinco and Redoña,** 42 Phil. 889, especially in a case where the alleged forgery or fal-

[15] People vs. Bautista, 53 Phil. 158.
[16] People vs. Reodica, et al., 62 Phil. 567.
[17] People vs. Camacho, 44 Phil. 484.
[18] People vs. Ponferrada, 54 Phil. 68.
[19] People vs. Segovia, 54 Phil. 75.
[20] U. S. vs. Sarmiento, 1 Phil. 484.
[21] Viada 2 Cod. Pen. 387; U. S. vs. Ponte, 20 Phil. 279.
[22] U. S. vs. Paraiso, 1 Phil. 66; U. S. vs. Roque, 1 Phil. 327; U. S. vs. Buenaventura, 1 Phil. 428; U. S. vs. Balmori, 1 Phil. 660; U. S. vs. Castro, 6 Phil. 10.

sification was made with reference to a mercantile document. Consequently, one who makes it appear falsely that the alleged party to a document was a real party thereto, when as a matter of fact he did not participate in the transaction, is guilty of falsification even though there was no attempt to imitate or simulate the signatures of the person whose name was illegally used.[23]

A perfect imitation, however, of the genuine signature is not necessary in order to constitute falsification. It is sufficient that there was an intent to imitate.[24]

One who, taking advantage of the occasion when a power of attorney is presumably being drawn up, prepares instead thereof, contrary to the wishes of the interested parties and with malice aforethought, an instrument of sale in his favor, using deceit as to parties and the witnesses, and afterwards induces a notary to verify falsely that the vendor actually appeared and ratified such instrument, is guilty of falsification of a notarial document, under paragraph 3 of Art. 171, in that the offender had attributed to the offended parties who signed the document statements other than those in fact made by them.[25]

A conviction for falsification of a public document by a private person will not be sustained when the facts are found to be consistent with good faith and show the absence of criminal intent.[26]

Falsification can be committed through imprudence.[27]

A person who has set forth an inaccurate date in certain proceedings otherwise correct, does not commit the crime of falsification of a document, for the reason that such inaccuracy, as far as date is concerned, affects neither the integrity nor the truth of such proceedings.[28]

One who induces others to sign the names of third persons to pay a roll without attempting to imitate the genuine signatures, cannot be convicted upon a charge of falsifying a public document.[29]

The statement upon a disbursing officer's check of the purpose for which it is drawn is an essential part thereof and if the purpose is falsely stated, the crime of falsification of a document is committed.[30]

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[23] People vs. Isla, 42 Phil. 485.
[24] U. S. vs. Rampas, 26 Phil. 189.
[25] U. S. vs. Capule, 24 Phil. 12.
[26] U. S. vs. San Jose, 7 Phil. 604; U. S. vs. Arceo, 17 Phil. 592; People vs. An, 48 Phil. 183.
[27] U. S. vs. Maleza, 14 Phil. 469.
[28] See Dec. Sup. Ct. of Spain, December 23, 1885, 35 Jur. Crim. 1025-26.
[29] U. S. vs. Freimuth, 3 Phil. 318.
[30] U. S. vs. Wilson, 4 Phil. 317.

A will appeared to be signed by one of the defendants at the request of the testatrix who had been dead for some months when the signature was made. **Held:** The defendants were guilty of falsification under Arts. 171 and 172 of this Code.[31]

Re falsification of bar examination papers, see **People vs. Castro et al.**, 54 Phil. 41; **People vs. Romualdez et al.**, 57 Phil. 481.

The following are two important questions which, in spite of their being trite and of almost daily occurrence, are deemed to be not definitely settled in this jurisdiction, i.e.:

COMPLEX CRIME OF ESTAFA WITH FALSIFICATION.—Can a person be prosecuted for the crime of **estafa** by means of falsification of a private document? In other words, can the complex crime of **estafa** with falsification legally exist?[32]

This interesting question was answered in the negative by the Supreme Court of Spain which has uniformly held that no such thing as **estafa** through falsification of a private document can legally exist. It may be inferred from the decisions wherein such doctrine is established that its grounds are the following: Since the damage to another, or the intent to cause such damage, is an essential element of the offense of falsification of a private document, it cannot properly be said that such falsification in a case of **estafa** is a means to commit the latter crime, for the fraudulent gain obtained through deceit in **estafa** in the commission of which a document was falsified is nothing more nor less than the very damage caused or attempted to be caused by the falsification of such document. In other words, in order that the falsification of a private document may be considered as a means to commit another crime, i. e., **estafa**, the immediate effect of the one must be different from that of the other. So, in robbery with homicide, we see that the homicide has for its immediate effect the death of a person, though its ultimate effect be the robbery of the same person. Now, the only effect (both immediate and ultimate) of the falsification in a case of **estafa** is the damage to another, and the effect of the **estafa** is that same and identical damage. The fraudulent gain obtained by the falsifier of a private document is none other than the same gain obtained by him in receiving another through such falsified private document. Damage and defraudation are convertible terms in such a case.

In this connection, the following questions are propounded and answered by Viada:

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[31] U. S. vs. De los Angeles et al., 4 Phil. 597.

[32] See People vs. Geyrosaga, 53 Phil. 278; People vs. Silvallana, 61 Phil. 636; People vs. Reyes, 56 Phil. 286.

QUESTION III.[33] Should one who imitates the handwriting and signature of another on a money order to the end that on the latter's account a certain sum of money be paid to him, upon his production of said money order, be convicted of falsification of a private document and also of **estafa** and punished with the penalty in its maximum degree fixed for the more serious offense, in accordance with Art. 90?[34] The Supreme Court has decided that the accused should be punished for the falsification only, on the ground that, according to Art. 314 (171) of the Penal Code, the crime of falsification is committed by counterfeiting or imitating the handwriting, signature, or rubric of another, and Art. 318 (172, Par. 2 of this Code) provides that he who, **to the damage of another**, or with the intent of **causing** such damage, shall in any private document commit any of the acts of falsification enumerated in the aforesaid Article (171), shall suffer the penalty of **presidio correccional** in its minimum and medium degrees and be fined in a sum not less than 625 pesetas and not more than 6,250 pesetas; that it is inferred from this definition that in order that falsification of a private document may constitute a crime it is an **indispensable requirement** that it be done **to the damage** of another, or **with the intent of causing such damage;** and, therefore, the damage and gain derived from this means are intimately connected with the falsification from which they cannot be separated, **making up one crime only** punished by said Art. 318 (172, par. 2); and for that reason the lower court, in declaring that the accused committed the crimes of falsification of a private document and **estafa**, the former as a means to carry out the latter, and in imposing the maximum degree of the penalty for the more serious offense, misapplied Arts. 583 and 90 (equivalent to Arts. 315, No. 1, par. [b], and 48 of this Code) etc.[35]

The same doctrine was laid down as regards mercantile documents.

QUESTION II.[36] If one presents to the Bank of Spain an acknowledgment of Security (**resguardo de valores**) with a "receipt with the coupon" imitating the handwriting, signature, and rubric of the depositor, collecting by this means 42,500 pesetas on registered bonds at 4%, will he, besides the crime of falsification of a mercantile document defined in Art. 315 of the Penal Code, commit that of **estafa**? It was so understood by the **Audiencia** of Madrid, but appeal having been taken by counsel for the accused, the Supreme Court revoked the sentence of the lower court.

[33] 3 Cod. Pen., 487.
[34] Equivalent to Art. 48 of this Code.
[35] Dec. of June 18, 1875, published in the Gazette of August 15, 1875.
[36] Viada, Supp., 5 Cod. Pen., 416, 417.

"Considering," the court said, "that a falsification committed for gain, as shown by Art. 330 of the code, constitutes only one crime, and could not be otherwise, taking into account that the deceit is contained in the falsification and the sole object of the latter was that of obtaining a gain, which case is expressly covered by Art. 330 of the code, whereby none of the other elements constituting the **estafa** remains, nor anything capable of being considered as a means to commit the same, Arts. 547, 548 and 90 of the code being, therefore, of no application."[37]

CASE OF SIMPLE ESTAFA, INSTEAD OF FALSIFICATION. —Another interesting question is: Could not, in any case, the crime of estafa be committed by means of a forged document? To this question, the Supreme Court of Spain held that a false, though not a falsified, document may be a means to commit the crime of **estafa.**

QUESTION III.[38] Would the mere simulation of a letter, chit, receipt, or any other private document, with the object of defrauding or swindling another, be a falsification of a private document, even though the contents of such document as well as the signatures and rubrics thereof be false, if there was no attempt to imitate or counterfeit the handwriting and signature of the person who supposedly wrote them out? The Supreme Court has held in very numerous sentences that in such a case the crime of **estafa** only is committed, but not a falsification of a private document. "Considering," said the court, "that the crime committed by F. A., in calling on the Barley store in the inn of Almudebar with a letter apparently signed by Domingo de Valentian in order that the empty sacks and the proceeds from the sale of rice on account of said Valentian be turned over to him, as they were, is a mere **estafa,** because the production of the letter used by him, is the means by which he committed such **estafa,** and without it the deceit constituting it could not have been carried into effect: Considering further that there was no counterfeited signature or rubric, or even a known one, on the letter, and, therefore, there was no falsification at all, etc."[39]

"Considering," it said in a subsequent sentence, "that if account is taken of both the spirit and the letter of said Articles (318 and 548) and of the two facts which are mentioned as proved in the sentence of the lower court, namely, that Gertrudis Porres received from Francisco Porres seven ounces (coins) of gold with the request that the same be loaned at a given interest,

[37] Dec. of May 6, 1904, published in the Gazette of Sept. 21, 1904, pp. 45, 46.
[38] Viada, 2 Cod. Pen., 427.
[39] Dec. of Oct. 18, 1873, published in the Gazette of January 24, 1874.

and that the accused Cinta Luchis induced the boy Rafael Villo to prepare, sign, and rubricate, in the name of said priests, the two promissory notes mentioned above, it is certain that the latter fact does not constitute the crime of falsification but that of **estafa**, either attempted or frustrated, because in preparing, signing, and rubricating said promissory notes without the knowledge and consent of said priests, there was no attempt to counterfeit or imitate the handwriting, signatures, and rubrics used by them, but the accused selected that means for the purpose of obtaining fraudulently the amounts set forth in said promissory notes, etc."[40]

Upon the same grounds the Supreme Court has also held that there was no liability for the crime of falsification of a private document but merely for **estafa** in the following cases: 1. In a case where one by means of chits signed with the name of another, whose handwriting was not, however, imitated, secured several goods from a store.[41] 2. In the case of a female school teacher who, in rendering account for the equipment of her school, presented certain receipts signed by a third person for amounts delivered to him for cleaning the school, even though the contents of such receipts as well as their signatures and rubrics were false, because the same were not counterfeited or imitated, nor the signature appearing thereon.[42] 3. And lastly, in the case of one who, falsely representing himself to be the brother of a certain person, asked and obtained from another a sum of money, for which he signed a receipt with a fictitious name.[43]

Art. 172. FALSIFICATION BY PRIVATE INDIVIDUALS AND USE OF FALSIFIED DOCUMENTS.— The penalty of prisión correccional **in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:**

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document of letter of exchange or any other kind of commercial document; and

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any

[40] Dec. of Jan. 15, 1874, published in the Gazette of April 6, 1874.
[41] Dec. of Dec. 27, 1882; Gazette of May 26, 1883.
[42] Dec. of April 15, 1885; Gazette of Nov. 7, pp. 231, 232.
[43] Dec. of May 20, 1886; Gazette of Aug. 17, pp. 93, 94.

private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.[44]

Prisión correccional in its medium and maximum periods: See Art. 157.

FALSIFICATION OF PUBLIC, OFFICIAL OR COMMERCIAL DOCUMENT BY PRIVATE INDIVIDUAL. — The first paragraph of this Article refers to the crime of falsification of public, official or commercial document, committed by a private individual.

It is distinguished from the falsification of public or official document committed by public officers defined and punished in Article 171 **ante**, in that in the present Article the offender need not take advantage of his public office in committing the crime. But in both Articles (171 and 172) the element of **damage or intent to cause damage is not necessary.**

Commercial documents or papers within the meaning of this Article are, in general, documents or instruments which are used by merchants or businessmen to promote or facilitate trade or credit transaction. Such instruments naturally include letters of exchange, letters of credit, drafts, trade acceptances, checks, notes or **pagares** issued in the course of a business transaction, **quedans**, bonds, books of accounts, and in general, any negotiable instrument.[45]

A surety account was held in this jurisdiction as a mercantile or commercial document.[46]

FALSIFICATION OF PRIVATE DOCUMENT COMMITTED BY PRIVATE INDIVIDUAL.—This offense and its penalty is described in paragraph 2 of Article 172.

It is distinguished chiefly from the crime of falsification of public document or commercial papers in that the **damage to another**, or at least, intent to do such damage is an indispensable element of the crime.[47]

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[44] Similar to Art. 301, 302 and 304 of the old Penal Code.
[45] Viada, 2 Cod. Pen., 419-420.
[46] People vs. Lerma, 44 Phil. 471.
[47] See People vs. Po Giok To, G. R. No. L-7236, April 30. 1955; People vs. Quasha, 49 O. G. 2826 (1953).

PRIVATE DOCUMENT, DEFINED.—A private document is "every deed or instrument executed by a private person without the intervention of a notary public or other person legally authorized, by which document some disposition or agreement is proved, evidenced or set forth." A theatre ticket is a private document.[48]

The mere fact that a receipt taken by a private person was intended for use in support of a claim against the public funds does not of itself raise it to the dignity of a public document before it has become a part of some official record and prior to its certification by some public official clothed with authority for that purpose.[49]

CASES OF FALSIFICATION IN GENERAL.—In **U. S. vs. Tan Chian**, 17 Phil. 209, the court said that in the crime of falsification of a private document, the penal law does not require that damage should positively have been done to another; it is sufficient for the commission of the crime that the purpose and intent of guilty party were to cause such injury.

Thus, when an alleged offender did nothing but to imitate the signature of another in a certain document, purporting to have received certain goods, the payments for which were evidenced in the forged receipt, without using the receipt afterwards because it was kept in the house, a conviction under this Article cannot be maintained. It does not suffice that the document itself be false, but there must also be evidence of damage caused to another, or an intention to cause it; and such damage or intention to cause it must be proved by facts independent of the writing of the false document.[50]

Subsequently, in the case of **U. S. vs. Infante**, 36 Phil. 146, the following syllabus was published:

> "The crime of falsification of a private document, defined and penalized by Art. 304 of the Penal Code (now par. 2 of this Article), is consummated when such a document is actually falsified with the intent to prejudice a third person, whether such falsified document is or is not there after put to the illegal use for which it was intended."

This doctrine, as will be seen, is apparently in conflict with that of **U. S. vs. Paraiso**, mentioned above. However, a careful examination of the facts stated in the case of Infante shows that the forged document was used by the offenders after its falsification is consummated and complete at the moment when such

[48] U. U. vs. Orera, 11 Phil. 596.
[49] U. S. vs. Nieto, 5 Phil. 582.
[50] U. S. vs. Paraiso, 1 Phil. 127.

a document is actually falsified, to the prejudice of, or with the intent to prejudice, a third person, and it matters not to what use the document may be put thereafter."[51]

The fraudulent gain obtained by the perpetrator of the crime of falsification of a private document—to which crime par. 2 of this Article refers—constitutes the essential and indispensable element of proof of the commission of this crime and is involved in the prejudice caused to a third person; and said punishable act cannot be classified as "estafa" **with falsification**, nor may the penalty for a more serious offense be applied, as prescribed in Art. 89 of the old Code, inasmuch as the prejudice occasioned or intended by the author of the falsification does not constitute estafa.[52]

J. Braga was authorized to use a rubber stamp bearing the name of a company, by signing his own name in connection therewith, for the purpose of buying goods for the company, but not for the purpose of obtaining money. In this manner Braga signed an obligation for the payment of ₱159, which he received and converted to his own use. These acts constituted the crime of falsification, because in effecting the transaction, he made it appear that that company was a party thereto when, as a matter of fact, the company did not participate.[53]

A burial permit issued by the Board of Health in the City of Manila is a public document within the meaning of that term as it is used in Art. 301 of the old Penal Code.[54]

The **simulation** of a public or official document done in such manner as to easily lead to error about its authenticity constitutes the crime of falsification. It is not essential that the falsification was made in a **real** public or official document.[55]

The fact that one's consent to a contract was obtained by mistake, violence, intimidation or fraud does not make the contract a false contract; and, therefore, a person who has obtained such a contract by those means, whatever be the crime he may be guilty of, is not guilty of the crime of falsification either of a pubic or a private document.[56]

USE OF FALSIFIED DOCUMENTS.—The third paragraph of Art. 172 punishes with the penalty next lower in degree any

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[51] See also U. S. vs. Barretto, 36 Phil. 204.
[52] U. S. vs. Chan Tiao, 37 Phil. 78.
[53] U. S. vs. Braga, 12 Phil. 202; People vs. Isla, 42 Phil. 485; U. S. vs. Cinco, 42 Phil. 462.
[54] U. S. vs. Mateo, 5 Phil. 462.
[55] *U. S. vs. Corral, 15 Phil. 383.*
[56] U. S. vs. Milla, 4 Phil. 391. See also U. S. vs. Lopez, 15 Phil. 515; U. S. vs. Viloria, 1 Phil. 682; U. S. vs. Litongjua, 4 Phil. 485; U. S. vs. Victoria, 9 Phil. 81; U. S. vs. Brown, 9 Phil. 89; which involve different cases of falsification.

person who shall knowingly introduce in evidence in any judicial proceeding any of the false documents embraced in Articles 171 and 172, or shall make use of them in any other manner or proceeding.

Theoretically speaking, therefore, we may say that a person who did not participate in the making of a falsified document, but later on knowingly made use of such false document, is an accomplice in the falsification, and is subject to punishment under this paragraph.

As may be seen from the context of the Article under consideration, the use of falsified documents is not limited to court proceedings, but is extended to any kind of proceeding. In the latter case, however, **damage**, or at least, **intent to cause such damage**, should be proven.

For this reason, there can be no conviction of the offense of knowingly using a false document, such as a false vehicle license, in the absence of proof of the defendant's knowledge of its falsity.[57]

Art. 173. FALSIFICATION OF WIRELESS, CABLE, TELEGRAPH, AND TELEPHONE MESSAGES, AND USE OF SAID FALSIFIED MESSAGES. — The penalty of prisión correccional **in its medium and maximum periods shall be imposed upon any officer or employee of the Government or of any private corporation or concern engaged in the service of sending or receiving wireless, cable, or telephone messages who utters a fictitious wireless, telegraph, or telephone message of any system or falsifies the same.**

Any person who shall use such falsified dispatch to the prejudice of a third party or with the intent to cause such prejudice, shall suffer the penalty next lower in degree.[58]

Prisión correccional in its medium and maximum periods: See Art. 157.

Under the provisions of this Article a private individual cannot commit the crime of falsification of telegraphic dispatches by direct participation, unless such private individual is an employee

[57] U. S. vs. Gomez, 3 Phil. 436.
[58] Similar to the provisions of Art. 303 of the old Penal Code, Section 4 of Act 1851 and Art. 114 of the proposed Correctional Code of 1916.

of some corporation or concern engaged in the business of sending or receiving wireless, telegraph or telephone messages.

A private individual not connected with any firm engaged in the business of receiving and sending telegraph or wireless messages, can only be liable for violation of this Article if he should knowingly make use of any falsified telegraph, wireless or telephone messages, to the prejudice of a third party or with intent to cause such prejudice.

The telegraph operator and public official who, with intent to gain, reduces the number of words written in a telegram received by him for dispatch, by making alterations in its wordings, when unauthorized to do so by the sender, and who transmits the message by wire in the form as amended by him after suppressing several of the words therein contained, commits the crime of falsification of a telegram under this Article.[59]

SECTION FIVE

FALSIFICATION OF MEDICAL CERTIFICATES, CERTIFICATES OF MERIT OR SERVICE AND THE LIKE

Art. 174. FALSE MEDICAL CERTIFICATES, FALSE CERTIFICATES OF MERIT OR SERVICE, ETC. —The penalties of arresto mayor **in its maximum period to** prisión correccional **in its minimum period and a fine not to exceed 1,000 pesos shall be imposed upon:**

1. Any physician or surgeon who, in connection with the practice of his profession, shall issue a false certificate; and

2. Any public officer who shall issue a false certificate of merit or service, good conduct, or similar circumstances.

The penalty of arresto mayor **shall be imposed upon any private person who shall falsify a certificate falling within the classes mentioned in the two preceding subdivisions.[60]**

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[59] U. S. vs. Romero, 17 Phil. 76. See also Section 1980 in connection with Section 757 of the Administrative Code.

[60] Similar to Arts. 309, 310 and 311 of the old Penal Code, and Section 2728 of the Administrative Code.

Arresto mayor in its maximum period to **prisión correccional** in its minimum period: See Art. 156.

The falsification of one of the certificates or vouchers in an application for examination to the Civil Service Board, and any part thereof containing recommendations of the applicant, by subscribing the name of a person who in fact did not subscribe nor write the contents thereof, constitutes the crime of falsification of a certificate of merit, provided for and punished in Article 311 of the old Penal Code,[61] equivalent to par. 2 of this Article.

The fact that a private individual perverted the truth in the narration of the facts set forth in a document issued by a municipal secretary, in order to use the same, as he did, in the exercise of the right of suffrage, constitutes the crime of falsification of certificate of merit and of the use thereof by a private person, which is defined and punished by par. 2 of this Article.[62]

Art. 175. USING FALSE CERTIFICATES.—The penalty of arresto menor shall be imposed upon any one who shall knowingly use any of the false certificates mentioned in the next preceding article.[63]

Arresto menor:
Minimum: From 1 day to 10 days;
Medium: From 11 days to 20 days;
Maximum: 21 days to 30 days.

SECTION SIX

MANUFACTURING, IMPORTING, AND POSSESSION OF INSTRUMENTS OR IMPLEMENTS INTENDED FOR THE COMMISSION OF FALSIFICATION

Art. 176. MANUFACTURING AND POSSESSION OF INSTRUMENTS OR IMPLEMENTS FOR FALSIFICATION.—The penalty of prisión correccional in its medium and maximum periods and a fine not to exceed 10,000 pesos shall be imposed upon any person who shall make or introduce into the Philippine Islands any

[61] U. S. vs. Michelena, 4 Phil. 492.
[62] U. S. vs. Deloso, 11 Phil. 180.
[63] This provision is similar to par. 3 of Art. 172, the only difference being in the nature of the false document which is being used.

stamps, dies, marks, or other instruments or implements intended to be used in the commission of the offenses of counterfeiting or falsification mentioned in the preceding sections of this chapter.

Any person who, with the intention of using them, shall have in his possession any of the instruments or implements mentioned in the preceding paragraph, shall suffer the penalty next lower in degree than that provided therein.[64]

Prisión correccional in its medium and maximum periods: See Art. 128.

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[64] Similar to the provisions of Arts. 312 and 313 of the old Penal Code and Section 352 of Act 1754.

CHAPTER TWO

OTHER FALSITIES

SECTION ONE

USURPATION OF AUTHORITY, RANK, TITLE, AND IMPROPER USE OF NAMES, UNIFORMS, AND INSIGNIA

Art. 177. USURPATION OF AUTHORITY OR OFFICIAL FUNCTIONS.—Any person who shall knowingly and falsely represent himself to be an officer, agent, or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of prisión correccional **in its minimum and medium periods.**[1]

A person who at the instigation of another with whom he is in connivance falsely represents a minister of the gospel and performs a marriage ceremony between a friend and a woman is guilty of usurpation of authority.[2]

Art. 178. USING FICTITIOUS NAME AND CONCEALING THE TRUE NAME.—The penalty of arresto mayor **and a fine not to exceed 500 pesos shall be imposed upon any person who shall publicly use a fictitious name for the purpose of concealing a crime, evading the execution of a judgment, or causing damage.**

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[1] Based on the provisions of Art. 328 of the old Penal Code, as amended by R. A. No. 379. See also R. A. No. 10, which provides: "Section 1.—Any person who, with or without pretense of official position, shall perform any act pertaining to the Government, or to any person in authority or public officer, without being lawfully entitled to do so, shall be punished with imprisonment for not less than two years nor more than ten years."

[2] U. S. vs. Hernandez et al., 29 Phil. 109.

Any person who conceals his true name and other personal circumstances shall be punished by arresto menor **or a fine not to exceed 200 pesos.**[3]

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months;
Arresto menor:
Minimum: From 1 day to 10 days.
Medium: From 11 days to 20 days.
Maximum: From 21 days to 30 days.

It is necessary that the offender should have used publicly and habitually an assumed or fictitious name. Thus, a person who, after having been arrested by a policeman, and upon being asked, gives an assumed name and address, cannot be guilty of a violation of the first paragraph of this Article, because the elements of **publicity** and **habituality** are lacking.

The common practice of persons arrested in gambling dens of giving the peace officer, upon request, names different from their own falls under the provisions of the second paragraph of this Article.

Again, if the only evidence against an accused person is that he used and signed in a certain document a name different from his own, a prosecution and conviction for violation of this Article cannot be maintained.[4]

To convict for the crime of using a false or fictitious name under this Article, it is necessary to show first, that the name used was false, and second, that it was used publicly. The signing of a fictitious name, i. e., Toribio Jalijali, instead of To Lee Piu, in an application for passport is a public use of a fictitious name.[5]

The common practice among Chinese of adopting scores of different names and aliases has created a tremendous confusion in the field of trade. Such a practice almost borders on the crime of using fictitious name, which, for obvious reasons, could not be successfully maintained against Chinese who, rightly or wrongfully, claimed they possess a thousand and one names.

To curb this practice which had proven to be harmful in **bona fide** business transactions, Commonwealth Act No. 142 was enacted on November 7, 1936, penalizing the act of using an alias name,

[3] Similar to Art. 331, par. 2 of the old Penal Code.
[4] Dec. of Sup. Ct. of Spain, May 14, 1887; Viada, 2 Cod. Pen., 502.
[5] U. S. vs. To Lee Piu, 35 Phil. 4.

unless such alias is duly authorized by proper judicial proceedings and duly recorded in the civil register.

Hereunder are the provisions of said Commonwealth Act No. 142.

"Section 1. Except as a pseudonym for literary purposes, no person shall use any name different from the one with which he was christened or by which he has been known since his childhood, or such substitute name as may have been authorized by a competent court. The name shall comprise the patronymic name and one or two surnames.

"Section 2. Any person desiring to use an alias or aliases shall apply for authority therefor in proceedings like those legally provided to obtain judicial authority for a change of name. Separate proceedings shall be had for each alias, and each new petition shall set forth the original name and the alias or aliases for the use of which judicial authority has been obtained, specifying the proceedings and the date on which such authority was granted. Judicial authorities for the use of aliases shall be recorded in the proper civil register.

"Section 3. No person having obtained judicial authority to use an alias or aliases shall sign or execute any document without stating his real name and all aliases he may have been authorized to use.

"Section 4. Any violation of this Act shall be punished with imprisonment of from one month to six months.

"Section 5. This Act shall take effect on its approval."

Art. 179. ILLEGAL USE OF UNIFORMS OR INSIGNIA.—The penalty of arresto mayor **shall be imposed upon any person who shall publicly and improperly make use of insignia, uniforms, or dress pertaining to an office not held by such person or to a class of persons of which he is not a member.**[6]

Arresto mayor: See Art. 178.

[6] Similar to Art. 333 of the old Penal Code and Art. 155 of the proposed Correctional Code of 1916.

SECTION TWO

FALSE TESTIMONY

Art. 180. FALSE TESTIMONY AGAINST A DEFENDANT.—Any person who shall give false testimony against the defendant in any criminal case shall suffer:

1. The penalty of reclusión temporal, **if the defendant in said case shall have been sentenced to death;**

2. The penalty of prisión mayor, **if the defendant shall have been sentenced to** reclusión temporal **or** perpetua;

3. The penalty of prisión correccional, **if the defendant shall have been sentenced to any other afflictive penalty; and**

4. The penalty of arresto mayor, **if the defendant shall have been sentenced to a correctional penalty or a fine, or shall have been acquitted.**

In cases provided in subdivisions 3 and 4 of this article, the offender shall further suffer a fine not to exceed 1,000 pesos.[7]

Prisión mayor: See Art. 115.
Prisión correccional: See Art. 115.
Arresto mayor: See Art. 178.

DISTINCTION BETWEEN FALSE TESTIMONY AND PERJURY.—With the incorporation of the present Article and Articles 188 and 189, the present Code revives the old distinction between false testimony and perjury, which distinction was wiped out since the enactment of Act 1697 of the Philippine Commission. False testimony, therefore, according to the provisions of the present Article and those of Articles 181 and 182, may be distinguished from perjury, in that false testimony is supposed to be given under oath in the course of some judicial proceedings whether in favor of or against the defendant therein, while perjury under Article

[7] Similar to Art. 318 of the old Penal Code and Art. 156 of the proposed Correctional Code of 1916.

183 is any willful and corrupt assertion of falsehood on some material matter made under oath and not in judicial proceedings.

REQUISITES OF THE OFFENSE.—The requisites of the offense under Article 180, therefore, are as follows: (1) that there be criminal proceedings; (2) that the offender testifies under oath against the defendant therein; and (3) that the defendant should have been either convicted or acquitted.

The punishment, as will be seen, depends upon whether or not the defendant in a criminal case is convicted or acquitted. If convicted, the punishment to be imposed is practically one degree lower than that which has been inflicted upon the defendant in the criminal case.

If the victim or the offended party is acquitted, then the penalty to be imposed upon the culprit is **arresto mayor.**

Art. 181. FALSE TESTIMONY FAVORABLE TO THE DEFENDANT.—Any person who shall give false testimony in favor of the defendant in a criminal case, shall suffer the penalties of arresto mayor **in its maximum period to** prisión correccional **in its minimum period and a fine not to exceed 1,000 pesos, if the prosecution is for a felony punishable by an afflictive penalty, and the penalty of** arresto mayor **in any other case.**[8]

Arresto mayor in its maximum period to **prisión correccional** in its minimum period:

Minimum: From 4 months and 1 day to 1 year;

Medium: From 1 year and 1 day to 1 year and 8 months;

Maximum: From 1 year, 8 months and 1 day to 2 years and 4 months.

Arresto mayor: See Art. 178.

As will be seen, the Court is more liberal in cases of persons offering false testimony in favor of the defendant. The penalty is only **arresto mayor** in its maximum period to **prisión correccional** in its minimum period, if the prosecution is for a felony punishable with an afflictive penalty, and in other cases, the punishment is only **arresto mayor.**

Art. 182. FALSE TESTIMONY IN CIVIL CASES.—Any person found guilty of false testimony in a civil

[8] Similar to Art. 319 of the old Penal Code and to Art. 157 of the proposed Correctional Code of 1916.

case shall suffer the penalty of prisión correccional **in its minimum period and a fine not to exceed 6,000 pesos, if the amount in controversy shall exceed 5,000 pesos, and the penalty of** arresto mayor **in its maximum period to** prisión correccional **in its minimum period and a fine not to exceed 1,000 pesos, if the amount in controversy shall not exceed said amount or cannot be estimated.**[9]

Prisión correccional in its minimum period:

Minimum: From 6 months and 1 day to 1 year, 1 month and 10 days;

Medium: From 1 year, 1 month and 11 days to 1 year, 8 months and 20 days;

Maximum: From 1 year, 8 months and 21 days to 2 years and 4 months.

Arresto mayor in its maximum period to **prisión correccional** in its minimum period: See Art. 181.

The elements of false testimony in civil cases are as follows: (a) That there be a civil case or civil proceedings pending before the Court and (b) that the offender had falsely testified or given false testimony in said case or proceedings. It is immaterial whether the testimony is in favor of or against the plaintiff or the defendant in said case, so long as the testimony is false.

The penalty depends upon whether or not the subject matter of the controversy exceeds ₱5,000 or whether or not the subject matter is capable of pecuniary estimation.

Art. 183. FALSE TESTIMONY IN OTHER CASES AND PERJURY IN SOLEMN AFFIRMATION.—The penalty of arresto mayor **in its maximum period to** prisión correccional **in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.**

Any person who, in case of a solemn affirmation

[9] Similar to Art. 321 of the old Penal Code and to Art. 158 of the proposed Correctional Code of 1916.

made in lieu of an oath, shall commit any of the falsehood mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.[10]

Arresto mayor in its maximum period to **prisión correccional** in its minimum period: See Art. 181.

PERJURY DEFINED.—Perjury, therefore, may be defined to be the willful and corrupt assertion of a falsehood under oath or affirmation administered by authority of law on a material matter.

"Material matter" is the main fact which is the subject of the inquiry or any circumstance which tends to prove that fact, or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of the inquiry, or which legitimately affects the credit of any witness to testify.[11]

REQUISITES OF THE OFFENSE.—The following are the elements of the crime of perjury: (a) Statement made under oath; (b) competent officer to receive and administer such oath; (c) willful and deliberate assertion of a falsehood by the offender; and (d) that the sworn statement containing the falsity is required by law.[12]

One, T, with a view to induce a clerk in the Office of the Municipal Treasurer of L to issue a certificate of transfer of a certain large cattle, executed an affidavit wherein he falsely swore that he was authorized by the owner of the large cattle to sell or otherwise dispose of said cattle. It was held that said affidavit could not be made the basis of perjury for the reason that the execution or filing of such an affidavit was not required by law.[13]

Examples of false swearing of affidavits required by law are: Affidavits attached to a petition for receivership, ejectment proceedings, injunction, and so forth.

A conviction for perjury cannot be sustained merely upon the contrary sworn statements of the accused, but the prosecution must prove which of the two statements is false, and must show that statement to be false by evidence other than the contradictory statement. One who is thus accused of having given under oath a statement contradictory to the one given in a former examination,

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[10] Similar to Art. 159 of the proposed Correctional Code of 1916 and Section 1 of Act 1697 of the Philippine Commission.
[11] U. S. vs. Estraña, 16 Phil. 520.
[12] 21 R. C. L. pp. 257-259; U. S. vs. Jurado, 31 Phil. 491; and People vs. Tupasi et al., 36 O. G. 2086.
[13] People vs. Tupasi et al., **supra.**

has the right to prove that the statement formerly given by him was induced by threats and duress.[14]

SUBORNATION OF PERJURY.—The crime of subornation of perjury, as defined in section 4 of Act 1697, is treated by the present Code as a plain case of perjury, in which the suborner or instigator is the principal by inducement, and the party committing the perjury is the principal by direct participation.[15]

In every case of alleged subornation of perjury, every essential element constituting the crime of perjury must be established by competent testimony.[16]

Art. 184. OFFERING FALSE TESTIMONY IN EVIDENCE.—Any person who shall knowingly offer in evidence a false witness or testimony in any judicial or official proceeding, shall be punished as guilty of false testimony and shall suffer the respective penalties provided in this section.[17]

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[14] 21 R. C. L. 271, par. 16 and cases cited therein; U. S. vs. Capistrano, 40 Phil. 902.
[15] See Art. 17 of this Code. See People vs. Predal, 38 O. G. 3036.
[16] People vs. Akmad, 53 Phil. 241.
[17] Similar to the provisions of Art. 325 of the old Penal Code and Art. 60 of the proposed Correctional Code of 1916.

CHAPTER THREE

FRAUDS

SECTION ONE

MACHINATIONS, MONOPOLIES, AND COMBINATIONS

Art. 185. MACHINATIONS IN PUBLIC AUCTIONS.—Any person who shall solicit any gift or promise as a consideration for refraining from taking part in any public auction, and any person who shall attempt to cause bidders to stay away from an auction by threats, gifts, promises, or any other artifice, with intent to cause the reduction of the price of the things auctioned, shall suffer the penalty of prisión correccional **in its minimum period and a fine ranging from 10 to 50 per centum of the value of the thing auctioned.**[1]

Prisión correccional in its minimum period: See Art. 182.

The provisions of this Article may be violated in two different ways: (a) By seeking any gift or promise with a view to refraining from taking part in a public auction; or (b) by causing bidders to stay away from an auction by means of threats, gifts, promise, etc., with the intent to affect the price of the auction.

In the first case the crime is perpetrated and consummated by the mere act of soliciting gifts, presents, etc., for the purpose of abstaining from taking part in the auction. If the person approached agrees to pay and gives the gift demanded, or the promise is carried out, then he will be considered as a principal in the crime described in this Article.

The second sentence is intended to punish a mere attempt to drive away a bidder from a public auction. If the means employed by the offender in carrying out his purpose be threat or coercion, he will be amenable, besides, for such offenses. On the other hand, if the means employed therefor be a promise or gift, and

[1] Similar to Art. 542 of the old Penal Code and Arts. 140 and 149 of the proposed Correctional Code of 1916.

such gift or promise be carried out by the prospective bidder, then the latter is also guilty as a principal in the commission of the crime.

Art. 186. MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE.—The penalty of prisión correccional **in its minimum period or a fine ranging from 200 to 6,000 pesos, or both, shall be imposed upon:**

1. Any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market;

2. Any person who shall monopolize any merchandise or object of trade or commerce, or shall combine with any other person or persons to monopolize said merchandise or object in order to alter the prices thereof by spreading false rumors or making use of any other artifice to restrain free competition in the market;

3. Any person who, being an importer of any merchandise or object of commerce from any foreign country [or from the United States], shall combine in any manner with other persons for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippine Islands of any article or articles imported or intended to be imported into said Islands, or of any article in the manufacture of which an imported article is used.

If the offense mentioned in this article affects any food substance or other article of prime necessity, the penalty shall be that of prisión correccional **in its medium and maximum periods, it being sufficient for the imposition thereof that the initial steps have been toward carrying out the purposes of the combination.**

Any property possessed under any contract or by any combination mentioned in the preceding paragraphs,

and being the subject thereof, shall be forfeited to the government of the Philippine Islands.

Whenever any of the offenses described above is committed by a corporation or association, the president and each one of the directors or managers of said corporation or association, or its agent or representative in the Philippine Islands, in case of a foreign corporation or association, who shall have knowingly permitted or failed to prevent the commission of such offenses, shall be held as principals thereof.[2]

Prisión correccional in its minimum period: See Art. 182.
Prisión correccional in its medium and maximum periods: See Art. 167.

The fact that a person attributed to himself formidable power and, pretending to hold a commission from a powerful chief, went about distributing papers and proclamations to the people of a certain town, spreading subversive and fanatic ideas, with orders from his alleged chief to lower the prices of needful commodities and to reform the customs under the penalty of being visited with floods and other calamities, and through these machinations and deceit succeeded in deceiving ignorant people, causing them to provide themselves with instruments of measure larger than they formerly had and different from the regular size, and also succeeded in making them lower the prices of commodities, constituted the crime provided for and punished by par. 2 of this Article.[3]

SECTION TWO

FRAUDS IN COMMERCE AND INDUSTRY

Art. 187. IMPORTATION AND DISPOSITION OF FALSELY MARKED ARTICLES OR MERCHANDISE MADE OF GOLD, SILVER, OR OTHER PRECIOUS METALS OR THEIR ALLOYS.—The penalty of prisión correccional **or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any person who shall**

[2] Similar to the provisions of Arts. 544 and 545 of the old Penal Code, and Section 107 of Act 3247 of the Philippine Legislature, and Art. 150 of the proposed Correctional Code of 1916.
[3] See U. S. vs. Fulgueras, 4 Phil. 432.

knowingly import, or sell, or dispose of any article or merchandise made of gold, silver, or other precious metal, or their alloys, with stamps, brands, or marks, which fail to indicate the actual fineness or quality of said metals or alloys.

Any stamp, brand, label, or mark shall be deemed to fail to indicate the actual fineness of the article on which it is engraved, printed, stamped, labeled, or attached when the test of the article shows that the quality or fineness thereof is less by more than one-half karat, if made of gold, and less by more than four one-thousandth, if made of silver, than what is shown by said stamp, brand, label, or mark. But in case of watch cases and flatware made of gold, the actual fineness of such gold shall not be less by more than three one-thousandth than the fineness indicated by said stamp, brand, label, or mark.[4]

Prisión correccional: See Art. 117.

Art. 188. SUBSTITUTING AND ALTERING TRADE-MARKS, TRADE-NAMES, OR SERVICE MARKS.—The penalty of prisión correccional **in its minimum period or a fine ranging from 500 to 2,000 pesos, or both, shall be imposed upon:**

1. Any person who shall substitute the trade-name or trade-mark of some other manufacturer or dealer or a colorable imitation thereof, for the trade-name or trade-mark of the real manufacturer or dealer upon any article of commerce and shall sell the same;

2. Any person who shall sell such articles of commerce or offer the same for sale, knowing that the trade-name or trade-mark has been fraudulently used on such goods as described in the preceding subdivision;

3. Any person who in the sale or advertising of his

[4] Similar to the provisions of Art. 273 of the old Penal Code and to the Act of the United States Congress of June 13, 1906.

services shall use or substitute the service mark of some other person, or a colorable imitation of such mark; or

4. Any person who, knowing the purposes for which the trade-name, trade-mark, or service mark of a person is to be used, prints, lithographs, or in any way reproduces such trade-name, trade-mark, or service mark, or a colorable imitation thereof, for another person, to enable that other person to fraudulently use such trade-name, trade-mark, or service mark on his own goods or in connection with the sale or advertising of his services.

A trade-name or trade-mark as herein used is a word or words, name, title, symbol, emblem, sign, or device, or any combination thereof used as an advertisement, sign, label, poster, or otherwise, for the purpose of enabling the public to distinguish the business of the person who owns and uses said trade-name or trade-mark.

A service mark as herein used is a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes without limitation the marks, names, symbols, titles, designation, slogans, character names, and distinctive features of radio or other advertising.[5]

Prisión correccional in its minimum period: See Art. 182.

DISTINCTION BETWEEN TRADE-MARK AND TRADE-NAME.—Trade-names have been frequently confused with trade-marks and broadly speaking, they include names which may constitute trade-mark; but accurately speaking, trade-names are names which are used in trade to designate the particular business of certain individuals considered somewhat as an entity, or the place at which a business is located or of a class of goods, but which are not technical trade-marks either because not applied or affixed to goods sent into the market, or because not capable of exclusive appropriation by any one as trade-marks.[6] Example of a trade-

[5] Similar to the provisions of Arts. 278 and 279 of the old Penal Code and Section 6 of Act 666 of the Philippine Commission, and as amended by R. A. No. 172.

[6] U. S. vs. Kyburz, 28 Phil. 475.

name: Greilsammer Hermanos. Example of a trade-mark: A sphere with the words Meridian in its center applied to the cases and movement of a certain kind of watch.

The following was held by the Supreme Court to be a violation of Section 6 of Act 666 now incorporated as paragraph 1 of Article 188:

"Greilsammer Hermanos import from a European manufacturer watches of a certain make and standard, engrave upon them their trade-mark; placed them on the market under the trade-name of Meridian watches, and have advertised them and established a market for them. They do not claim to be the manufacturers of these watches, but they were dealers in watches and every sale by them of a watch under the trade-name thus adopted and advertised implies that their skill and judgment, as watchmakers and jewellers, has been exercised in ascertaining that such watch is up to the standard established for watches known as Meridian watches. A certain Kyburz imported similar watches from the same manufacturer in Europe and advertised and sold them under the name of, and as and for Meridian watches. **Held:** That defendant is guilty of violation of paragraph 1 of this Article.[7]

GEOGRAPHICAL NAME.—Geographical terms and words in common use to designate a locality, a country, or a section of a country, cannot be monopolized as trade marks.[8]

So is also the generic name of an article, especially when such name is descriptive of such article. Even words which were not originally or of their own meaning descriptive terms, but which, by use, association, and acceptation, have come to be the generic name for a particular kind or class of goods, and indicate that only, and not origin or ownership, are not valid trade-marks.[9]

Art. 189. UNFAIR COMPETITION, FRAUDULENT REGISTRATION OR DESIGNATION OF ORIGIN, AND FALSE DESCRIPTION.—The penalty provided in the next preceding article shall be imposed upon:

1. Any person who, in unfair competition and for the purpose of deceiving or defrauding another of his legitimate trade or the public in general, shall sell his goods giving them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves, or in the wrapping of the packages in which

[7] U. S. vs. Kyburz, 28 Phil. 475.
[8] 63 Corpus Juris, Page 356.
[9] 63 Corpus Juris, Page 364.

they are contained, or the device or words thereon, or in any other feature of their appearance which would be likely to induce the public to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer, or shall give other persons a chance or opportunity to do the same with a like purpose.

2. Any person who shall affix, apply, annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, and shall sell such goods or services.

3. Any person who, by means of false or fraudulent representations or declarations, orally or in writing, or by other fraudulent means shall procure from the patent office or from any other office which may hereafter be established by law for the purposes, the registration of a trade-name, trade-mark, or service mark, or of himself as the owner of such trade-name, trade-mark, or service mark, or an entry respecting such trade-name, trade-mark, or service-mark.[10]

Prisión correccional in its minimum period: See Art. 182.

UNFAIR COMPETITION AND FRAUDULENT REGISTRATION OF TRADE-MARK.—The first paragraph of the preceding Article defines and punishes the crime of unfair competition as distinguished from falsification or substitution of trade-mark.

In unfair competition the offender does not use exactly or identically the same trade-mark or trade-name of another. He simply gives his merchandise or goods the general appearance of goods of other manufacturers or dealers, either in the wrapping of the packages in which they are contained, or in the device used or words thereof which would be likely to induce the public to take the goods packed or labeled for the merchandise of the other dealer.

In order to maintain an action for unfair competition, it is necessary that actual intent to deceive the public or defraud a competitor shall affirmatively appear on the part of the person

[10] As amended by R. A. No. 172.

sought to be made liable, and such intent may be inferred from the similarity in the appearance of the goods manufactured or sold by such person and those of the party claiming to have been damaged by such competition.[11]

It seems that mere similarity in the appearance of two cigar rings is not sufficient to show actual intent to deceive the public, which is required by this Article.[12]

The true test of unfair competition is whether certain goods have been intentionally clothed with an appearance which is likely to deceive the ordinary purchaser exercising ordinary care, and not whether a certain limited class of purchasers with special knowledge not possessed by the ordinary purchaser could avoid mistake by the exercise of this special knowledge.[13]

In another case, it was held: Under the facts stated in the opinion, that the defendant did sell goods packed or labeled or prepared in such a manner as to induce the intended purchaser to believe that the goods were of a make or origin other than the true ones; that he clothed his goods with a certain appearance for the purpose of deceiving the public, the intention to deceive being inferred from the similarity of the goods packed and offered for sale, and he was therefore deemed guilty of unfair competition as defined in Art. 189 of this Code.[14]

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[11] Secs. 7, Act No. 666; Baxter et al. vs. Zuazua et al., 5 Phil. 160.
[12] Nelle vs. Baer, Senior & Co., 5 Phil. 608.
[13] U. S. vs. Manuel, 7 Phil. 221.
[14] U. S. vs. Gow Chiong, 23 Phil. 138.

TITLE FIVE

CRIMES RELATIVE TO OPIUM AND OTHER PROHIBITED DRUGS[1]

Art. 190. POSSESSION, PREPARATION, AND USE OF PROHIBITED DRUGS, AND MAINTENANCE OF OPIUM DENS.—The penalty of arresto mayor **in its medium period to** prisión correccional **in its minimum period and a fine ranging from 300 to 10,000 pesos shall be imposed upon:**

1. Anyone who, unless lawfully authorized, shall possess, prepare, administer or otherwise use any prohibited drug.

"Prohibited drug," as used herein, includes opium, cocaine, alfa and beta eucaine, their derivatives, and all preparations made from them or any of them.

"Opium" embraces every kind, class, and character of opium, whether crude or prepared; the ashes or refuse of the same; narcotic preparations thereof or therefrom; morphine or alkaloid of opium; preparations in which opium, morphine or alkaloid of opium enter as an ingredient, and also opium leaves or wrappings of opium leaves, whether prepared or not, for their use.[2]

Prisión correccional in its minimum period: See Art. 182.

The prime requisite to obtain a conviction for the illegal possession of opium is proof beyond a reasonable doubt that the substance found in the possession of the accused is in fact opium.[3]

Two government agents testified that they arrested the defendants with a small quantity of a substance which, by its appear-

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[1] Act No. 2381, as amended by Act No. 3006, defining and penalizing the unlawful use of opium, was enacted by the Philippine Legislature on July 1, 1914, by virtue of the authority conferred upon it by Sec. 11, par. 80, of the Act of Congress of March 3, 1905. U. S. vs. Wayne Shoup, 35 Phil. 56.

The primary object of the Philippine Legislature in the enactment of Act No. 2381 was the protection of society from the evils believed to be incident to the widespread use of poisonous drugs other than as medicine or for scientific purposes. U. S. vs. Delgado, 41 Phil 372;. U. S. vs. Lim Sing, 23 Phil. 424.

[2] Similar to Section 1575 of the Administrative Code and Section 2 of Act 2381.

[3] U. S. vs. Chien Suey, 28 Phil. 300.

ance and taste, they knew to be cocaine. The defense offered no evidence. **Held:** in this state of the case, and considering the knowledge of said witnesses on the subject, the substance in question was sufficiently identified as being cocaine.[4]

During a trial the prosecution presented several witnesses who testified that the substance was opium ash. The defendant offered no proof to the contrary. At the close of the trial, by mutual agreement, the alleged opium ash was submitted to the Bureau of Science for analysis. The Bureau later reported that the substance was opium ash. The report of the Bureau was rather informal, but no objection was made in the court below to the form or substance of said report. The objection to the form and substance of said report was held to be too late when presented for the first time in the Supreme Court.[5]

One who is found with stains only, of opium or its derivatives upon his hand or clothing, cannot be convicted of having in his possession opium or its derivatives.[6]

The possession of ashes of opium is sufficient to justify a conviction under Act No. 1761. The quantity cannot be considered to determine the guilt or innocence of the accused.[7]

To convict one of the crime of illegal possession of opium, it is necessary to demonstrate (a) the occupancy or taking, and (b) the intent to possess.[8]

When a full, satisfactory, and sufficient explanation of the presence of a prohibited drug on the premises at the time of seizure is given, which is entirely consistent with the allegation of the defendant to the effect that he did not have the same in his possession, there can be no conviction, and the accused must be acquitted.[9]

The phrase "having possession of," in section 31 of Act No. 1761, is not limited to manual touch or personal custody. A principal acting through an agent comes within the purview of this expression.[10]

Where a person entertains an offer to buy opium, goes to the house of the vendor, examines the drug, and leaves the house with three tins of it, and where the person is not authorized to have the drug in his possession, it is presumed that he is the owner thereof by purchase.[11]

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[4] U. S. vs. Sua Tua, 11 O. G., 43.
[5] U. S. vs. Choa Tong, 22 Phil. 562.
[6] U. S. vs. Tang Seng Ki, 28 Phil. 54.
[7] U. S. vs. Chui Woai, 10 O. G., 1836.
[8] U. S. vs. Chua Lui, 26 Phil. 94.
[9] U. S. vs. Tan Tayco, 12 Phil. 739; U S. vs. Tim Masa, 17 Phil. 463.
[10] U. S. vs. Chan Guy Juan, 23 Phil. 105.
[11] U. S. vs. Torres and Padilla, 34 Phil. 994.

The mere fact that the chief of the customs secret service pretended to agree to a plan for smuggling illegally imported opium through the customs house, in order to better assure the seizure of said opium and the arrest of its importers, is no bar to the prosecution and conviction of the latter.[12]

Victoria Santiago, with others, was charged with having possession of opium, but declared that it belonged to her husband. Her husband was a Chinaman who had been absent in China for several months. The prosecution objected to her testimony, declaring that her husband was the owner of the opium in question, which objection was sustained by the lower court. Whether a married woman can give testimony against her husband under circumstances like those in the present case, the court then found it unnecessary to decide, for the reason that the defendant admitted her possession of the opium. Excluding the evidence relating to the ownership on the part of the husband, the evidence showed, beyond reasonable doubt, that the defendant was guilty of the crime charged.[13]

Defendant was ordered by his superior on board the steamer **Rubi** to assist the customs inspectors in searching for opium, of which he found a quantity hidden in a sack of bran after a few minutes search. Defendant having found the drug so quickly was charged with having opium in his possession contrary to law. **Held:** That the fact that the defendant found the opium only after a few minutes search, unsupported by other evidence, and considering the statement of the Chinese witness, on board the same ship, who possessed a permit to buy opium in Hongkong and who admitted that he did purchase some, which he alleged he afterwards threw overboard, was not sufficient evidence to prove the guilt of the defendant beyond reasonable doubt.[14]

The house of R, the husband of the defendant, was searched for opium. During the search R told the defendant to take from the bed a can alleged to contain opium and throw it away. She went to the bed, found the can, and at that moment was discovered by the policeman. She denied prior knowledge of the existence of the can. This fact was supported by the declaration of the husband. There was no proof that she used opium in any form. **Held:** That the proof was not sufficient to support the charges of the complaint.[15]

Where, in an action for the illegal possession of prohibited drugs, it appeared that, while the drugs were found in defendant's

[12] People vs. Lua Chu, 56 Phil. 44.
[13] U. S. vs. Ting Tong Guim, 25 Phil. 39.
[14] U. S. vs. McCormick, 15 Phil. 185.
[15] U. S. vs. Concepcion, 31 Phil. 182.

premises, they were there without his knowledge and consent, **Held:** The evidence was insufficient to convict.[16]

A conviction upon a charge of having opium in one's premises or in one's possession will not be sustained where it appears that x x x the defendant was not aware that the prohibited drug was in his premises or in his possession.[17]

It is a general rule that, when any of the prohibited drugs, enumerated in section 31 of the Opium Law (Act No. 1761) are found upon the premises occupied by a person accused of using the same, there can be no conviction under said section unless it affirmatively appears that he **knowingly** had the prohibited articles on the premises, or that the **animus possidendi** in fact existed together with his alleged apparent control of such article.[18]

Judgment of conviction of a violation of the Opium Law cannot be sustained where the evidence raises a reasonable doubt as to whether one found in the physical possession of a small bottle of opium was aware that the bottle contained opium, and a reasonable explanation is offered of the manner in which the drug came into the possession of the accused, consistent with the accused's lack of knowledge of the fact that the bottle contained opium.[19]

A conviction upon a charge of having opium in one's premises or one's possession will not be sustained where it appears that the **animus possidendi** was absent x x x. An innocent purchaser of a patent medicine or other medical preparation who is not aware that such preparation contains opium, is not liable under the penal provisions of the statute.[20]

While it is true that in the case of **U. S. vs. Tan Tayco and Go Sencho,** 12 Phil. 739, it was held that the discovery of opium in the house or upon the premises of an accused person is not conclusive that such opium was in his possession and control, nevertheless it is under the law a **prima facie** evidence to that effect, and is sufficient to sustain a conviction in the absence of a satisfactory explanation.[21]

Under the express terms of the statutes, proof of the mere fact of possession of a preparation containing a prohibited drug is **prima facie** proof of guilt of a violation of its provisions and will sustain a conviction, unless a reasonable doubt arises from the peculiar circumstances of the case whether or not the accused is

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[16] U. S. vs. Gan Lian Po, 34 Phil. 880.
[17] U. S. vs. Lim Poco, 25 Phil. 84.
[18] U. S. vs. Tan Tayco, 12 Phil. 739; U. S. vs. Tim Masa, 17 Phil. 463.
[19] U. S. vs. Esquejo, 18 Phil. 456.
[20] U. S. vs. Lim Poco, **supra.**
[21] U. S. vs. Bandoc, 23 Phil. 14.

aware that the preparation under his control contains the prohibited drug.[22]

While the mere fact of finding prohibited drugs on the premises owned and occupied by the accused raises a presumption that they were there with his knowledge and consent and were in his possession and control, that presumption is a rebuttable one.[23]

The rule as to **animus possidendi**[24] applied: The explanation of the defendants to the effect that they were ignorant of the presence of the opium found in a house under their control, is deemed to be unsatisfactory. On the contrary, the circumstantial evidence against the accused, including their conduct when apprehended, the condition of the room in which they were found with a strong odor of opium, the water and towel showing traces of opium, the barricaded nature of the house, and their being in control of a house said to be a gambling and opium den is sufficient to warrant a finding as to the evidence of **animus possidendi**.[25]

The mere uncorroborated claim of the accused that he did not know that the preparation found in his possession contained opium will rarely be sufficient to overcome the presumption to the contrary; and any evasion, false statement, or attempt at concealment on his part, in explaining how the drug came into his possession, may be taken into consideration in determining the question of his guilt.[26]

Although it has been held that it matters not how small the quantity of opium found in the unauthorized possession of an accused person may be, he is guilty of a violation of the statute if he knowingly had it in his possession; nevertheless, it may well happen, as in the case at bar, that under all the circumstances of a particular case, the fact that the amount of opium found in the possession of an accused person is very small will be sufficient, when taken together with his denial of knowledge of the fact that he had it in his possession, to sustain a finding that **animus possidendi** was absent.[27]

A **banquero** received for transportation in his banca, a sack which he had been assured contained nothing but sugar. A passenger in the banca subsequently discovered that the sack contained, among other things, 28 cans of opium. Thereupon the passenger took possession of the sack, turned it over to the municipal authorities, and caused the arrest of the **banquero** and of the appellant from whom the **banquero** received the sack, charging

[22] U. S. vs. Lim Poco, 25 Phil. 84; U. S. vs. Gaboya, 11 Phil. 489.
[23] U. S. vs. Gan Lian Po, 34 Phil. 880.
[24] U. S. vs. Bandoc, 23 Phil. 14.
[25] U. S. vs. Jao Li Sing, 37 Phil. 211.
[26] U. S. vs. Lim Poco, **supra**.
[27] U. S. vs. Lin Tiao, 26 Phil. 331.

them with violating the Opium Law. **Held:** That as it was not proved that the **banquero** knew that the sack contained opium, it appearing that he was ignorant of the real nature of its contents, he was not an accomplice in the commission of the crime.[28]

Where a statute defining an offense contains an exception in its enacting clause which is so incorporated with the language defining the offense that the ingredients of the offense cannot be accurately and clearly described if the exception is omitted, the rules of good pleading require that an indictment founded upon the statute must allege enough to show that the accused is not within the exception; but if the language of the section defining the offense is so entirely separable from the exception that the ingredients constituting the offense may be accurately and clearly defined without any reference to the exception, the pleader may safely omit such reference, as the matter contained within the exception is a matter of defense and must be shown by the accused.[29]

As a rule, an exception in a penal statute, by which certain particulars are withdrawn from or excepted out of the enacting clause thereof, defining a crime concerning a class or species, constitutes no part of the definition of such crime whether placed close to or remote from the enacting clause.

It is not necessary, in an information charging a violation of section 4 of Act No. 1761, to negative the exception in favor of persons using opium under prescription of a duly licensed and practising physician, the matter contained in the exception being a matter of defense which must be alleged and proven by the accused if he relies upon it.[30]

Four Chinese were surprised in a locked room by secret-service agents who entered through the window. One of them was caught in the act of smoking opium, one as lying beside him half asleep and apparently under the influence of some drug. The other two were lying nearby sleeping profoundly. When the sleepers were awakened they staggered like drunken men and behaved as though they had been heavily drugged, their conduct being such as might be expected from men who had stupefied themselves by smoking opium. No satisfactory explanation was offered as to the circumstances or conditions under which the sleepers were discovered. **Held:** That the evidence sustained their conviction upon a charge of smoking opium.[31]

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[28] U. S. vs. Lee See alias Tuya, 20 Phil. 398.
[29] U. S. vs. Cook, 84 U. S. 168, 173; U. S. vs. Chan Toco, 12 Phil. 262.
[30] U. S. vs. Chan Toco, 12 Phil. 262.
[31] U. S. vs. Tin Cho Co, 26 Phil. 198.

2. Anyone who shall maintain a dive or resort where any prohibited drug is used in any form, in violation of the law.[32]

Following the decision in the case of **U. S. vs. Su Toon**, 36 Phil. 736, **Held:** That a certain place is "an opium joint" can be established by proof of facts and circumstances, including evidence of the general reputation of the house.

Art. 191. KEEPER, WATCHMAN, AND VISITOR OF OPIUM DEN.—The penalty of arresto mayor **and a fine ranging from 100 to 300 pesos shall be imposed upon:**

1. Anyone who shall act as keeper or watchman of a dive or resort where any prohibited drug is used in any manner contrary to law; and

2. Any person who, not being included in the provisions of the next preceding article, shall knowingly visit any dive or resort of the character referred to above.[33]

Arresto mayor: See Art. 178.

In order to support a conviction for visiting a dive or resort where opium is smoked, it is necessary not only that the accused person be found in a place where the opium is smoked or otherwise used contrary to law, but also that the place thus visited by him be a dive or resort where the prohibited drug is commonly used.[34]

Art. 192. IMPORTATION AND SALE OF PROHIBITED DRUGS.—The penalty of prisión correccional **in its medium and maximum periods and a fine ranging from 300 to 10,000 pesos shall be imposed upon any person who shall import or bring into the Philippine Islands any prohibited drug.**

The same penalty shall be imposed upon any person who shall unlawfully sell or deliver to another any prohibited drug.[35]

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[32] Based on the provisions of Section 2, Act 2381.
[33] Similar to the provisions of Section 3 of Act 2381.
[34] U. S. vs. Ng Peh, G. R. No. 17256.
[35] Similar to Section 4 of Act 2381.

Prisión correccional in its medium and maximum periods: See Art. 167.

It is to be noted that section 4 of Act No. 2381 begins, "Any person who shall unlawfully import or bring any prohibited drug into the Philippine Islands." "Import" and "bring" are synonymous terms. The Federal Courts of the United States have held that the mere act of going into a port, without breaking bulk, is **prima facie** evidence of importation.[36] Again, importation is not the making entry of goods at the Customs-house, but merely bringing them into port; and importation is complete before entry in the Customs-house.[37]

And again, as applied to the Opium Law, it is expressly held that a person unlawfully imports or brings any prohibited drug into the Philippine Islands if the prohibited drug is found under this person's control on a vessel which has come direct from a foreign country and is within the jurisdictional limits of the Philippines.[38]

In a prosecution based on the illegal importation of opium or other prohibited drug, the Government must prove, or offer evidence sufficient to raise a presumption, that the vessel from which the drug was discharged came into Philippine waters from a foreign country with the drug on board.[39]

The two defendants apprehended in the act of taking from the Post Office of Manila some packages containing morphine that has come from Hongkong are both responsible for the illegal importation of a prohibited drug.[40]

One cannot be justified on the ground that he is an innocent agent when it is proved, as in this case, that he had knowledge that the packages taken by him from the post-office contained morphine.

It is a general rule that, from its postmark, the place from which a letter or package was mailed may be inferred.

Three different shipments of opium were alleged to have been brought into the Philippine Islands by the defendant on the steamer **Kaifong.** About the time this steamer was in the port of Cebu on her voyage number 123, the defendant, a resident of Cebu, contracted with one Lao Loc Hing, the **sobrecargo,** to purchase in Hongkong and bring to Cebu 100 tins of opium and turn them over to the defendant for the sum of ₱3,000. Lao Loc

[36] "The Mary" (U. S.), 16 Fed. Cas., 932, 933.
[37] U. S. vs. Lyman, (U. S.) 26 Fed. Cas., 1024, 1028; Perots vs. (U. S.), 19 Fed. Cas., 258.
[38] U. S. vs. Ah Sing, 36 Phil. 978, 981.
[39] U. S. vs. Jose, 34 Phil. 840.
[40] U. S. vs. Aztigarraga, 36 Phil. 886.

Hing complied with his part of the contract and, upon the arrival of the steamer in the port of Cebu, he notified the defendant. The defendant, after paying Lao Loc Hing the sum of ₱2,500, proceeded along-side the vessel at night and received the 100 tins of opium, which he carried to shore and sold to residents of Cebu. The opium was not manifested and was brought in without the knowledge of the Customs authorities or of the owners of the ship. **Held:** That the opium was not only imported into the Philippine Islands in violation of the Customs Administrative Act, but also in violation of Act No. 1761, the Opium Law, which was then in full force and effect and which prohibited the importation of opium, in any form, into the Islands, by persons not authorized to do so.[41]

When a person contrary to a prohibited penal statute puts on board a vessel, whereof he is an employee, goods or merchandise the introduction of which is expressly prohibited by the law of the country to a port where the vessel proceeds and anchors; and when thereafter, such person performs acts of dominion over such goods or merchandise for the purpose of removing the same from the vessel, and attempts to bribe government agents in order to prevent the seizure of the contraband, and then, upon seeing detention unavoidable, directs that said goods be thrown into the sea, wherefrom they are afterwards recovered; such acts on his part conclusively demonstrate that he is the owner and discharger of the contraband goods and he is therefore punishable under the law.[42]

The crime of illegal possession of opium is not necessarily included in the crime of illegal importation of that drug and, therefore, on failure to convict under the information in this case charging illegal importation of opium and not illegal possession, no conviction can be had for the illegal possession of the same drug, although such possession is shown beyond a reasonable doubt.[43]

Art. 193. ILLEGAL POSSESSION OF OPIUM PIPE AND OTHER PARAPHERNALIA FOR THE USE OF ANY PROHIBITED DRUG.—The penalty of arresto mayor and a fine not exceeding 500 pesos shall be imposed upon any person who, not being authorized by law, shall possess any opium pipe or other paraphernalia

[41] U. S. vs. Villano, 18 Phil. 359.
[42] U. S. vs. Lao Loc Hing, 14 Phil. 86.
[43] U. S. vs. Jose, 34 Phil. 840.

for smoking, injecting, administering, or using opium or any prohibited drug.

The illegal possession of an opium pipe or other paraphernalia for using any other prohibited drug shall be prima facie **evidence that its possessor has used said drug.**[44]

Arresto mayor: See Art. 178.

The doctrine in the case of **U. S. vs. Gustillo,** 19 Phil. 208, was followed to the extent of holding that it was not the intention of the Legislature to have separate complaints filed against a person found in the illegal possession of opium and another for the possession of the pipe.[45]

Defendant was convicted under section 4 of Act No. 1761 for smoking opium with a pipe. He was afterwards prosecuted under section 7 of the same Act for having the pipe in his possession. **Held:** That the possession of which he is charged in the second complaint is the same possession which he necessarily had in committing the offense specified in the first complaint, and therefore he could not again be convicted for having the pipe in his possession.[46]

Art. 194. PRESCRIBING OPIUM UNNECESSARILY FOR A PATIENT.—The penalty of prisión correccional **or a fine ranging from 300 to 10,000 pesos, or both, shall be imposed upon any physician or dentist who shall prescribe opium for any person whose physical condition does not require the use of the same.**

Prisión correccional:

Minimum: From 6 months and 1 day to 2 years and 4 months;

Medium: From 2 years, 4 months and 1 day to 4 years and 2 months;

Maximum: From 4 years, 2 months and 1 day to 6 years.

This provision was incorporated in the present Code to curb the pernicious activities of certain physicians in the City of Manila who maintained veritable dens for morphine addicts under the cloak of medical treatment.

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[44] Similar to Section 6 of Act 2381.
[45] U. S. vs. Poh Chi, 20 Phil. 140.
[46] U. S. vs. Lim Suco, 11 Phil. 484.

TITLE SIX

CRIMES AGAINST PUBLIC MORALS

CHAPTER ONE

GAMBLING AND BETTING

Art. 195. WHAT ACTS ARE PUNISHABLE IN GAMBLING.—(a) The penalty of arresto menor **or a fine not exceeding two hundred pesos, and, in case of recidivism, the penalty of** arresto mayor **or a fine ranging from two hundred to six thousand pesos, shall be imposed upon:**[1]

Arresto menor:
Minimum: From 1 day to 10 days;
Medium: From 11 days to 20 days;
Maximum: From 21 days to 30 days.
Arresto mayor:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months.

1. Any person other than those referred to in subsections (b) and (c) who, in any manner, shall directly or indirectly take part in any game of monte, jueteng, **or any other form of lottery, policy, banking or percentage game, dog races, or any other game or scheme the result of which depends wholly or chiefly upon chance or hazard; or wherein wagers consisting of money, articles of value, or representative of value are made; or in the exploitation or use of any other mechanical invention or contrivance to determine by chance the loser or winner of money or any object or representative of value.**

"Gambling" has always had a restricted legal definition in this jurisdiction, which includes only those games the result of

[1] Taken from the provisions of Sections 1, 2 and 3 of Act 1757, as amended by Commonwealth Act No. 235.

which depends wholly or chiefly upon chance or hazard. Games the result of which depends wholly or chiefly upon skill are excluded from its operation.[2]

The courts cannot but realize that gambling, in its larger scale as well as in its restricted sense, is an act beyond the pale of good morals, and, for the welfare of the Filipino people, should be exterminated. It is highly proper that this pastime should be subjected to the control or restraint imposed by ordinances of local governments peculiarly afflicted by the evil.[3]

The following games are not games of chance and consequently, are not prohibited by this Article:

Panguingue;[4]

Burro;[5]

Machioc;[6] a Chinese game.

Panguingue is, however, in one sense, a specie of gambling which municipalities can restrain, suppress, or control, by the exercise of the police power.[7]

On the other hand, the following games are games of chance and, *consequently, are prohibited by this Article:*

Nones y pares;[8]

Poker, whether draw poker or stud poker;[9]

Yampong or **liampo;**[10] a Chinese game, and

Teji,[11] another Chinese game.

Banca-banca is also a gambling game the result of which depends principally, if not entirely, on chance. It is similar to roulette, only that the manner of playing is the reverse, that is to say, the cards are shuffled before the bets are made, as if the roulette were turned in a closed box, and afterwards the bets are made, each player choosing a certain number. It matters little what the particular game of chance is called, whether **monte, banca-banca, nones y pares, yampong, liampo or jueteng,** if in fact it is a game of chance and is prohibited by the gambling law.[12]

The use of money in playing the prohibited game of **monte** is not necessary to constitute a violation of the law. The purpose of the law was to prohibit absolutely the game of **monte** in the Philippines. The mere fact that money was or was not used, in

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[2] U. S. vs. Hilario, 24 Phil. 392.
[3] U. S. vs. Salaveria, 39 Phil. 102.
[4] U. S. vs. Salaveria, *supra.*
[5] Reyes vs. Martinez, 5 Phil. 402.
[6] U. S. vs. Liongsin, 39 Phil. 457, 460.
[7] *U. S. Salaveria, supra.*
[8] U. S. vs. Concepcion, 37 Phil. 48.
[9] People vs. Nolasco et al., G. R. 26106, Nov. 27, 1926, and Opinion of the Attorney General, August 25, 1917.
[10] U. S. vs. Wan Yang et al., 34 Phil. 679.
[11] U. S. vs. Dumanua, 37 Phil. 466.
[12] U. S. vs. Casion et al., 37 Phil. 36.

no way constitutes a necessary element of the game. "Any representative of value or of any valuable consideration or thing" used in playing the prohibited game of **monte**, constitutes a violation of the law.[13]

A municipal council is empowered to pass ordinances prohibiting and penalizing **jueteng**.[14]

Jueteng collectors can be convicted of a violation of the present paragraph of Art. 195 if the proof is sufficient.[15]

The selling or offering for sale to the public of 450 tickets, successively numbered from one up, each number representing a chance on an automobile which was to be drawn by lot as a prize as soon as the tickets so numbered were sold, constitutes a raffle or lottery and, as such, is a gambling game prohibited under this Article of the Penal Code.[16]

While par. 1 of Art. 195 defines what constitutes gambling, said Article gives no specific definition for lottery. The Supreme Court of the United States, in the case of **Horner vs. United States**, 147 U. S. 449, defined lottery to be, "A distribution of prizes by lot or chance; a game of hazard in which small sums of money are ventured for the chance of obtaining a larger value, either in money or in other articles. They are not, in the legal acceptation of the term, **mala in se** but may properly be made **mala prohibita**. They are a species of gambling and wrong in their influence".[17]

The game commonly known as **Turnuhan** or **Abuluyan ng salapi**, is run as follows: The society is divided into two sections named A and B; persons who desire to affiliate themselves or to become members of the society may acquire one or more shares in either of the two series, each share being represented by a number, and for each number or share a member has to turn in to the director or manager of the society, the sum of ₱0.50 every Sunday and ₱1 every fourth Sunday, and receive from the director a memorandum book for each number that he has, in which is stated the amounts turned in every Sunday. The members have the right, by reason of the amounts turned in by them every Sunday, to win a prize which the director pays, that is, ₱150 for shares belonging to series A and ₱182.50 for those of series B. These prizes are obtained by means of raffles conducted and supervised by the director every Sunday, the drawing being double and the value of each prize also double every fourth Sunday. **Held:**

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[13] U. S. vs. Rafael et al., 23 Phil. 184.
[14] U. S. vs. Espiritusanto, 23 Phil. 610.
[15] U. S. vs. Inductivo et al., 40 Phil. 84.
[16] U. S. vs. Filart et al., 30 Phil. 80.
[17] U. S. vs. Baguio, 39 Phil. 962.

Such device or scheme constitutes a gambling game or lottery and is prohibited under this paragraph of Art. 195.[18]

The term "lottery" extends to all schemes for the distribution of prizes by chance, such as policy playing, gift exhibitions, prize concerts, raffles at fairs, etc., and various forms of gambling. The three essential elements of lottery are: **First**, consideration; **Second**, prize; and **Third**, chance.[19]

A certain newspaper publication offered certain rewards or prizes to those subscribers who, prior to the election of the candidates for Carnival Queen either in Manila or in the provinces, could guess as to the total number of votes that would be cast for any of the winning candidates. **Held:** (a) That the element of chance is present even though it may be accompanied by an element of calculation or even of certainty; (b) that the law does not condemn the gratuitous distribution of property by chance, if no consideration is derived directly or indirectly from the party receiving the chance, but does condemn as criminal any scheme in which a valuable consideration of some kind is paid directly or indirectly for the chance to draw a prize; and (c) that the distribution of prizes under the circumstances herein related constitutes lottery prohibited by the Gambling Law.[20]

Mere possession of contrivances or devices not being utilized for the conduct of a lottery is not punishable under this Article.[21]

While it is unlawful to have about one certain article that may pertain or may have pertained to any game of **jueteng**, no such provision is found in the law with respect to devices capable of being utilized for the conduct of lottery. So, for the possession of such devices, to be criminal or punishable under this paragraph of Article 195, the complaint must specifically set forth that such devices are utilized or have been utilized in a game of **jueteng**.[22]

2. Any person who shall knowingly permit any form of gambling referred to in the preceding subdivision to be carried on in any inhabited or uninhabited place or any building, vessel, or other means of transportation owned or controlled by him. If the place where gambling is carried on has the reputation of a

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[18] U. S. vs. Fineza, 39 Phil. 948.

[19] Horner vs. United States, 147 U. S., 499; Public Clearing House vs. Coyne, 194 U. S., 497; U. S. vs. Filart and Singson, 30 Phil. 80; U. S. vs. Olsen and Marker, 36 Phil. 395; U S. vs. Baguio, 39 Phil. 962; Valhalla Hotel Construction Co. vs. Carmona, 44 Phil. 233; "El Debate" Inc. vs. Topacio, 44 Phil. 278.

[20] "El Debate" vs. Topacio, **supra.**

[21] People vs. Diaz, G. R. No. 2550, Dec. 2, 1926.

[22] People vs. Diaz, **supra.**

gambling place or that prohibited gambling is frequently carried on therein, the culprit shall be punished by the penalty provided for in this article in its maximum period.[23]

Proof that the game of **jueteng** has been played once in the house of a person is not sufficient to convict him of being the owner of or maintaining a gambling house.[24]

(b) The penalty of prisión correccional **in its maximum degree shall be imposed upon the maintainer, conductor, or banker in a game of "jueteng" or any similar game.**

(c) The penalty of prisión correccional **in its medium degree shall be imposed upon any person who shall, knowingly and without lawful purpose, have in his possession any lottery list, paper, or other matter containing letters, figures, signs, or symbols which pertain to or are in any manner used in the game of** jueteng **or any similar game which has taken place or about to take place.**[25]

Art. 196. IMPORTATION, SALE, AND POSSESSION OF LOTTERY TICKETS OR ADVERTISEMENTS. —The penalty of arresto mayor **in its maximum period to** prisión correccional **in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court, shall be imposed upon any person who shall import into the Philippine Islands from any foreign place or port any lottery ticket or advertisement or, in connivance with the importer, shall sell or distribute the same.**

Any person who shall, knowingly and with intent to use them, have in his possession lottery tickets or advertisements, or shall sell or distribute the same without connivance with the importer of the same, shall

[23] Taken from the provisions of Sections 3, 4 and 5 of Act 1757.
[24] U. S. vs. Palma et al., 4 Phil. 547.
[25] Taken from the provisions of Section 7½ of Act 1757, as amended by Section 1 of Act 3242.

be punished by arresto menor, **or a fine not exceeding 200 pesos, or both, in the discretion of the court.**

The possession of any lottery ticket or advertisement shall be prima facie **evidence of an intent to sell, distribute, or use the same in the Philippine Islands.**[26]

Arresto mayor in its maximum period to **prisión correccional** in its minimum period: See Art. 129.

Defendant, who printed a large number of lottery tickets, some of which were found in his private residence and others were proved to have been given to his co-defendant, the possession thereof not being satisfactorily explained, was found guilty of violation of Sec. 3 of Act No. 1523,[27] equivalent to this Article.

The mercantile firm of Marcelo Jose & Co., composed of Marcelo Jose and Tan Bo, was located at No. 200 Calle Harris, Olongapo. Both members of this firm were arrested on the night of May 16, 1915, and placed in confinement. About 2 or 3 o'clock in the afternoon of the following day, May the 17th, the store was searched by the authorities and a one-tenth part of a Macao lottery ticket was found therein. At the time this search was made neither of the owners of the store was present. Tan Bo, the managing partner, testified that his lottery ticket was sent to him by a friend in Amoy and that when he received it he put it in an envelope and placed it in the drawer and that his partner, Marcelo Jose, had never seen it. The appellant, Marcelo Jose testified that, although he was a member of the mercantile firm of Marcelo Jose & Co., he knew nothing of the existence of the lottery ticket until he saw it in the court of the justice of the peace, and that he lived in Manila and went to Olongapo only when the business required his presence.[28]

When lottery tickets are found upon the premises occupied by persons accused of possessing the same, there can be no conviction under the provision of this Article unless it affirmatively appears that they knowingly had the prohibited tickets on the premises, or that the **animus possidendi** in fact existed, together with their alleged apparent possession or control of such tickets. But direct proof of acts of this nature in a criminal proceeding is rarely forthcoming, except in cases of confession, and their existence may and usually must be inferred from the varying circumstances in each particular.[29]

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[26] Taken from the provisions of Act 1523.
[27] U. S. vs. Reyes, 23 Phil. 39.
[28] U. S. vs. Jose et al., 34 Phil. 715.
[29] U. S. vs. Jose et al., **supra.**

Under the facts stated in the opinion, the appellant was not guilty of knowingly permitting the lottery ticket in question to be upon his premises.[30]

Certain lottery tickets, seized by the customs authorities, were introduced as evidence in a criminal case in which the defendant therein was accused of their illegal importation, was convicted, and the judge ordered the tickets destroyed. The Collector then sought a writ of prohibition, and prayed that the tickets be returned to him, inasmuch as he had already begun proceedings for their confiscation. **Held:** That the jurisdiction of the Insular Collector had attached and that the tickets must be returned for their proper disposition in the proceeding pending before him. It is subversion of the judicial authority to take a case from a court having jurisdiction before its final decision is rendered. When one court has acquired jurisdiction, no other court, State or Federal, will, in the absence of supervising or appellate jurisdiction, interfere, unless in pursuance of some statute providing for such interference.[31] The Insular Collector, when sitting in forfeiture proceedings, as provided by Act No. 355, constitutes a tribunal upon which the law expressly confers jurisdiction to hear and determine all questions touching the forfeiture, and further disposition of the subject matter of such proceedings.[32]

Art. 197. BETTING IN SPORTS CONTESTS.—The penalty of arresto menor **or a fine not exceeding 200 pesos, or both, shall be imposed upon any person who shall bet money or any object or article of value or representatives of value upon the result of any boxing or other sport contest.**[33]

Arresto menor: See Art. 195.

Art. 198. ILLEGAL BETTING ON HORSE RACES. —The penalty of arresto menor **or a fine not exceeding 200 pesos, or both, shall be imposed upon any person who, except during the periods allowed by law, shall bet on horse races. The penalty of** arresto mayor **or a fine ranging from 200 to 2,000 pesos, or both, shall be imposed upon any person who, under the same circum-**

[30] U. S. vs. Jose et al., **supra.**
[31] Mail *vs.* Maxwell, 107 Ill., 555.
[32] Government of the Philippine Islands et al. vs. Gale et al 24 Phil. 95.
[33] Taken from the provisions of Section 15 of Act 2984.

stances, shall maintain or employ a totalizer or other device or scheme for betting on horse races or realizing any profit therefrom.

For the purposes of this article, any race held on the same day and at the same place shall be held punishable as a separate offense, and if the same be committed by any partnership, corporation, or association, the president and the directors, or managers thereof shall be deemed to be principals in the offense if they have consented to or knowingly tolerated its commission.[34]

Arresto menor: See Art. 195.

Art. 199. ILLEGAL COCKFIGHTING.—The penalty of arresto menor **or a fine not exceeding 200 pesos, or both, in the discretion of the court, shall be imposed upon:**

1. Any person who directly or indirectly participates in cockfights, by betting money or other valuable things, or who organizes cockfights at which bets are made, on a day other than those permitted by law.

2. Any person who directly or indirectly participates in cockfights, by betting money or other valuable things, or organizes such cockfights, at a place other than a licensed cockpit.[35]

Arresto menor: See Art. 195.

The penalties prescribed in section 1 of Act No. 480 for "engaging in cockfighting," or attendance as a "spectator of cockfighting" under certain circumstances, are limited to cases wherein the cockfighting takes place in a cockpit, and are not applicable to cases of cock-fighting which does not take place in a cockpit.[36]

While a grove of trees, a barn or shed, and even an open field or crossroads to which a number of birds are brought to fight a main, or to which cock-fighters more or less frequently resort to engage in the sport may fairly be included in the definition of the term cockpit as used in this Article, the term cannot properly

[34] Taken from the provisions of Act 1537.
[35] Taken from the provisons of Sections 1 and 2 of Act 480.
[36] U. S. vs. Estapia, 37 Phil. 17.

be applied to any place to which, without any preparation, the owners of a couple of birds betake themselves on a single occasion for a single encounter.[37]

The rule by virtue of which the courts pay marked respect to the uniform and long-continued construction placed upon the language of a revenue statute by the revenue officers of the government is, at best, a mere aid to construction or interpretation, in cases wherein the language of a statute is fairly susceptible to more than one meaning so that substantial doubt arises as to the intent of the Legislature in the use of such ambiguous language.[38]

This Article provides the appropriate penalties for violations of the general law restricting cock-fighting in cockpits to the legal holidays authorized by statute; and subsection (i) of section 2243 of the Administrative Code confers authority upon the various municipal councils throughout the Islands, to adopt ordinances regulating or prohibiting altogether cockpits, cock-fighting and the keeping and training of fighting cocks within their respective jurisdictions, and to provide such penalties for violations of these ordinances as they may deem proper.[39]

The penalties which should be imposed in cases, such as that at bar, are those which may lawfully be provided by the ordinances of the municipality wherein the cock-fighting takes place; and the failure of the prosecuting officers to invite the attention of the trial court to these ordinances if they have been lawfully enacted, does not justify the court in imposing a penalty prescribed for another and distinct offense, in the hope that such unauthorized and illegal punishment may have a salutary effect in suppressing the evils incident to unauthorized and unlicensed cock-fighting.[40]

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[37] U. S. vs. Estapia, 37 Phil. 17.
[38] U. S vs. Estapia, supra.
[39] U. S. vs. Estapia, supra.
[40] U. S. vs. Estapia, supra.

CHAPTER TWO

OFFENSES AGAINST DECENCY AND GOOD CUSTOMS

Art. 200. GRAVE SCANDAL. — The penalties of arresto mayor **and public censure shall be imposed upon any person who shall offend against decency or good customs by any highly scandalous conduct not expressly falling within any other article of this Code.**[1]

Arresto mayor: See Art. 195.

The following complaint for grave scandal was presented against the defendants:

"That, on and for many weeks prior to the 27th day of November, 1907, in the city of Manila, Philippine Islands, the said Juana Benedicto de Perez was a married woman, and that said Manuel Samaniego knew that she was married and united in the bonds of matrimony with and was the legitimate consort of Jose Perez Siguenza; that during the period of time above expressed the said Manuel Samaniego and Juana Benedicto de Perez willfully, illegally, and criminally and scandalously, without having any matrimonial tie between them, habitually appeared together in public places and frequented together places of recreation, suspicious places, vacant houses, and houses of bad repute, in the daytime as well as in the night time; and lewdly and indecently went to bed together in the house of the husband of the said Juana Benedicto de Perez during the late hours of the night, dressed only in their night clothes, and indecorously, indecently, and immodestly embraced each other and caressed each other in the presence of the family, children, and servants of the said husband of Juana Benedicto de Perez; all with public scandal and with scandal to the community, and with shame and humiliation to the husband and family of the said Juana Benedicto de Perez."

None of the substantial allegations of the complaint was proven to have been made in public, and therefore the acts complained of lacked many of the elements essential to bring them within the purview of this Article of the Penal Code. Every act that was in anywise public failed entirely of those qualities which offend modesty and good morals by "grievous scandal or enormity." The occurrence at the residence on the night of the 6th of Nov-

[1] Simiar to Art. 441 of the old Penal Code.

ember did not have that publicity which is required by this Article of the Penal Code.[2]

The crime penalized by this Article consists of acts which are offensive to decency and good customs which, having been committed publicly, have given rise to public scandal to persons who have incidentally witnessed the same. Even if the Article does not so express, it is evident that as a condition precedent for the existence of this crime, the offense against decency and good customs must have been made publicly; if the offense does not have this element, it is clear that it does not produce the grave scandal defined by the Article, and for which reason the offense would not fall under the sanction of this Article, but under the more lenient provisions of No. 2 of Article 586 of the old Penal Code, which penalizes as simple offense against public order with the penalty of **arresto menor** of from 1 day to 10 days and a fine of from 5 to 20 pesetas "those who by means of any act or acts not constituting a crime offend the moral and good customs." When the act, therefore, which is offensive against decency is made publicly, the same shall be regarded as a crime, the publicity of the act being the element that produces the grave scandal penalized under this Article; in the absence of this essential requisite, the provisions of No. 2 of Art. 586 of the old Penal Code shall be applicable.[3]

One of the elements of this offense, therefore, is publicity, that is, that the scandalous conduct should have been witnessed by several persons or committed in a public place, or within the public view or knowledge.

Art. 201. IMMORAL DOCTRINES, OBSCENE PUBLICATIONS, AND EXHIBITIONS.—The penalty of prisión correccional **in its minimum period, or a fine ranging from 200 to 2,000 pesos, or both, shall be imposed upon:**

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

2. The authors of obscene literature, published with their knowledge in any form, and the editors publishing such literature;

3. Those who in theaters, fairs, cinematographs,

[2] U. S. vs. Samaniego, 16 Phil. 663.
[3] U. S. vs. Catajay, 6 Phil. 398; Decs. of Sup. Ct. of Spain of April 13, 1885, Dec. 14, 1903 and Jan. 27, 1908.

or any other place open to public view, shall exhibit indecent or immoral plays, scenes, acts, or shows; and

4. Those who shall sell, give away, or exhibit prints, engravings, sculptures, or literature which are offensive to morals.[4]

Prisión correccional in its minimum period: See Art. 128.

The exhibition of picture, paintings and sculpture of women in the **nude** in art galleries for the view and appreciation of persons interested in art is not punishable, but is otherwise, if exhibited to people not so interested except to satisfy their morbid curiosity and taste and lust.[5]

Art. 202. VAGRANTS AND PROSTITUTES—PENALTY.—The following are vagrants:

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

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

3. Any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes;

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

5. Prostitutes.

For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

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[4] Taken from the provisions of Arts. 442 and 571 of the old Penal Code, Section 12 of Act 277, and Sections 191, 192, 193 and 194 of the proposed Correctional Code of 1916.

[5] People vs. Go Pin, 51 O. G. 4003 (1955).

Any person found guilty of any of the offenses covered by this article shall be punished by arresto menor **or a fine not exceeding 200 pesos, and in case of recidivism, by** arresto mayor **in its medium period to** prisión correccional **in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.**[6]

Arresto menor: See Art. 159.

Arresto mayor in its medium period to **prisión correccional** in its minimum period: See Art. 216.

When the evidence fails to show that the accused is without known trade or occupation, or that he is a person of depraved or dissolute habits, or that he frequents or lives in houses of prostitution, he cannot be convicted of vagrancy under the provisions of Act No. 519 (equivalent to par. 4 of this Article) nor be made to suffer the penalty imposed upon vagrants.[7]

Conviction of **vagrancy** as defined and penalized in Act No. 516 was sustained, it appearing that defendant was an able-bodied man of 33 years of age; that he habitually neglected to apply himself to any lawful calling; that he spent his time in loitering about the streets and frequenting cockpits and places where games of various kinds were conducted and gambling was indulged in; that he had once been convicted of a violation of the provisions of the Opium Law, and twice of playing **monte** (a prohibited gambling game); and that he had no apparent means of existence other than the charity of his mother, whose means were so limited that she would appear to need assistance rather than to be in a position to render it.[8]

A person is not guilty of vagrancy under the second paragraph of section 1 of the Vagrancy Act (No. 519) for frequenting saloons, dram shops, or gambling houses, unless it be shown that he is without visible means of support.[9]

The keeper of a house of prostitution may be punished under the Vagrancy Law, Act No. 519.[10]

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[6] Taken from the provisions of Section 1 of Act 519.
[7] U. S. vs. Vhoa Chi Co., 3 Phil. 678.
[8] U. S. vs. Molina, 23 Phil. 471.
[9] U. S. vs. Hart et al., 26 Phil. 149.
[10] People vs. Mirabien, 50 Phil. 499.

TITLE SEVEN

CRIMES COMMITTED BY PUBLIC OFFICERS

CHAPTER ONE

PRELIMINARY PROVISIONS

Art. 203. WHO ARE PUBLIC OFFICERS.—For the purpose of applying the provisions of this and preceding titles of this book, any person who, by direct provision of the law, popular election or appointment by competent authority shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer.[1]

Under the Spanish sovereignty, the term "a person in authority" included religious, military, and civil officials. Under the government now existing in the Philippine Islands, the term "persons in authority" and "public officer" must be given a restricted meaning so as to include only persons who perform some of the functions of the government of the Philippine Islands.

Thus, an officer of the United States Army was not considered an authority within the meaning of this Article.[2]

However, with the establishment of the Philippine Commonwealth, and the enactment of the National Defense Act, the Philippine Army became one of the instrumentalities of the Government of the Philippine Commonwealth, and hence, their officers must necessarily acquire the status of either public officers or persons in authority.

"Employee," when generally used in reference to persons in the public service, includes any person in the service of the Government or any branch thereof of whatever grade or class.

"Officer," as distinguished from "clerk" or "employee," refers to those officials whose duties, not being of a clerical or manual

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[1] Similar to the provisions of Art. 401 of the old Penal Code and of Sec. 2 of the Administrative Code.
[2] U. S. vs. Smith, 39 Phil. 533.

nature, may be considered to involve the exercise of discretion in the performance of the functions of government whether such duties are precisely defined by law or not.

"Officer", when used with reference to a person having authority to do a particular act or perform a particular function in the exercise of governmental power, shall include any Government employee, agent, or body having authority to do the act or exercise the function in question.[3]

A clerk of a justice of the peace is not a public functionary.[4]

A clerk appointed by authority of the Civil Service Board in a department of the city of Manila in a public functionary.[5]

A member of the secret service is a public official.[6]

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[3] Sec. 2, Administrative Code.
[4] U. S. vs. Añonuevo, 5 Phil. 336.
[5] U. S. vs. Leyson, 5 Phil. 447.
[6] U. S. vs. Tan Gee et al., 7 Phil. 738.

CHAPTER TWO

MALFEASANCE AND MISFEASANCE IN OFFICE

SECTION ONE

DERELICTION OF DUTY

Art. 204. KNOWINGLY RENDERING UNJUST JUDGMENT.—Any judge who shall knowingly render an unjust judgment in any case submitted to him for decision shall be punished by prisión mayor **and perpetual absolute disqualification.**[1]

Prisión mayor:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

UNJUST DECISION DEFINED; ITS SOURCES.—As is seen, in order that a judge may be punished under this Article, the following conditions must be present — (a) that an unjust judgment be rendered by him; and (b) that such unjust judgment is one which is contrary to law, or is not supported by the evidence, or both. The source of an unjust judgment may be either error or ill-will. There is no liability at all for a mere error. "It is well settled that a judicial officer, when required to exercise his judgment or discretion, is not liable criminally for any error which he commits, provided he acts in good faith."[2] Bad faith is therefore the ground of liability. If in rendering judgment the judge fully knew that the same was unjust in the sense aforesaid, then he acted maliciously and must have been actuated and prevailed upon by hatred, envy, revenge, greed, or some other similar motive.[3]

GIST OF THE OFFENSE PUNISHABLE UNDER THIS ARTICLE.—The gist of the offense punishable under this Article is therefore that an unjust judgment be rendered maliciously or in bad faith, i. e., knowing it to be unjust. So in **U. S. vs. Gacutan**, 28 Phil. 128, the defendant, a justice of the peace, was

[1] Taken from the provisions of Arts. 346, 347, 348, 349 and 350 of the old Penal Code.
[2] 33 Corpus Juris, 987.
[3] Viada, 2 Cod. Pen., 523-533.

acquitted because it did not appear whether or not it was known to him that the decision he had rendered was unjust.

MEANING OF THE TERM "KNOWINGLY."—Spanish jurisprudence holds that the term "knowingly" means sure knowledge, conscious and deliberate intention to do an injustice,[4] and that a mere error in the interpretation or application of the law does not constitute the crime of prevarication.[5] The Court of Spain also held that the offense of rendering an unjust judgment was committed by a municipal judge who under the pretense that the warden failed to deliver to him the keys to the jail, as requested, imposed upon him a fine of 20 pesetas, and executed it by distraining and selling property belonging to the warden.[6]

JUDGES OF SUPERIOR JURISDICTION, IMMUNITY FROM CIVIL LIABILITY.—In **Alzua and Arnalot vs. Johnson,** 42 Phil. 980, the Supreme Court of the United States held that justices of the Supreme Court of the Philippine Islands are immune from damages arising from a judgment rendered in bad faith. Reasoning out its opinion, the United States Supreme Court said, among other things, the following: "But, however it may be as to the matters that we have stated, we regard it as fundamental that the immunity of the defendant from this suit is the same as that of judges in the United States, which is established beyond dispute.[7] Whatever may have been the Spanish Law, this is a principle so deep-seated in our system that we should regard it as carried into the Philippines by implication as soon as we established courts in those Islands.[8] Reasons somewhat analogous to those adverted to in **Carrington vs. United States,**[9] make the rule perhaps more important in the Philippines than it is here. It is true that in Section 9, Act No. 190, of the Philippine Commission (1901) it is provided that "no judge, justice of the peace, or assessor shall be liable to a civil action for the recovery of damages by reason of any judicial action or judgment rendered by him in good faith, and within the limits of his legal powers and jurisdiction"; and it is argued that this imports that any judge shall be liable for a judgment rendered in bad faith. But, without considering the question of power, we are of the opinion, for the reason to which we have referred, that this should not be construed to convey such an implication, at least, as to judges of the Supreme Court. The section is shown to have had in mind inferior judges and the like

[4] Decs. of Sup. Ct. of Spain of Oct., 1884, and Jan. 10, 1900.
[5] Decs. of Sup. Ct. of Spain of Jan. 13, 1914, and Dec. 31, 1919.
[6] Dec. of Sup. Ct. of Spain of Jan. 9, 1906.
[7] Brady vs. Fisher, P. Wall., 335; 20 L. ed., 285.
[8] Acts of Philippine Commission Nos. 136, 222. Act of Congress of July 1, 1902, Chap. 1369, Secs. 1, 5; 32 Stat. at L. 963.
[9] 208 U. S., 1, 7; 52 L. ed., 367, 28 Sup. Ct. Rep., 203.

by its mention of justices of the peace and assessors, as to whom a different rule has been held to prevail."

DISTINCTION BETWEEN MISCONDUCT AND BRIBERY.—A justice of the peace who requested and accepted a gift from a party to a suit before him, in consideration of which he rendered a favorable decision to the party giving the gift, regardless of what the evidence in the case may be, does not commit the crime punished under this Article, but the crime of bribery defined and punished under Art. 210 of this Code. Reasoning on this doctrine, the Supreme Court, through Mr. Justice Moreland, said: "We do not know whether the decision was a just one or unjust one. There is nothing in the record to determine that act. We may say, therefore, without determining what effect, if any, the decision of the Supreme Court of the United States in the case of **Alzua vs. Johnson**[10] has upon the provisions of Chapter I of Title VII of the Penal Code, that there is no evidence upon which we may determine that the judgment rendered was an unjust judgment."[11]

Art. 205. JUDGMENT RENDERED THROUGH NEGLIGENCE.—Any judge who, by reason of inexcusable negligence or ignorance, shall render a manifestly unjust judgment in any case submitted to him for decision shall be punished by arresto mayor **and temporary special disqualification.**[12]

Arresto mayor: See Art. 195.
Temporary special disqualification:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

Malice (**dolus**) is usually the ordinary source of this as of other kinds of offenses, says Groizard,[13] but this crime may also arise from the correlated existence of damage and culpability, and, adds this learned author, he who intentionally fails to comply with the duties of his office commits certainly the crime of prevarication but dereliction of duty may also be committed by one who acts without malice, by omitting in the performance of his duty that diligence, prudence, and care which the law is entitled to exact in the rendering of any public service. Negligence and ig-

[10] 231 U. S., 106.
[11] U. S. vs. Gacutan, 28 Phil. 100.
[12] Similar to Art. 351 of the old Penal Code.
[13] Vol. 4, pp. 82, 83.

norance are inexcusable if they imply a manifest injustice which cannot be explained by a reasonable interpretation.[14] By "manifestly unjust judgment" is meant that which cannot be explained by a reasonable interpretation, even though the understanding of the law applied be mistaken, but on the contrary a notorious violation of a legal provision is apparent, in a clear and indisputable manner, to logic and reason.[15]

Art. 206. UNJUST INTERLOCUTORY ORDER.— Any judge who shall knowingly render an unjust interlocutory order or decree shall suffer the penalty of arresto mayor **in its minimum period and suspension; but if he shall have acted by reason of inexcusable negligence or ignorance and the interlocutory order or decree be manifestly unjust, the penalty shall be suspension.**[16]

Arresto mayor: See Art. 195.
Suspension: See Art. 208.

In all governments, power and trust must be reposed somewhere; all that can be done is to define their limits and provide means for their proper exercise. When the act in question is that of a judicial officer, all that the law can secure is a guaranty that the officer shall not with impunity do wrong willfully, fraudulently, or corruptly, If he does so act, he is liable both civilly and criminally; but for an error of judgment he is not liable, either civilly or criminally. If a citizen has had a fair and honest exercise of judgment by a judicial officer in his case, it is all the law entitles him to, and although the judgment may be erroneous and the party injured, it is **damnum absque injuria,** for which no action lies.[17]

It is well settled that a judicial officer, when required to exercise his judgment or discretion, is not liable criminally for any error which he commits, provided he acts in good faith. But any judicial officer who acts corruptly is responsible criminally whether he acts under the law or without the law. The rules of the common law exempting a judge from indictment for any act done or omitted to be done when sitting as a judge still prevails, except so far as it has been changed by particular statutes, or by

[14] Decs. of Sup. Ct. of Spain, March 28, 1911, and April 24, 1912.
[15] Dec. of Sup. Ct. of Spain, Feb. 19, 1891.
[16] Similar to Art. 352 of the old Penal Code.
[17] Bevard vs. Hoffman (1862), 18 Md., 479, 81 Am. Dec. 618.

some constitutional provisions. Frequently, however, judges are by force of statute made subject to indictment for willful neglect of official duty, or for corrupt acts done in their official capacity, such as oppression, requiring excessive bail, granting unlawfully a liquor license, exorting illegal fees or compensation, allowing an unjust claim against the country, failing to vacate his seat, or practicing law.[18]

Art. 207. MALICIOUS DELAY IN THE ADMINISTRATION OF JUSTICE. — The penalty of prisión correccional **in its minimum period shall be imposed upon any judge guilty of malicious delay in the administration of justice.**[19]

Prisión correccional in its minimum period: See Art. 208.

The term malicious has been construed by the Supreme Court of Spain as equivalent to deliberate intention.[20]

Another legal provision intended to expedite the disposition of judicial cases may be found in Sec. 129 of the Administrative Code which provides that judges or auxiliary judges of the Court of First Instance, judges of municipal courts, and justices of the peace shall certify on their applications for leave, and upon salary vouchers presented by them for payment, and upon the payrolls upon which their salaries are paid, that all special proceedings, applications, petitions, demurrers, motions, and all civil and criminal cases which have been under submission for decision or determination for a period of 90 days or more have terminated or been decided on or before the date of making the certificate, and that no leave shall be granted or no salary shall be paid without such certificate.

Art. 208. PROSECUTION OF OFFENSES, NEGLIGENCE AND TOLERANCE. — The penalty of prisión correccional **in its minimum period and suspension shall be imposed upon any public officer, or officer of the law, who, in dereliction of the duties of his office, shall maliciously refrain from instituting prosecution for the**

[18] 33 Corpus Juris, 987.
[19] Similar to Arts. 353 of the old Penal Code and 161 of the proposed Correctional Code of 1916.
[20] Dec. of Jan. 10, 1900.

punishment of violators of the law, or shall tolerate the commission of offenses.[21]

Prisión correccional in its minimum period:

Minimum: From 6 months and 1 day to 1 year, 1 month and 10 days;

Medium: From 1 year, 1 month and 11 days to 1 year, 8 months and 20 days;

Maximum: From 1 year, 8 months and 21 days to 2 years and 4 months.

Suspension:

Minimum: From 6 months and 1 day to 2 years and 4 months.

Medium: From 2 years, 4 months and 1 day to 4 years and 2 months.

Maximum: From 4 years, 2 months and 1 day to 6 years.

DERELICTION OF DUTY.—The offense described in this Article was known in the old Penal Code as the crime of **prevaricación.**

Prevaricar, according to the dictionary of the Spanish Language, is to fall short in the performance of one's duty, violating faith, religion, or oath.

It is an indispensable requisite of this offense that it be committed **knowingly,** that is, with malice and deliberate intent, lest a dereliction of duty caused by poor judgment or honest mistake be confused with that prompted by enmity, hate, or other base and corrupt motive.[22]

Thus, the lieutenant of a barrio who neglects his duty and maliciously fails to move the prosecution of a crime of arson, the commission of which he is duly informed of, is guilty of the offense described in this Article.[23]

As far as officers and employees of the Bureau of Internal Revenue are concerned, see Section 2714, par. (h), of the Administrative Code.

As regards the criminal liability of public officers, Mechem says:

Sec. 1022. **Disregard of duty punishable as a crime.**—"Any act or commission," says Mr. Bishop, "in disobedience of official duty, by one who has accepted public office, is, when of public concern, in general, punishable as a crime. This is particularly so

[21] Same as Art. 355 of the old Penal Code and Art. 161 of the proposed Correctional Code of 1916.
[22] Viada, 2 Cod. Pen. 532, 533. See People vs. Malabanan, 62 Phil. 786.
[23] U. S. vs. Mendoza, 23 Phil. 194.

where the thing required is of a ministerial or other like nature, and there is reposed in the officer no discretion.

"But this doctrine has its exceptions and qualifications; thus, one serving in a judicial or other capacity in which he is required to exercise a judgment of his own, is not punishable for a mere error therein, or for a mistake of the law. His act, to be cognizable criminally, or even civilly, must be willful and corrupt. And if it is strictly judicial, and he is, for instance, a justice of the peace, and has jurisdiction, he will not be liable to the suit of the party, however the law may be as to a criminal prosecution, though corruption is alleged."

Sec. 1023. **What officers not indictable.**—"It is sufficiently settled," continues Mr. Bishop, "that legislators, the judges of our highest courts and of all courts of record acting judicially, jurors, and probably such of the high officers of each of the governments as are intrusted with responsible discretionary duties, are not liable to an ordinary criminal process, like an indictment, or official doings however corrupt. There is some apparent authority for including with them justices of the peace, in respect of things judicial, and within their jurisdiction, but the plain weight of authority, probably of reason also excludes them; holding them liable to the ordinary criminal processes, though not the civil as we have seen, in cases of corruption, not of mere mistake or error."

DISTINCTION BETWEEN DERELICTION AND BRIBERY.—The offense described in this Article is similar to that described in the third paragraph of Article 210. This crime (bribery consisting of accepting gift or money with a view to refraining from doing something pertaining to the *official duty of the offender*), may be distinguished from the offense described in this Article (dereliction), in that, in dereliction, the offender performs a **positive** act while in bribery the offender performs a **negative** act.

Art. 209. BETRAYAL OF TRUST BY AN ATTORNEY OR SOLICITOR—REVELATION OF SECRETS.— In addition to the proper administrative action, the penalty of prisión correccional **in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any attorney-at-law or solicitor** (procurador judicial) **who, by any malicious breach of professional duty or inexcusable negligence or ignorance, shall prejudice his client, or reveal any of the secrets of the latter learned by him in his professional capacity.**

The same penalty shall be imposed upon an attorney-at-law or solicitor (procurador judicial) **who, having undertaken the defense of a client or having received confidential information from said client in a case, shall undertake the defense of the opposing party in the same case, without the consent of his first client.**[24]

Prisión correccional in its minimum period: See Art. 208.

Besides the penalty prescribed by this Article, an attorney guilty of misconduct may also be disbarred.[25]

SECTION TWO

BRIBERY

Art. 210. DIRECT BRIBERY.—Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of prisión correccional **in its minimum and medium periods and a fine of not less than the value of the gift and not more than three times such value, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.**[26]

Prisión correccional in its minimum and medium periods: See Art. 194.

Arresto mayor in its maximum period:

Minimum: From 4 months and 1 day to 4 months and 20 days;

Medium: From 4 months and 21 days to 5 months and 10 days;

Maximum: From 5 months and 11 days to 6 months.

BRIBERY; ITS ELEMENTS.—There are four elements of this offense: **first**, that the offender be a public officer within the

[24] Similar to the provisions of Art. 356 of the old Penal Code.
[25] Sec. 25, Rule 127, R. C.
[26] Same as Arts. 381 and 383 of the old Penal Code.

meaning of Art. 203 of this Code; **second,** that the offender receives by himself or through others some gift or present or accepts a promise; **third,** that such gift, present, or promise be received with a view to committing some crime; and **fourth,** that the act constituting the crime be connected with or related to the exercise of the official duty of the offender. For instance, a judge who accepts a present or gift for the purpose of rendering an unjust decision, commits the crime of bribery defined and punished under this Article. It should be borne in mind that this Article does not require that the crime which the offender agrees to commit in consideration of the gift or present received should be executed or consummated. In the example given there would be a case of bribery if the judge accepts the gift or present with a view to, or for the purpose of, rendering an unjust decision. If he renders the unjust decision, he thereby commits, in addition to the crime of bribery, that of misconduct.[27]

Another typical example of the crime of bribery of the first type under this Article, that is, the receiving of promise, gift, or present by a public officer in consideration of the performance of an act constituting a crime, is the case of a clerk of court who agrees to destroy a documentary evidence presented in a criminal case for the purpose of eliminating evidence against certain accused from whom he received a sum of money for that purpose.

But in the case of a policeman who threatened to arrest and cause the prosecution of a person who had in his possession a certain quantity of molasses which the said person believed to be opium, and the arrested person paid a sum of money, the policeman committed the crime of robbery and not bribery.[28]

If any gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of arresto mayor **in its maximum period and a fine of not less than the value of the gift and not more than twice such value.**

This second type of bribery is distinguished from the first previously commented upon in that the act which the public officer

[27] Viada, 2 Cod., Pen., 642.
[28] U. S. vs. Sanchez, 26 Phil. 83; U. S. vs. Recio, 21 Phil. 511. See the case of U. S. vs. Gacutan, 28 Phil. 100.

agrees or consents to perform in consideration of money, prize or reward, does not constitute a crime. For instance, the Mayor of a certain city who, in consideration of money or presents, awards a certain stall in the public market to a Chinaman, in spite of the fact that there are Filipinos who have better rights than the Chinaman, is certainly guilty of this type of bribery, for the reason that the act which the offender agrees to perform in consideration of money does not constitute a crime.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of arresto mayor **in its medium and maximum periods and a fine of not less than the value of the gift and not more than three times such value.**[29]

Arresto mayor in its medium and maximum periods: See Art. 130.

Bribery under this paragraph is committed by a Constabulary soldier who, having the custody of a leper en route to the leper colony, accepts money from him for the purpose of assisting in effecting the escape of the said leper.[30]

A defendant, a justice of the peace, demanded and received ₱15.00 from X with the agreement that he would decide in favor of S a case which the latter had then pending in his court. The case was not decided at the time of the trial of this action. **Held:** that the defendant was guilty of bribery under this paragraph.[31]

Again, a justice of the peace who requested and accepted a gift from a party to a suit before him, in consideration of which he rendered a favorable decision to the party giving the gift, regardless of what the evidence in the case may be, does not commit the crime punished under Art. 204 of this Code, but the crime of bribery defined and punished under this paragraph. Reasoning on this doctrine, the Supreme Court, through Mr. Justice Moreland, said: "We do not know whether the decision was a just one or unjust one. There is nothing in the record to determine that fact. We may say, therefore, without determining what effect, if any, the decision of the Supreme Court of the United States in the case of **Alzua vs. Johnson,** 231 U. S. 160, has upon the provisions of Chapter I of Title VII of the Penal Code,

[29] Based on the provisions of Art. 383 of the old Penal Code.
[30] U. S. vs. Gimenea, 24 Phil. 464.
[31] U. S. vs. Alban, 4 Phil. 363.

that there is no evidence upon which we may determine that the judgment rendered was an unjust judgment."[32]

Bribery punishable under this paragraph covers the offering of a gift or present to a public official while in the performance of his official duties, with a view to and for the object of influencing such public official and causing him to refrain from carrying out and performing acts which he, the said public official, should perform in the proper exercise of the official duties of his office. Such is the act of offering and giving money to a member of the Secret Service for the purpose of preventing the arrest of a Chinaman and preventing the reporting of the discovery of such Chinaman's presence, without a certificate as required by law, in the City of Manila,[33] or in consideration of his not arresting any one guilty of a breach of a municipal ordinance.[34]

But a municipal official who demands and exacts gifts from persons under promise to relieve them from certain obligations to the municipality is guilty of **estafa** and not bribery under this paragraph.[35]

One Antonio Barretto, after having been caught by the Customs-house Secret Service in the act of withdrawing from the Customs-house a big shipment of opium, offered and gave the Chief of the Secret Service ₱10,000 "in settlement of the matter." The Chief of the Secret Service accepted the money and reported the matter of the Collector of Customs. **Held:** These facts constituted the crime of attempted bribery under this paragraph.[36]

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.[37]

Special temporary disqualification:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators,

[32] U. S. vs. Gacutan, 28 Phil. 100.
[33] U. S. vs. Tan Gee et al., 7 Phil. 738.
[34] U. S. vs. Fulgencio, 2 Phil. 452. See also U. S. vs. Horca, 6 Phil. 52; U. S. vs. Buenaventura, 6 Phil. 447; U. S. vs. Paua, 6 Phil. 740; U. S. vs. Gamacan, 7 Phil. 329.
[35] U. S. vs. Jader, 1 Phil. 297.
[36] U. S. vs. Barretto, G. R. No. 15375, Aug. 20, 1920. See also U. S. vs. Dy Jueco, 37 Phil. 301.
[37] Similar to Arts. 383 and 384 of the old Penal Code.

appraisal and claim commissioners, experts, or any other persons performing public duties.[38]

Art. 211. INDIRECT BRIBERY.—The penalties of arresto mayor, **suspension in its minimum and medium periods, and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.**[39]

Arresto mayor: See Art. 195.

One Richards, a veterinarian of the Board of Health, entrusted with the duty of examining mules which were offered for sale to the Insular Government, received a certain sum of money from one Reich, a vendor of mules, immediately after the latter received from the Government the amount of the purchase price of the mules sold. There was no evidence to the effect that the money was given for the purpose of preventing or restraining the veterinarian from doing something pertaining to his office. **Held:** That these facts do not constitute direct bribery under Arts. 381 and 382 on direct bribery of the old Penal Code, but they constitute indirect bribery under Art. 386, equivalent to this Article.[40]

Art. 212. CORRUPTION OF PUBLIC OFFICIALS. —The same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person who shall have made the offers or promises or given the gifts or presents as described in the preceding articles.[41]

One Altman, sanitary inspector of the City of Manila, visited the premises of Ui Matiao in order to make a report on the application by the defendant for a license to sell oil. Ui Matiao offered the officer money in the form of a promise styled in the following language: "I have offered and promised to bearer ten pesos (₱10) to expedite my license to sell oil, and I understand what I am signing.—28-9-1901—Ui Matiao."—These facts alone do not constitute bribery defined under Art. 210. In order that a public official may be convicted of bribery he must have accepted

[38] Similar to the provisions of Art. 384 of the old Penal Code.
[39] Similar to Art. 386 of the old Penal Code.
[40] U. S. vs. Richards, 6 Phil. 545.
[41] Similar to Art. 387 of the old Penal Code.

a bribe for committing, in the discharge of his duties, an act constituting a crime. Even assuming that the official, in consideration of the note, had decided to make a favorable report, such action alone would not constitute the offense defined in said Article. It must have been an unjust decision knowingly rendered.[42]

A person, surprised in the act of attempting to deliver a sum of money to a customs employee to induce the latter to refrain from certifying that vessel inspected by him was unseaworthy, the money not having been accepted, is guilty of attempted bribery.[43]

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[42] U. S. vs. Ui Matiao, 1 Phil. 487.
[43] U. S. vs. Paua, 6 Phil. 740. See also U. S. vs. Gamacan, 7 Phil. 329; U. S. vs. Tan Gee et al., 7 Phil. 738.

CHAPTER THREE

FRAUDS AND ILLEGAL EXACTIONS AND TRANSACTIONS

Art. 213. FRAUDS AGAINST THE PUBLIC TREASURY AND SIMILAR OFFENSES.—The penalty of prisión correccional **in its medium period to** prisión mayor **in its minimum period or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:**

Prisión correccional in its medium period to **prisión mayor** in its minimum period:

Minimum: From 2 years, 4 months and 1 day to 4 years and 2 months;

Medium: From 4 years, 2 months and 1 day to 6 years;

Maximum: From 6 years and 1 day to 8 years.

1. In his official capacity, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds, shall enter into an agreement with any interested party or speculator or make use of any other scheme, to defraud the Government;[1]

As will be seen, four elements are necessary in the crime described in this paragraph, namely: (a) that the offender be a public officer; (b) that he should have taken advantage of his office; (c) agreement or connivance with some outsider having a contract with the Government, and (d) intent to defraud the Government.

2. Being entrusted with the collection of taxes, licenses, fees, and other imposts, shall be guilty of any of the following acts or omissions:

(a) Demanding, directly or indirectly, the payment

[1] Similar to Art. 396 of the old Penal Code.

of sums different from or larger than those authorized by law.[2]

When a deputy treasurer, by means of deceit, knowingly and maliciously collects from the taxpayers of his municipality, greater fees than those prescribed by law and converts to his own use the excess money collected by him, the crime committed is **estafa**, and not illegal exaction.[3]

(b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially.[4]

(c) Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.[5]

When the culprit is an officer or employee of the Bureau of Internal Revenue or the Bureau of Customs, the provisions of the Administrative Code shall be applied.[6]

Art. 214. OTHER FRAUDS.—In addition to the penalties prescribed in the provisions of Chapter Six, Title Ten, Book Two, of this Code, the penalty of temporary special disqualification in its maximum period to perpetual special disqualification shall be imposed upon any public officer who, taking advantage of his official position, shall commit any of the frauds or deceits enumerated in said provisions.[7]

Temporary special disqualification in its maximum period to perpetual special disqualification:

Minimum: From 10 years and 1 day to 11 years, temporary special disqualification;

Medium: From 11 years and 1 day to 12 years, temporary special disqualification;

Maximum: Perpetual special disqualification.

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[2] Similar to the provisions of Art. 398 of the old Penal Code.
[3] U. S. vs. Lopez et al., 10 Phil. 479.
[4] Similar to the provisions of Sec. 2714, par. (e), of the Administrative Code.
[5] Similar to the provisions of Sec. 2714, par. (i), of the Administrative Code.
[6] See Sec. 2714 of the Administrative Code.
[7] Similar to Art. 399 of the old Penal Code.

Thus, a public officer, who, **without abusing his office,** commits any of the crimes defined in Chapter 6, Title 10 of this Code (**estafa**), that is, misappropriation of funds belonging to another, should not be considered as guilty of the crime punished by this Article, but as a private individual committing the crime defined by Art. 315, No. 1 (b), of this Code,[8]

But a justice of the peace who, with abuse of his office and authority, deceives the defendant in a suit before him, by making him believe that the claim against him was for ₱12 when in fact and in truth it was only for ₱6; and after having obtained ₱12 from the defendant in settlement of the claim, delivers to the plaintiff ₱6 only, converting to his own use the balance, is guilty of **estafa** under Article 315, par. 2, in connection with this Article of the present Code.[9]

When a public officer commits a common crime independent of his official function and does acts that are not connected with the duties of his office, he should be punished with the penalty which the law imposes on the private individual who violates its provisions, without taking into account the official character with which the guilty party is invested. Thus a municipal councilor, who has not the duty of collecting the **cedula** tax and having received a sum of money from certain residents for the purchase of cedulas, appropriates and misapplies it, shall be punished for the crime of **estafa,** and it would be improper to subject him to the accessory penalty of this Article.[10]

Art. 215. PROHIBITED TRANSACTIONS. — The penalty of prisión correccional **in its minimum period or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any appointive public officer who, during his incumbency, shall directly or indirectly become interested in any transaction of exchange or speculation within the territory subject to his jurisdiction.**[11]

Prisión correccional in its minimum period: See Art. 208.

Art. 216. POSSESSION OF PROHIBITED INTEREST BY A PUBLIC OFFICER.—The penalty of arresto mayor **in its medium period to** prisión correccional **in its**

[8] U S. vs. Mijares, 14 Phil 83; U. S. vs. Casin, 8 Phil. 589.
[9] U. S. vs. Regala, 28 Phil. 57.
[10] U. S. vs. Dacuycuy, 9 Phil. 84. See also U. S. vs. Casin, 8 Phil. 589; U. S. vs. Figueroa, 22 Phil. 269; U. S. vs. Estabaya, 30 Phil. 64.
[11] Similar to Art. 400 of the old Penal Code.

minimum period, or fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon a public officer who, directly or indirectly, shall become interested in any contract or business in which it is his official duty to intervene.

This provision is applicable to experts, arbitrators, and private accountants who, in like manner, shall take part in any contract or transaction connected with the estate or property in the appraisal, distribution, or adjudication of which they shall have acted, and to the guardians and executors with respect to the property belonging to their wards or estate.[12]

Arresto mayor in its medium period to **prisión correccional** in its minimum period:

Minimum: From 2 months and 1 day to 4 months;

Medium: From 4 months and 1 day to 6 months;

Maximum: From 6 months and 1 day to 2 years and 4 months.

This Article is in force, and Sec. 2581 of the Administrative Code did not repeal the same. The punishment provided in Sec. 2581 of the Administrative Code being different from that imposed by this Article of the Penal Code not only by reason of its nature and character, but also because of the procedure by which it is imposed, it cannot be said that it was the intention of the Legislature to repeal this Article of the Penal Code by the enactment of said Sec. 2581.[13]

The prohibition contained in Section 28 of the Municipal Code (Act 83), now Sec. 2761, Administrative Code, is analogous to that contained in this Article, which punishes as guilty of fraud a public official who becomes directly or indirectly interested in any kind of contract or operation in which he must intervene by reason of his office; and even though in doing so the public official or municipal officer does nothing more than violate a prohibition, for no fraud occurs therein, yet the probability that he may perpetrate fraud does exist, as Viada says in his commentaries on the Penal Code in dealing with this Article, or at least that he may defer the State's interests to his own.[14]

[12] Similar to Art. 397 of the old Penal Code.
[13] People vs. Encarnacion, 21 O. G., 510.
[14] U. S. vs. Udarbe, 28 Phil. 382.

CHAPTER FOUR

MALVERSATION OF PUBLIC FUNDS OR PROPERTY

Art. 217. MALVERSATION OF PUBLIC FUNDS OR PROPERTY — PRESUMPTION OF MALVERSATION.—Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of prisión correccional **in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.**

2. The penalty of prisión mayor **in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.**

3. The penalty of prisión mayor **in its maximum period to** reclusion temporal **in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.**

4. The penalty of reclusion temporal **in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be** reclusion temporal **in its maximum period to** reclusion perpetua.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie **evidence that he has put such missing funds or property to personal uses.**[1]

Prisión correccional in its minimum and medium periods: See Art. 194.

Prisión correccional in its maximum period to **prisión mayor** in its minimum period:

Minimum: From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days;

Medium: From 5 years, 5 months and 11 days to 6 years, 8 months and 20 days;

Maximum: From 6 years, 8 months and 21 days to 8 years.

Prisión mayor in its medium and maximum periods:

Minimum: From 8 years and 1 day to 9 years and 4 months;

Medium: From 9 years, 4 months and 1 day to 10 years and 8 months;

Maximum: From 10 years, 8 months and 1 day to 12 years.

Reclusión temporal in its minimum and medium periods:

Minimum: From 12 years and 1 day to 13 years, 9 months and 10 days;

Medium: From 13 years, 9 months and 11 days to 15 years, 6 months and 20 days;

Maximum: From 15 years, 6 months and 21 days to 17 years and 4 months.

Reclusión temporal in its medium and maximum periods:

Minimum: From 14 years, 8 months and 1 day to 16 years, 5 months and 10 days;

Medium: From 16 years, 5 months and 11 days to 18 years, 2 months and 20 days;

Maximum: From 18 years, 2 months and 21 days to 20 years.

REQUISITES OF THE OFFENSE.—There are three requisites for this offense, namely: (1) that the offender be a public officer; (2) that such officer be accountable, that is, that he be entrusted with the care or custody of some public funds or property; and (3) that he had misapplied or misappropriated such funds or property entrusted to him or allowed somebody through connivance or negligence to misappropriate such funds or property.

[1] Based on the provisions of Sec. 2672 of the Administrative Code, and as amended by R. A. No. 1060.

Therefore, a public officer or government employee who takes away government property or fund belonging to his office or bureau, commits common theft instead of malversation of public funds, unless it can be proved that the offender was accountable for the fund or property he had taken away.

And for a public officer to be accountable, he need not be bonded. Such officer is accountable so long as he is entrusted by some superior officer with the care or custody of some government funds or property.

The recovery of the amount malversed after the malversation was consummated does not give way to the reduction of the penalty provided for by law for the full amount embezzled.[2]

FORMER LAWS ON THE SUBJECT.—The crime of malversation of public funds was originally punished by Act No. 1740 of the Philippine Commission. Later on the provisions of said Act were incorporated as Sec. 2672 of the Administrative Code.

By an express provision of law, all money belonging to a municipality, or other branch of the Government, and placed in charge of a treasurer, must be kept in the safe, except such amounts as may be required for making change and other indispensable transactions during office hours.

ACTS CONSTITUTING MALVERSATION.—The mere fact of a treasurer or officer in charge of the keeping and custody of public funds or property not being able to produce all the funds and property in his charge, on the demand of any officer authorized to examine such person, office, treasury, or depositary, shall be deemed to be **prima facie** evidence that such missing funds or property have been put to personal use or used for purposes designated in Act No. 1740 (equivalent to this Article) as misappropriation of public funds.[3] And each fraudulent abstraction of money a separate crime.[4]

In accordance with the provisions of the said law, the refund of the sum misappropriated, even before the commencement of the criminal prosecution, does not exempt the guilty person from liability for the crime.[5]

The accused having been convicted of misappropriation of public funds as defined and penalized in Act No. 1740, the relatively severe sentence of eight years' imprisonment and a fine of ₱1,000 was properly imposed, it appearing that the public funds misappropriated amounted to ₱2,713, and that the convict had

[2] Bacsarpa et al. vs. Court of Appeals, 52 O. G. 3957, July 31, 1956.
[3] U. S. vs. Reyes, 14 Phil. 718. See also People vs. Livara, G. R. No. L-6201, April 20, 1954.
[4] People vs. Sacramento, 53 Phil. 639.
[5] U. S. vs. Reyes, **supra**.

been a trusted employee long in the service of the Government, a man of considerable intelligence, well educated, and fully capable of understanding the nature of the offense committed.[6]

The accounts of the defendant, a justice of the peace, were examined by an employee of the office of the local treasurer, who informed the defendant, as a result of such examination, that he should turn into the treasury a certain sum of money which appeared to be the amount due the Government from fees, fines, and costs collected by him. As a matter of fact, the total amount of such collections was much larger, and the defendant knowingly and improperly retained the balance until afterwards notified of the mistake. **Held:** That it is the duty of officials to act fairly in their dealings with the Government, and that one who, having the custody of public funds, takes advantage of a mistake in the examination of his accounts to retain in his possession funds which he should turn in to the treasury and converts to his own use the money thus improperly retained, is guilty of the crime of misappropriation.[7]

If, upon an official examination of the accounts of a treasurer, a shortage in the cash appears, and upon notice thereof the treasurer fails to immediately produce and deliver to the examiner the amount of money necessary to balance his accounts, he is guilty of a misappropriation of public funds as defined by Act No. 1740. A subsequent reimbursement does not relieve the treasurer from liability.[8]

When upon an official examination of the accounts of a treasurer there is shown an apparent shortage of cash, and upon notice thereof the treasurer immediately produces and delivers to the examiner the money necessary to balance the accounts, a charge of violation of Act No. 1740 cannot be sustained inasmuch as it is not even **prima facie** a case of misappropriation.[9]

Under the provisions of the law, a person is guilty of malversation of public funds only when he converts them to his own use or to the use of another, or handles them so negligently as to permit someone else to use them.

A municipal president who delegates to his secretary the duty of collecting and remitting fines and costs is not criminally liable for the unlawful acts of such secretary in connection therewith, when it is not shown that he was guilty of abandonment, negligence, or bad faith. Such delegation does not, of itself,

[6] U. S. vs. Meneses, 14 Phil. 357.
[7] U. S. vs. Sagun, 15 Phil. 178.
[8] U. S. vs. Feliciano, 15 Phil. 142.
[9] U. S. vs. Feliciano, **supra.**

constitute that abandonment, fault, or negligence described and penalized by law.[10]

While Act No. 1740 provides that: "* * * any failure or inability of such person to produce all the funds and property properly in his charge on demand of any officer authorized to examine or inspect such person, office, treasury, or depository shall be deemed to be **prima facie** evidence that such missing funds or property have been put to personal use or used for personal ends by such person within the meaning of the preceding section," yet such presumption is a rebuttable one and constitutes only a **prima facie** case against the accused person, and when the prosecution in presenting its case against the accused, introduces evidence showing that the money or property had not been put to personal use by the defendant, the presumption of guilt does not arise.[11]

Those who take a direct part in the commission of the crime of malversation of public funds by public officials, as defined in Act No. 1740, and those who cooperate in the commission of that crime by acts without which it could not have been accomplished, are guilty as principals, although they themselves may not be public officials.[12]

Where a municipal council has authorized a certain payment, as reimbursement for expenditures made by order of the municipality, and it is proved that the treasurer made such payment, the failure of the creditor, who was the municipal president, to issue a warrant thereof is merely a defect of administrative procedure and is not proof of commission of the crime of malversation of public funds, because it must be clearly demonstrated that said treasurer appropriated the funds to his own use and benefit instead of making the payment ordered by the municipal council.[13]

One who has actually paid out the public funds in good faith to persons who have rendered services to the municipality of which he is treasurer, and under and in accordance with a resolution of the municipal council authorizing him to make such payments, is not guilty of the crime of misappropriation of public funds, although such payments may have been made in violation of law.

Where the money alleged to have been misappropriated was paid out in the interest and for the benefit of the municipality, in good faith, and in the honest belief that it was his duty as municipal treasurer to make such payment, such funds so paid out are not

[10] U. S. vs. Acevedo, 18 Phil. 428.
[11] U. S. vs. Catolico, 18 Phil. 504. See to the same effect U. S. vs. Francisco, 35 Phil. 246.
[12] U. S. vs. Ponte, 20 Phil. 379; U. S. vs. Dato and Lustro, 37 Phil. 359.
[13] U. S. vs. Borlongan, 21 Phil. 232.

criminally misappropriated, although they may have been paid out on insufficient vouchers or improper evidence.[14]

Where a municipal treasurer makes an honest mistake as to the law or to the facts concerning his duties relative to the expenditure of the public funds, and in good faith pays out such funds under such mistake, he is not guilty of the crime of misappropriation of public funds, although he may be civilly liable to reimburse the municipality.[15]

G, a justice of the peace, decided a civil case pending in his court between D and C in favor of D. C appealed and deposited with G ₱16, the docket fee, which was to be forwarded to the Court of First Instance, as required by law. G failed to send the record to the Court of First Instance and appropriated to his own use the ₱16. **Held:** That G received the money as a public official and had appropriated the same to his own use; that he was therefore guilty of embezzlement and not **estafa.**[16]

A conviction of a person charged with misappropriation of public funds under Act No. 1740 cannot be sustained in the absence of proof of criminal intent to misappropriate. Such intent, however, may be inferred from the circumstances.

Neither an honest mistake in bookkeeping, nor an honest difference of opinion between the accused and the district auditor as to the exact sum of money due the Government, can be made the basis of a prosecution for embezzlement.

The fact that a municipal treasurer, on being charged by an examining auditor with a shortage in his official accounts of a stated amount, and that, on being so charged, immediately pays over to the examining auditor the sum alleged to be short, is of itself, and standing alone, no evidence of misappropriation; nor is the fact that the treasurer, in order to make good the alleged shortage, is obliged to go out and borrow the sum alleged to be short, sufficient proof of misappropriation, where it appears that the shortage claimed by the same auditor was more than three times the amount of the actual shortage, if any.[17]

In order that a public official may be guilty of malversation of public funds or property, he must, at the time of the conversion, be acting as a public official and must be dealing with public money or property, or with money or property which has become impressed with public attributes or character.[18]

Act No. 1740 is designed to punish bonded public officers for

[14] U. S. vs. Elviña, 24 Phil. 230.
[15] U. S. vs Elviña, **supra.**
[16] U. S. vs. Guzman, 25 Phil. 22; U. S. vs. Lafuente, 37 Phil. 671.
[17] U. S. vs. Pascual, 26 Phil. 234.
[18] U. S. vs. Regala, 28 Phil. 57.

the crime of misuse of Government funds or property entrusted to their care, whether such officers profit thereby themselves or whether third persons reap the benefit through the abandonment, fault, or neglect of the officer.

To constitute fault or negligence within the meaning of this Act, it is necessary to establish beyond a reasonable doubt that the defendant failed to take reasonable care of the funds or property lost, in view of all the attendant circumstances. In this case, **Held:** That such fault or negligence has not been proved.[19]

A clerk in the employ of a provincial government whose duty it is, among others, to collect certain fees from persons registering land in that province and turn them over to the provincial government is one of the persons described in section 1 of Act No. 1740, and may properly be convicted under the statute if he is guilty of any of the acts therein prohibited and punished.

That the person accused under Act No. 1740 is a mere clerk and not a bonded officer of the provincial government is of no legal consequence. The vital fact is that he is an employee of, or in some way connected with, the government and that, in the course of his employment, he receives money or property belonging to the government for which he is bound to account.[20]

The name or relative importance of the office or employment held by the accused is not the controlling factor; the nature of the duties which he performs—the fact that, as part of his duties, he receives public money or property for which he is bound to account—is that which determines whether or not, in case of failure to account, his case falls within Act No. 1740.[21]

Where the account given by the accused of the disappearance of public funds in his custody as a postmaster is not satisfactory, it cannot be accepted to exonerate him. Such account is not satisfactory when he merely suspects other persons to have stolen the funds, but does not bring evidence, whether direct or circumstantial, to establish the fact. And such a defense is not rendered valid by the fact that the disappearance of the funds took place on the occasion of a fire and when in an effort to save them, he had misplaced them, when his conduct with regard to the saving of the funds from the fire was so imprudent and unreasonable as to render his story incredible and inadmissible.[22]

A certain postmaster who had the custody of certain postal money orders payable to some persons collected and misappropriated the amounts thereof by forging the signatures of the

[19] U. S. vs. Garces, 31 Phil. 637.
[20] U. S. vs. Velasquez, 32 Phil. 157.
[21] U. S. vs. Velasquez, **supra.**
[22] U. S. vs. Kalingo, 46 Phil. 651.

payees, without, however, imitating their signatures. **Held:** That the amount of the money orders had the nature of a public fund while it was under the custody of the accused as such postmaster, and the appropriation thereof by him constitutes the crime of malversation of public funds.[23]

MALVERSATION THROUGH FALSIFICATION OF PUBLIC DOCUMENTS.—Where the evidence shows that the accused falsified public documents to commit malversation, he may be charged of the complex crime of malversation through falsification of public documents.[24]

Art. 218. FAILURE OF ACCOUNTABLE OFFICER TO RENDER ACCOUNTS.—Any public officer, whether in the service or separated therefrom by resignation or any other cause, who is required by law or regulation to render account to the Insular Auditor, or to a provincial auditor and who fails to do so for a period of two months after such accounts should be rendered, shall be punished by prisión correccional **in its minimum period, or by a fine ranging from 200 to 6,000 pesos, or both.**[25]

Prisión correccional in its minimum period: See Art. 208.

Act No. 1740 makes the refusal of an official entrusted with public funds to render an account punishable, when the demand for such account is lawfully made by an officer duly authorized to make it. And this is true although the funds so entrusted are, upon examination, found to be intact. The reason is that the law, in this particular, does not so much contemplate the possibility of malversation as it does the need of enforcing, by penal provision, the performance of a duty incumbent upon every public employee who handles public funds.[26]

An examination of the records here, including the complaint filed in said case, fails to disclose any evidence showing that the defendant had any duty to collect and receive money arising from the revenues of the Insular Government and to make disbursements of such money for any purpose. Notwithstanding this failure on the part of the fiscal to prove these facts, the defendant gave as his excuse for not rendering his accounts in accordance

[23] People vs. Villanueva, 58 Phil. 671.
[24] People vs. Barbas, 60 Phil. 241.
[25] Same as Art. 2671 of the Administrative Code.
[26] U. S. vs. Saberon, 19 Phil. 391.

with said section (sec. 3, Act No. 1402) the fact that it was absolutely impossible for him to comply with the law, together with the other duties imposed upon him, with the assistants which the Government had given him, and for that reason only he had not rendered his monthly accounts. The defendant also presented proof to show that he had received no notice from the Auditor or any representative of the Auditor requiring a rendition of his accounts within any particular time; and that he had received no notice whatever from any one requiring him to render his accounts.[27]

It is true that the defendant rendered himself liable under the law, under said section 30, in not rendering his accounts within ten days after the expiration of the month to which they pertained. The prosecution, however, does not rely upon that provision of the law. The prosecution is based upon the theory that the defendant failed to render his accounts after having been requested so to do. We are of the opinion, and so hold, that the evidence does not show, beyond peradventure of doubt, that the defendant had ever been requested to render his accounts in accordance with the allegations of the complaint filed in said case.[28]

Defendant, as municipal president, received from the lessee a certain sum of money as rent for a house belonging to the municipality and failed or refused to account for the money so received: **Held**, That the act of the municipal president falls under the provisions of section 1 of Act 1740, an Act providing for the punishment of public officials and employees who fail or refuse to properly account for public funds or property entrusted to their care.[29]

Art. 219. FAILURE OF A RESPONSIBLE PUBLIC OFFICER TO RENDER ACCOUNTS BEFORE LEAVING THE COUNTRY.—Any public officer who unlawfully leaves or attempts to leave the Philippine Islands without securing a certificate from the Insular Auditor showing that his accounts have been finally settled, shall be punished by arresto mayor, **or a fine ranging from 200 to 1,000 pesos, or both.**[30]

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[27] U. S. vs. Hazley, 9 Phil. 533.
[28] U. S. vs. Hazley, supra.
[29] U. S. vs. Togonon, 12 Phil. 516. See also U. S. vs. Santos, 13 Phil. 1; U. S. vs. Calimag, 12 Phil. 687.
[30] Similar to Section 2670 of the Administrative Code.

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months.

Under the provisions of Act 1605 of the Philippine Commission subsequently incorporated in the Administrative Code as Section 2670, and now Art. 219 of the Revised Penal Code, no bonded officer or employee of the Insular government in the Philippine Islands, or of the City of Manila, shall leave or attempt to leave the Philippine Islands without first securing a certificate (clearance) from the Auditor, showing that his accounts with the Government with which he is or was such bonded officer or employee have been finally settled by said Auditor.

However, a mere rendition of accounts of government property and funds by an employee of the Government is not sufficient reason upon which to demand a certificate of clearance. Experience has taught auditors and those charged with the auditing of accounts that mere paper balances are not always reliable. The Auditor is not obliged, under the law, to accept a mere paper account as final and conclusive as to the real responsibility of government employees and issue a clearance upon that alone. The Auditor, if he has any doubt about the correctness of the account rendered, may make an actual examination of the funds and property represented by such paper accounts or balances before issuing his certificate of clearance.[31]

Art. 220. ILLEGAL USE OF PUBLIC FUNDS OR PROPERTY.—Any public officer who shall apply any public fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of prisión correccional **in its minimum period or a fine ranging from one-half to the total value of the sum misapplied, if by reason of such misapplication, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.**

If no damage or embarrassment to the public service

[31] Lamb vs. Phipps, 22 Phil. 456.

has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied.[32]

Prisión correccional in its minimum period: See Art. 208.

The present Article deals with misapplication of public funds or property, and it may be distinguished from the misappropriation defined and punished by Article 217 in its nature and objects. In the first place, the offender in the crime defined by this Article does not derive any personal gain or profit out of the proceeds of the crime, unlike the offender in the crime of misappropriation defined in Article 217. In the second place, the ultimate purpose or object to which the fund or property has been used or devoted is clothed with public character or nature, unlike the ultimate purpose or object of the misappropriation in Article 217, which is, the private or personal interest of the offender.

In misapplying, or rather, improperly using public funds or property to some public project or purpose other than that for which such fund or property was intended, the public interest **may** or **may not** suffer any damage. In the first case, the Code punishes the offender with **prisión correccional** in its minimum period, that is from 6 months and 1 day to 2 years and 4 months, plus fine and disqualification. In the second case, the Code is quite lenient, and only punishes the offender with a fine ranging from 5 to 50 per cent of the fund improperly used.

Art. 221. FAILURE TO MAKE DELIVERY OF PUBLIC FUNDS OR PROPERTY.—Any public officer under obligation to make payment from Government funds in his possession, who shall fail to make such payment, shall be punished by arresto mayor **and a fine of from 5 to 25 per cent of the sum which he failed to pay.**

This provision shall apply to any public officer who, being ordered by competent authority to deliver any property in his custody or under his administration, shall refuse to make such delivery.

The fine shall be graduated in such case by the value of the thing, provided that it shall not be less than 50 pesos.[33]

[32] Similar to the provisions of Art. 393 of the old Penal Code.
[33] Similar to the provisions of Art. 394 of the old Penal Code.

Arresto mayor: See Art. 219.

Art. 222. OFFICERS INCLUDED IN THE PRECEDING PROVISIONS.—The provisions of this chapter shall apply to private individuals who, in any capacity whatever, have charge of any insular, provincial, or municipal funds, revenues, or property and to any administrator or depository of funds or property attached, seized, or deposited by public authority, even if such property belongs to a private individual.[34]

The misappropriation of the proceeds of the sale of attached property, sold by consent, by the depository, constitutes malversation under Articles 395, 390 and 392 of the old Penal Code (similar to the present Article) and not **estafa.**[35]

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[34] Similar to the provisions of Art. 395 of the old Penal Code.
[35] U. S. vs. Rastrollo, 1 Phil. 22.

CHAPTER FIVE

INFIDELITY OF PUBLIC OFFICERS

SECTION ONE

INFIDELITY IN THE CUSTODY OF PRISONERS

Art. 223. CONNIVING WITH OR CONSENTING TO EVASION.—Any public officer who shall consent to the escape of a prisoner in his custody or charge, shall be punished:

1. By prisión correccional **in its medium and maximum periods and temporary special disqualification in its maximum period to perpetual special disqualification, if the fugitive shall have been sentenced by final judgment to any penalty.**

2. By prisión correccional **in its minimum period and temporary special disqualification, in case the fugitive shall not have been finally convicted but only held as a detention prisoner for any crime or violation of law or municipal ordinance.**[1]

Prisión correccional in its medium and maximum periods: See Art. 167.

Prisión correccional in its minimum period: See Art. 208.

Temporary special disqualification: See Art. 210.

It is not necessary that the prisoner under custody shall have been convicted by **final** sentence in order that this crime may exist. If the prisoner turned loose has been sentenced by final judgment the penalty is set forth in paragraph 1; while paragraph 2 fixes the penalty when the prisoner has not undergone any **final** sentence.

Connivance in the escape of a prisoner on the part of the person in charge is an essential condition in the commission of the crime of faithlessness in the custody of prisoners. If the

[1] Based on the provisions of Art. 358 of the old Penal Code, and Art. 174 of the proposed Correctional Code of 1916, and Act 2364 of the Philippine Legislature.

public officer charged with the duty of guarding him does not connive with the fugitive, then he has not violated the law and is not guilty of this crime.[2]

But when the custodian maliciously failing to perform the duties of his office, and conniving with the prisoner, permits him to obtain relaxation of his imprisonment and to escape the punishment of being deprived of his liberty, thus making the penalty ineffectual, there is no real and actual evasion of service of a sentence (**quebrantamiento de condena**), even though the convict may not have fled inasmuch as the prisoner's leaving the prison and his evasion of service of the sentence were effected through tolerance of the guard or rather by agreement with him. At least, the guard, under such circumstances, is guilty of this crime through criminal negligence.[3]

E and C were arrested and sentenced for a violation of the Gambling Law. A **mitimus** was issued to the warden of the provincial jail to detain them. Later, by virtue of an order of the provincial governor, they were turned over to the defendant, as president of the municipality of Imus, to serve the term of imprisonment in the municipal jail. E and C were permitted to spend most of their time outside of said jail. **Held:** That the defendant, as president, was not guilty of contempt; that the defendant was not detaining E and C by virtue of an order of the court,—there was no order of the court directing the defendant to take into custody the two persons.[4] Mr. Justice Carson, however, dissenting from the majority opinion, believed that if any offense at all had been committed by Gabriel, said offense was infidelity in the custody of prisoners.

Art. 224. EVASION THROUGH NEGLIGENCE.—If the evasion of the prisoner shall have taken place through the negligence of the officer charged with the conveyance or custody of the escaping prisoner, said officer shall suffer the penalties of arresto mayor **in its maximum period to** prisión correccional **in its minimum period and temporary special disqualification.**[5]

Arresto mayor in its maximum period; **prisión correccional** in its minimum period: See Art. 129.

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[2] U. S. vs. Bandino, 29 Phil. 459.
[3] U. S. vs. Bandino, **supra.**
[4] U. S. vs. Gabriel, 31 Phil. 632.
[5] Similar to Art. 175 of the proposed Correctional Code of 1916.

Art. 225. ESCAPE OF PRISONER UNDER THE CUSTODY OF A PERSON NOT A PUBLIC OFFICER. —Any private person to whom the conveyance or custody of a prisoner or person under arrest shall have been confided, who shall commit any of the offenses mentioned in the two preceding articles, shall suffer the penalty next lower in degree than that prescribed for the public officer.[6]

SECTION TWO

Infidelity in the Custody of Documents

Art. 226. REMOVAL, CONCEALMENT, OR DESTRUCTION OF DOCUMENTS. — Any public officer who shall remove, destroy, or conceal documents or papers officially entrusted to him, shall suffer:

1. The penalty of prisión mayor **and a fine not exceeding 1,000 pesos, whenever serious damage shall have been caused thereby to a third party or to the public interest.**

2. The penalty of prisión correccional **in its minimum and medium periods and a fine not exceeding 1,000 pesos, whenever the damage caused to a third party or to the public interest shall not have been serious.**

In either case, the additional penalty of temporary special disqualification in its maximum period to perpetual special disqualification shall be imposed.[7]

Prisión correccional in its minimum and medium periods: See Art. 194.

ELEMENTS OF THE OFFENSE.—The elements of this offense are four: (1) that the offender be a public officer, because if he is a private person, the case may be considered as a simple violation of Art. 315, No. 3 (c), of this Code; (2) that

[6] Similar to the provisions of Art. 359 of the old Penal Code and Art. 176 of the proposed Correctional Code of 1916.
[7] Similar to Art. 360 of the old Penal Code.

there be a document removed, destroyed, or concealed;[8] (3) that the documents destroyed, removed, or concealed should have been confided or entrusted to such public officer by reason of his office; and (4) that damage or prejudice to the public interests, or to that of a third person, should have been caused.[9]

CASES OF INFIDELITY IN THE CUSTODY OF DOCUMENTS.—Thus, a justice of the peace, who destroyed the record of an appealed civil case for the purpose of appropriating the deposit of ₱16, was guilty of infidelity in the custody of documents;[10] the same crime was committed by a postmaster who retained mail matter deposited at the post office under his charge or maliciously changed the ordinary route of said mail matter for a purpose other than that which the law and postal regulations authorize, even though he did not open the letters;[11] the same crime was committed by one who, while acting for and instead of, and by commission and direction of a postmaster, extracted from a registered letter, which had been handed to him for registry, the sum of ₱24.00.[12] Faithlessness in the custody of the documents was the crime committed, by an attorney **de oficio** of an accused, who removed, destroyed, or concealed the records of the case or part thereof, which were handed to him in connection with the defense of the accused.[13]

Faithlessness in the custody of documents was also the crime committed by a deputy clerk of court who, having received in his official capacity several notes or paper money which were presented as an exhibit in a case, failed to give an account or afterward took away said money.[14]

A package containing a book, sent through the mail by the C.O.D. system, is, properly speaking, goods or merchandise and as such cannot be considered as a document within the meaning of this Article. For this reason, a postmaster, who removes a C.O.D. package which has been confided to his custody, does not commit the crime punished by this Article.[15]

A municipal secretary who, together with the president, makes certain changes in the minutes of a meeting of the municipal council, which minutes were afterwards approved as corrected by the council, is not guilty of the crime of faithlessness in the custody of documents.[16]

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[8] Kataniag vs. People, 74 Phil. 45.
[9] Viada, 2 Cod. Pen., 565; Decs. of Sup. Ct. of Spain, May 14, 1876, March 18 and November 25, 1884.
[10] U. S. vs. Tobias, 20 Phil. 185.
[11] U. S. vs. Filoteo, 14 Phil. 73.
[12] U. S. vs. Ballilo, 17 Phil. 459.
[13] Dec. of Sup. Ct. of Spain, Feb. 5, 1883; Viada, 2 Cod. Pen. 568.
[14] People vs. Abraham, G. R. No. 17628, decided Feb. 17, 1922.
[15] People vs. Agnis, G. R. No. 19676.
[16] P. S. vs. Elises, 19 Phil. 503.

The destruction of a municipal payroll by a municipal president, before the payroll was approved by him according to Sec. 2300 of the Administrative Code, and before it was approved by any of the persons whose signatures were necessary for payment of salaries, does not constitute the crime of faithlessness in the custody of documents. The reason is that a mere blank form for an official document is not in itself a public document within the meaning of this Article. And a payroll not signed by any of the persons or officials whose signatures are necessary before the salaries covered by the roll can be paid is not a document but merely a draft of it.[17]

Art. 227. OFFICER BREAKING SEAL.—Any public officer charged with the custody of papers or property sealed by proper authority, who shall break the seals or permit them to be broken, shall suffer the penalties of prisión correccional **in its minimum and medium periods, temporary special disqualification and a fine not exceeding 2,000 pesos.**[18]

Prisión correccional in its minimum and medium periods: See Art. 194.

Note that the breaking of seals, rather than the opening of a closed envelope, is the act which is punished under this Article.

Art. 228. OPENING OF CLOSED DOCUMENTS.—Any public officer not included in the provisions of the next preceding article who, without proper authority, shall open or shall permit to be opened any closed papers, documents, or objects entrusted to his custody, shall suffer the penalties of arresto mayor, **temporary special disqualification, and a fine not exceeding 2,000 pesos.**[19]

Arresto mayor: See Art. 219.

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[17] People vs. Camacho, 44 Phil. 484.
[18] Similar to the provisions of Art. 361 of the old Penal Code.
[19] Similar to Art. 362, par. 1, of the old Penal Code.

SECTION THREE

Revelation of Secrets

Art. 229. REVELATION OF SECRETS BY AN OFFICER.—Any public officer who shall reveal any secret known to him by reason of his official capacity, or shall wrongfully deliver papers or copies of papers of which he may have charge and which should not be published, shall suffer the penalties of prisión correccional **in its medium and maximum periods, perpetual special disqualification, and a fine not exceeding 2,000 pesos if the revelation of such secrets or the delivery of such papers shall have caused serious damage to the public interest; otherwise, the penalties of** prisión correccional **in its minimum period, temporary special disqualification, and a fine not exceeding 500 pesos shall be imposed.**[20]

***Prisión correccional** in its medium and maximum periods:* See Art. 167.

Prisión correccional in its minimum period: See Art. 208.

Of course, the provisions of this Article do not include the revelation of secrets of the State to a belligerent nation, because such acts are already defined and punished as espionage in Art. 117 of this Code.

Art. 230. PUBLIC OFFICER REVEALING SECRETS OF PRIVATE INDIVIDUAL.—Any public officer to whom the secrets of any private individual shall become known by reason of his office who shall reveal such secrets, shall suffer the penalties of arresto mayor **and a fine not exceeding 1,000 pesos.**[21]

Arresto mayor:

[20] Similar to the provisions of Art. 363 of the old Penal Code and Art. 180 of the proposed Correctional Code of 1916.

[21] Similar to Art. 364 of the old Penal Code.

Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months.

As far as Internal Revenue officers are concerned, Section 2716 of the Administrative Code will prevail.

As far as officers investigating corporations are concerned, Section 55 of Act 1459 will govern.

As far as telegraph operators are concerned, Sec. 1970 of the Administrative Code will prevail.

CHAPTER SIX

OTHER OFFENSES OR IRREGULARITIES BY PUBLIC OFFICERS

SECTION ONE

Disobedience, Refusal of Assistance, and Maltreatment of Prisoners

Art. 231. OPEN DISOBEDIENCE. — Any judicial or executive officer who shall openly refuse to execute the judgment, decision, or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities, shall suffer the penalties of arresto mayor **in its medium period to** prisión correccional **in its minimum period, temporary special disqualification in its maximum period, and a fine not exceeding 1,000 pesos.**[1]

Arresto mayor in its medium period to ***prisión correccional*** in its minimum period: See Art. 216.

Temporary special disqualification in its maximum period:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

There are three elements in the crime defined in this Article. The first is that there must be an open refusal on the part of the offender to obey an order; the second is that the order must come from competent authority, or authority vested with jurisdiction over the matter; and third, that the order be given or issued with legal formalities.[2]

Thus, a municipal secretary who refuses to deliver to the mayor, after having been repeatedly requested to do so, the keys of the doors of the municipal building and the seal under his custody, is guilty of the offense defined and punished by this Article.[3]

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[1] Similar to the provisions of Art. 365 of the old Penal Code.
[2] Viada, 2 Cod. Pen., 575.
[3] Dec. of Sup. Ct. of Spain, Feb. 17, 1873; Viada, 2 Cod. Pen., 579.

Art. 232. DISOBEDIENCE TO ORDER OF SUPERIOR OFFICER, WHEN SAID ORDER WAS SUSPENDED BY INFERIOR OFFICER.—Any public officer who, having for any reason suspended the execution of the orders of his superiors, shall disobey such superiors after the latter have disapproved the suspension, shall suffer the penalties of prisión correccional **in its minimum and medium periods and perpetual special disqualification.**[4]

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

Art. 233. REFUSAL OF ASSISTANCE.—The penalties of arresto mayor **in its medium period to** prisión correccional **in its minimum period, perpetual special disqualification and fine not exceeding 1,000 pesos, shall be imposed upon a public officer who, upon demand from competent authority, shall fail to lend his cooperation towards the administration of justice or other public service, if such failure shall result in serious damage to the public interest, or to a third party; otherwise,** arresto mayor **in its medium and maximum periods and a fine not exceeding 500 pesos shall be imposed.**[5]

Arresto mayor in its medium period to **prisión correccional** in its minimum period: See Art. 216.

Arresto mayor in its medium and maximum periods:

Minimum: From 2 months and 1 day to 3 months and 10 days;

Medium: From 3 months and 11 days to 4 months and 20 days;

Maximum: From 4 months and 21 days to 6 months.

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[4] Similar to the provisions of Art. 366 of the old Penal Code.

[5] Similar to the provisions of Art. 367 of the old Penal Code.

A municipal president who flatly and insolently refuses to serve a summons of a provincial fiscal, after having been duly requested to do so by the latter official, is guilty of a violation of this Article.[6]

Art. 234. REFUSAL TO DISCHARGE ELECTIVE OFFICE.—The penalty of arresto mayor **or a fine not exceeding 1,000 pesos, or both, shall be imposed upon any person who, having been elected by popular election to a public office, shall refuse without legal motive to be sworn in or to discharge the duties of said office.[7]**

Arresto mayor: See Art. 230.

Art. 235. MALTREATMENT OF PRISONERS. — The penalty of arresto mayor **in its medium period to** prisión correccional **in its minimum period, in addition to his liability for the physical injuries or damage caused, shall be imposed upon any public officer or employee who shall overdo himself in the correction or handling of a prisoner or detention prisoner under his charge, by the imposition of punishments not authorized by the regulations, or by inflicting such punishments in a cruel and humiliating manner.**

If the purpose of the maltreatment is to extort a confession, or to obtain some information from the prisoner, the offender shall be punished by prisión correccional **in its minimum period, temporary special disqualification, and a fine not exceeding 500 pesos, in addition to his liability for the physical injuries or damage caused.[8]**

Arresto mayor in its medium period to **prisión correccional** in its minimum period: See Art. 216.

The present Article is intended mainly to curb the criminal

[6] People vs. Castro, G. R. No. 19273, decided March 16, 1923.
[7] Similar to the provisions of Art. 368 of the old Penal Code and Sec. 2728 of the Administrative Code.
[8] Similar to Art. 184 of the proposed Correctional Code of 1916 and Sec. 2 of Act 619 of the Philippine Commission.

practices of many peace officers in resorting to corporal violence for the purpose of obtaining confessions from prisoners.

SECTION TWO

Anticipation, Prolongation, and Abandonment of the Duties and Powers of Public Office.

Art. 236. ANTICIPATION OF DUTIES OF A PUBLIC OFFICE.—Any person who shall assume the performance of the duties and powers of any public office or employment without first being sworn in or having given the bond required by law, shall be suspended from such office or employment until he shall have complied with the respective formalities and shall be fined from 200 to 500 pesos.[9]

Art. 237. PROLONGED PERFORMANCE OF DUTIES AND POWERS.—Any public officer who shall continue to exercise the duties and powers of his office, employment, or commission, beyond the period provided by law, regulations, or special provisions applicable to the case, shall suffer the penalties of prisión correccional **in its minimum period, special temporary disqualification in its minimum period, and a fine not exceeding 500 pesos.**[10]

Prisión correccional in its minimum period: See Art. 239.
Temporary special disqualification in its minimum period:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

With regard to prolongation of office committed by a notary public, see Sec. 2632 of the Administrative Code.

Art. 238. ABANDONMENT OF OFFICE OR POSITION.—Any public officer who, before the acceptance

[9] Similar to the provisions of Art. 369 of the old Penal Code.
[10] Similar to Art. 370 of the old Penal Code.

of his resignation, shall abandon his office to the detriment of the public service shall suffer the penalty of arresto mayor.

If such office shall have been abandoned in order to evade the discharge of the duties of preventing, prosecuting, or punishing any of the crimes falling within Title One, and Chapter One of Title Three of Book Two of this Code, the offender shall be punished by prisión correccional **in its minimum and medium periods, and by** arresto mayor **if the purpose of such abandonment is to evade the duty of preventing, prosecuting, or punishing any other crime.**[11]

Arresto mayor: See Art. 230.
Prisión correccional in its minimum period: See Art. 239.

With regard to abandonment of post by a member of the Constabulary, Section 2688 of the Administrative Code will prevail.

In the case of **U. S. vs. Neri Abejuela,** 12 Phil. 30, the accused who was then a member of the municipal council of Cagayan, presented his resignation on October 5, 1907. The resignation was not acted upon by the council before October 19 of the same year, when the defendant presented his certificate as candidate for the office of third member of the provincial board. This was held to be a violation of the Election Law, for the reason that Neri's office as municipal councilor did not become vacant until his resignation was accepted.

SECTION THREE

Usurpation of Powers and Unlawful Appointments

Art. 239. USURPATION OF LEGISLATIVE POWERS.—The penalties of prisión correccional **in its minimum period, temporary special disqualification, and a fine not exceeding 1,000 pesos, shall be imposed upon any public officer who shall encroach upon the powers of the legislative branch of the Government, either by**

[11] Similar to Art. 372 of the old Penal Code.

making general rules or regulations beyond the scope of his authority, or by attempting to repeal a law or suspending the execution thereof.[12]

Prisión correccional in its minimum period:
Minimum: From 6 months and 1 day to 1 year, 1 month and 10 days;
Medium: From 1 year, 1 month and 11 days to 1 year, 8 months and 20 days;
Maximum: From 1 year, 8 months and 21 days to 2 years and 4 months.
Temporary special disqualification:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

The present Article as well as Article 240, 241, 242, and 243 are intended to protect and guarantee the principles of separation and distribution of powers by and among the three main branches or departments of government, namely: Executive, Legislative and Judicial.

Any unlawful encroachment of one department upon another is subversive to the cause of good government.

Art. 240. USURPATION OF EXECUTIVE FUNCTIONS.—Any judge who shall so assume any power pertaining to the executive authorities, or shall obstruct the latter in the lawful exercise of their powers, shall suffer the penalty of arresto mayor **in its medium period to** prisión correccional **in its minimum period.**[13]

Arresto mayor in its medium period to **prisión correccional** in its minimum period: See Art. 216.

Art. 241. USURPATION OF JUDICIAL FUNCTIONS.—The penalty of arresto mayor **in its medium period to** prisión correccional **in its minimum period shall be imposed upon any officer of the executive branch of the Government who shall assume judicial powers or**

[12] Similar to Art. 373 of the old Penal Code.
[13] Similar to the provisions of Art. 374 of the old Penal Code.

shall obstruct the execution of any order or decision rendered by any judge within his jurisdiction.[14]

Arresto mayor in its medium period to **prisión correccional** in its minimum period: See Art. 216.

By the provisions of paragraph (g), Section 18, of the former Municipal Code (Act No. 82), the municipal president was empowered to hold a court, hear, and adjudge violations of municipal ordinances. For that reason a municipal president who tried and convicted a person for violation of a municipal ordinance regarding gambling was not committing any crime penalized by this Article.[15]

The fact that a municipal president receives a complaint signed by the chief of police, and afterward tries the case, even though the justice of the peace is discharging his office in the municipality is a violation of this Article.[16]

Art. 242. DISOBEYING REQUEST FOR DISQUALIFICATION.—Any public officer who, before the question of jurisdiction is decided, shall continue any proceeding after having been lawfully required to refrain from so doing, shall be punished by arresto mayor **and a fine not exceeding 500 pesos.**[17]

Arresto mayor: See Art. 230.

Art. 243. ORDERS OR REQUESTS BY EXECUTIVE OFFICERS TO ANY JUDICIAL AUTHORITY.—Any executive officer who shall address any order or suggestion to any judicial authority with respect to any case or business coming within the exclusive jurisdiction of the courts of justice, shall suffer the penalty of arresto mayor **and a fine not exceeding 500 pesos.**[18]

Arresto mayor: See Art. 230.

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[14] Similar to the provisions of the second paragraph of Art. 374 of the old Code.
[15] U. S. vs. Rallos, 4 Phil. 446.
[16] People vs. Valdehuesa, G. R. No. 17720, decided January 21, 1922.
[17] Similar to Art. 375 of the old Penal Code.
[18] Similar to Art. 376 of the old Penal Code.

Art. 244. UNLAWFUL APPOINTMENTS. — Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of arresto mayor **and a fine not exceeding 1,000 pesos.**

Arresto mayor: See Art. 230.

As will be seen from the wording of this Article, it is not sufficient that the offender should nominate or appoint to a public office a person without the qualifications therefor, but it must be proved besides that the offender was aware of the lack of qualifications of his appointee or nominee at the time he made the appointment or appointments.

SECTION FOUR

Abuses Against Chastity

Art. 245. ABUSES AGAINST CHASTITY—PENALTIES.—The penalties of prisión correccional **in its medium and maximum periods and temporary special disqualification shall be imposed:**

Prisión correccional in its medium and maximum periods: See Art. 167.

Temporary special disqualification: See Art. 231.

1. Upon any public officer who shall solicit or make immoral or indecent advances to a woman interested in matters pending before such officer for decision, or with respect to which he is required to submit a report to or consult with a superior officer;[19]

MEANING OF THE WORD SOLICIT.—The word "solicit" used in this paragraph means the act of proposing **earnestly** and **persistently** something unchaste and dishonest to a woman who happens to be interested in matters pending before the offender for decision or consideration. In order that this offense may be considered consummated, it is not necessary that the woman soli-

[19] Similar to Art. 379 of the old Penal Code.

cited should have yielded or succumbed to the solicitation or requirements of the offender. It is sufficient that the offender makes earnest and repeated proposals to the woman interested in a certain matter under his consideration.

OFFENSE TO CHASTITY DEFINED.—By offense against chastity is meant any kind of attempted attack or assault against the chastity of a woman, even though the offender does not in fact succeed in his desire to injure or destroy the chastity of his victim.

DISTINCTION BETWEEN OFFENSE AGAINST CHASTITY AND ABUSE OF CHASTITY.—It is therefore necessity to distinguish the crime punished in this paragraph from that of abuse of chastity described and punished under Art. 336, in that in the latter crime the offender, in the majority of cases, is a private individual, and it is necessary that some actual act of lasciviousness and dishonesty should be executed by the offender. In the crime prescribed under this Article, a mere dishonest proposal or proposition, if it is made earnestly and persistently by the offender, will give ground for a prosecution and conviction.[20]

2. Any warden or other public officer directly charged with the care and custody of prisoners or persons under arrest who shall solicit or make immoral or indecent advances to a woman under his custody.

If the person solicited be the wife, daughter, sister, or relative within the same degree by affinity of any person in the custody of such warden or officer, the penalties shall be prisión correccional **in its minimum and medium periods and temporary special disqualification.**[21]

Warden or **alcaide** within the meaning of this paragraph includes any public officer directly in charge of the care and vigilance of prisoners, whether temporarily detained or serving final judgment. Thus a police officer duly appointed and qualified as such, who, while having under his charge, care, and vigilance, prisoners confined in the cells of the police station, takes advantage of the occasion, approaches one of the woman prisoners, demands her love, and makes unchaste proposals to her, commits the crime of offense against chastity defined and punished in this Article.[22]

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[20] Hidalgo, II Cod. Pen., 87.
[21] Similar to the provisions of Art. 380 of the old Penal Code.
[22] U. S. vs. Morelos, 29 Phil. 570.

TITLE EIGHT

Crimes Against Persons

CHAPTER ONE

DESTRUCTION OF LIFE

SECTION ONE

Parricide, Murder, Homicide

Art. 246. PARRICIDE.—Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusión perpetua **to death.**[1]

Reclusión perpetua to death:
Minimum: Reclusión perpetua;
Medium: Reclusión perpetua;
Maximum: Death.

CORRECT WORDING OF THE ARTICLE.—Another mistake was obviously committed in translating the Spanish text of Article 246 of this Code into English.

The original text in Spanish reads as follows:

> "Art. 246.—PARRICIDIO. **Será castigado como parricida con la pena de reclusión perpetua a muerte el que matare a su padre, madre, o hijo, sean legítimo o ilegítimos, o a cualquiera otro de sus ascendientes o descendientes, o a su cónyuge."**

As will be seen, the Spanish text includes the word **other (otro)** between **any** and **of**; in other words, it makes clear and plain that the ascendants and descendants referred to in said Article exclude parents and children.

So the following is the correct translation of the present Article:

[1] Same as Art. 402 of the old Penal Code.

"Art. 246. Parricide.—Any person who shall kill his father mother, or child, whether legitimate or illegitimate, or any other ascendant or descendant, or his spouse, shall be guilty of parricide and shall be punished by the penalty of **reclusión perpetua** to death."

There may be parricide by reckless imprudence.[2]

ESSENTIAL ELEMENT OF THE OFFENSE.—Relationship is the element of the crime. The victim must be either the father, mother, child, whether legitimate or illegitimate, or other ascendant or descendant, or the spouse of the offender.

The Code is silent as to the question of whether the killing of an **illegitimate** ascendant or descendant other than parents or children constitutes parricide; but Viada[3] thinks that an illegitimate ascendant or descendant is not included among persons protected under this Article. Thus, he who kills an illegitimate grandfather or grandson is not guilty of parricide, but of simple homicide, or of murder, if any of the circumstances of the latter crime is present.

The privilege or protection given under this Article does not include the adopted father or adopted son, nor the father-in-law or son-in-law.[4]

The legal y of the marriage is essential in parricide cases, as appears from e law (Art. 402 of the old Penal Code) which does not include illegitimate spouses.[5]

EFFECT OF MARRIAGE ACCORDING TO TAGBANUA TRIBE.—The facts proved in this case leave no room for doubt that the defendant killed the deceased, to whom he had been married according to the rites of the tribe of the Tagbanuas, of which both of them were members, which rites, by his own admission, sanction said marriage, and his act, therefore, constitutes the crime of parricide defined and penalized in this Article.[6]

LIABILITY OF STRANGER.—A stranger who cooperates and takes part in the perpetration of parricide, even though he lent his cooperation with the full knowledge of the relationship between the victim and the offender whom he helped out, is not guilty of parricide, but only of homicide, or of murder, if any of the circumstances of the latter crime is attendant.[7]

PARRICIDE BY MISTAKE.—The question of whether the

[2] People vs. Recote, G. R. Nos. L-5801-02, March 28, 1955.
[3] Viada, 3 Cod. Pen., 7.
[4] Viada, 3 Cod. Pen., 7.
[5] People vs. Tambaroso, 56 Phil. 676.
[6] People vs. Rosil, 56 Phil. 722.
[7] People vs. Bucsit et al., 43 Phil. 184; People vs. Patricio, 46 Phil. 875.

act of a person who tries to kill a stranger but, by mistake, kills his father or any of the persons described in this Article, constitutes parricide, has already been discussed under Article 64.

The circumstance of treachery in connection with parricide is a generic aggravating circumstance and not a **qualifying** circumstance.[8]

It was held in one case that although in strict law the offense should be designated as parricide on account of the deceased being the husband of the defendant, yet, if the latter has been charged with and tried for the crime of murder, it is not possible in law to designate the crime with a more serious qualification, since within the principles governing the present law of criminal procedure the defendant has a right not to be sentenced for an offense which is greater than that with which she has been charged in the complaint.[9]

Art. 247. DEATH OR PHYSICAL INJURIES INFLICTED UNDER EXCEPTIONAL CIRCUMSTANCES. —Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury shall suffer the penalty of destierro.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age and their seducers, while the daughters are living with their parents.

Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article.[10]

Destierro:

Minimum: From 6 months and 1 day to 2 years and 4 months;

[8] U. S. vs. Villanueva, 2 Phil. 61; U. S. vs. Cunanan, 27 Phil. 6.
[9] U. S. vs. Ayao et al., 4 Phil. 114.
[10] Similar to Art. 423 of the old Penal Code, as amended by Act 3195 of the Philippine Legislature.

Medium: From 2 years, 4 months and 1 day to 4 years and 2 months;

Maximum: From 4 years, 2 months and 1 day to 6 years.

The provisions of this Article are obviously the remnants of the old barbaric laws in our statute books. The provisions practically place in the hands of an alleged aggrieved party the lives of his fellowmen, without due process of law.

We believe it is about high time for the Legislature to repeal this Article. If the author of the most heinous crime, say piracy, murder or treason, cannot be deprived of his life without undergoing a long and an elaborate trial, we cannot see any reason why a person whose only fault is that of violating the Sixth Commandment, can be summarily executed.

It may be argued that a person acting under the circumstances described in this Article is impelled by the impulse of so powerful a stimulus as to produce in the actor loss of self-control. Well and good. Passion and obfuscation, after all, is a mitigating circumstance (par. 6, Article 13). Let such circumstance be considered generic mitigation, or even qualified mitigation, in favor of the accused so as to lower the penalty for the crime by one or two degrees, if necessary. But we believe it is utterly unjust, not to say barbarous, to legalize murder in the hands of a more or less infuriated spouse or parent.

In one case, a married woman was caught by her husband lying with another man that succeeded in escaping and hiding from the offended husband who immediately thereafter looked for his unfaithful wife. She was killed by her husband, not in the place where he had caught her in adultery, but in another place nearby where he overtook her in her flight, and even though the woman did not receive the serious wounds which caused her death at the very time and place of adultery, but in another place nearby, still such acts unquestionably fall within the scope of the provisions of this Article, for it is reasonable to hold that the woman was killed immediately after she was caught in the commission of adultery, since not even an hour elapsed between the catching and the killing, and the time that intervened was only that necessarily employed by the husband in the unsuccessful pursuit of his wife's paramour.[11] Likewise, in **U. S. vs. Vargas**, 2 Phil. 194, it was held that where the defendant surprises his wife and her paramour, and the latter takes flight and is immediately pursued and killed, the killing is "in the act" within the meaning of this Article.

It is to be noted, however, that the privilege given in this

[11] U. S. vs. Alano, 32 Phil. 381.

Article is extended only to the case of a husband who caught or **surprised** his wife in the act of **actual adultery**, that is, actual carnal knowledge with her paramour. If the act surprised or found out by the husband does not amount to adultery, or if it is only **preliminary** thereto then the privilege of this Article cannot be given to the husband.[12]

Nor can the privilege of this Article be extended to a man who is not lawfully married to the woman he calls his wife and whom he kills together with the paramour, in spite of the fact that the offender is in the honest belief that he is lawfully married to the deceased, having lived with her for a long time as a lawful husband.[13]

Art. 248. MURDER.—Any person who, not falling with the provisions of article 246, shall kill another, shall be guilty of murder and shall be punished by reclusión temporal **in its maximum period to death, if committed with any of the following attendant circumstances:**

1. With treachery, taking advantage or superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

2. In consideration of a price, reward or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly

[12] Viada, 3 Cod. Pen. 96. See People vs. Marquez, 53 Phil. 260; People vs. Bituanan, 54 Phil. 23; People vs. Gonzales, G. R. No. 46310, Oct. 31, 1936.
[13] U. S. vs. Tubban, 29 Phil. 434; U. S. vs. Verzola, 33 Phil. 285.

augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.[14]

Reclusión temporal in its maximum period to death:
Minimum: From 17 years, 4 months, and 1 day to 20 years;
Medium: **Reclusión perpetua;**
Maximum: Death.

MURDER DEFINED.—Murder is, therefore the killing of any person other than those mentioned in the next preceding Article, provided that any of the circumstances above mentioned is present.

The following are the rules that should be taken into consideration in the application of these circumstances:

(a) That murder will exist with only one of the circumstances above described; and whenever more than one of said circumstances are present, the others must be considered as **generic** aggravating circumstances. Supposing that in a given murder, besides the circumstance of **treachery,** there were also present the circumstances of **evident premeditation** and that of its having been committed for a price or reward. **Evident premeditation** and **price** or **reward** will only be considered as **generic** aggravating circumstances, while **treachery** will be the qualifying circumstance of the crime.[15]

(b) That the circumstances mentioned in this Article, qualifying as they do the crime of murder, should be established by direct and positive evidence; mere presumption or inference will be insufficient.[16]

Treachery.[17] Treachery must be proved as the crime itself.[18]

Bayoneting a boy, 13 years of age, to death by a Constabulary soldier is murder.[19] So, also, the act of shooting a person who comes to the rescue of his victim while said person is trying to raise the latter from the ground.[20]

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[14] Similar to Art. 403 of the old Penal Code. The present Article brings about a new qualifying circumstance which did not appear in Art. 403 of the old Penal Code, i. e., circumstance No. 4 which reads: "On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or of any other public calamity."

[15] Dec. Sup. Ct. of Spain, August 29, 1872; Viada, 3 Cod. Pen. 15. See also U. S. vs. De Leon, 1 Phil. 163; U. S. vs. Abaigar, 2 Phil. 417; U. S. vs. Hicks, 14 Phil. 217.

[16] Dec. Sup. Ct. of Spain, October 7, 1871; Viada, 3 Cod. Pen. 7; U. S. vs. De Jesus et al., 2 Phil. 514; U. S. vs. Baguiao et al., 4 Phil. 110; U. S. vs. Bañagale, 24 Phil. 69.

[17] For definition and examples of treachery, see Art. 14, par. 16, and notes.

[18] People vs. Durante, 53 Phil. 363; People vs. Bordador et al., 63 Phil. 305.

[19] People vs. Santos, 50 Phil. 200.

[20] People vs. Tan, 50 Phil. 660. See also People vs. Acopio, 58 Phil.. 582; People vs. Noble, 43 O. G. 2010.

Treachery will exist even though the offender had no intention to commit so great a wrong as that committed.[21]

The fact that A murdered B, believing him to be C, is no defense. It is not even an extenuating circumstance. That he made a mistake in killing one man instead of another, when it is proved that he acted maliciously and wilfully, cannot relieve him from criminal responsibility.[22]

A quarrel having arisen between two players in the course of a game of matching shells, one of the two attempted to strike the other with his fist but was prevented from so doing by the seizure of his hands by the other two. Upon this the person against whom the assault was directed, taking advantage of the helpless state of his assailant, drew his bolo and with it gave a fatal thrust to the latter from behind, the weapon entering the back, near the right shoulder blade. The preparation of this attack was unseen by the two who were holding the arms of the deceased, but just before the thrust was given they were warned by the mother of the deceased, who called to them to release the deceased, as his opponent was going to attack him with a bolo. **Held:** That the crime committed was murder on the part of the individual who inflicted the fatal wound, but that the two who were holding the hands of the deceased at the time were not guilty as principals, or even as accomplices, in the offense, since it did not appear that they were holding the hands of the deceased in order to facilitate the fatal attack.[23]

On a certain night the deceased and the accused engaged in a trivial altercation in a billiard room, both being then unarmed; and in order to prevent further trouble a policeman conducted the accused to his house where he left him. About one-half hour later the deceased, who had meanwhile remained in the billiard room, arose and stepped into the street to go home. At this moment the accused, who had apparently been standing in wait in the obscurity of the night under the eaves of a barber shop nearby, started towards the deceased and, without saying a word, plunged a knife into his side, inflicting a mortal wound. The deceased had no time to evade the blow or make any defense against the assault, and owing to the darkness could not have perceived the threatening attitude of the accused until the instant when the blows were about to be delivered, when the deceased exclaimed "Are you going to attack?" **Held:** The assault was treacherous, and the offense was murder, notwithstanding the fact that the attack was made upon the deceased face to face.[24]

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[21] Pico vs. U. S., 40 Phil. 117.
[22] U. S. vs. Mendieta, 34 Phil. 242.
[23] People vs. Babac, 55 Phil. 597. See also People vs. Carandang, 54 Phil. 503.
[24] U. S. vs. Pengzon, 44 Phil. 224.

Where witnesses for the prosecution in a murder trial, upon whose testimony the prosecution in a great measure relies to qualify the crime as murder rather than homicide, testify and admit that they did not see the beginning of the struggle which ended in the death which is the subject-matter of the action in which the testimony is given, the evidence is insufficient to show that the crime was murder; and this is so even though the body of the person killed showed that some but not all of the wounds were inflicted from behind.[25]

But the act of taking four shots at a man who was quietly and heedlessly walking along the street about six feet ahead of his assailant, the latter employing modes or forms which directly and especially tended to insure the consummation of the crime without risk to the aggressor from any defense that might have been made by the assaulted man, who had his back to him, and who in spite of the serious wound caused upon him by the second of the four shots fired by his assailant did not die owing to a chance, accident, or person independent of the criminal act performed, constituted frustrated murder.[26]

In a case of murder qualified by **alevosia**, it was held that the aggravating circumstances that advantage was taken of superior strength and that the offense was committed in the night-time were absorbed in the qualifying circumstance of **alevosia**; not so, however, with respect to the aggravating circumstance that the offense was committed in the dwelling of the deceased, which was compensated by the mitigating circumstance indicated in Article 11 of the Penal Code, as amended.[27]

When an altercation which ends in a homicide is begun without **alevosia** on the part of the slayer, and the criminal design is prosecuted to its consummation without any break in the continuity of the aggression and without the intervention of any factor which materially changes the condition of the aggression, the offense constitutes homicide and not murder, although the fatal blow may be delivered under conditions exhibiting some of the features of **alevosia**. Thus, the accused assaulted the deceased with a knife and in the course of the fight which ensued inflicted a serious cut on his thigh. Upon this the deceased turned to flee and was pursued by the accused. After going a short distance the deceased fell on the ground face downward; and before he could recover his equipoise and resume his flight, the accused ran up and delivered a fatal thrust with his knife on the back of the deceased.

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[25] U. S. vs. Pangilion, 34 Phil. 786.
[26] U. S. vs. Agoncillo, 33 Phil. 242. See also U. S. vs. Baul, 39 Phil. 846; People vs. Penazon, 44 Phil. 224.
[27] People vs. Bumanglag, 56 Phil. 10.

Held: That as the assault was not characterized by **alevosia** in its inception; and the aggression was continuous until the consummation of the deed, the offense constituted a simple homicide.[28]

The case may be distinguished from that of **U. S. vs. Baluyot,** 40 Phil. 385, in the circumstance that here the assault, evidently of a homicidal character from the beginning, but not treacherous in its inception, was continuous, and no factor intervened to alter the fundamental conditions of the crime. The circumstance that the deceased had fallen to the ground gave the accused, it is true, the opportunity, of which he promptly availed himself, to come up with the deceased and to dispatch him at once. But the act of so doing cannot be interpreted as evincing a design to employ a method indicative of **alevosia.**[29]

Alevosia may properly be considered, even when the victim of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up a defense against the attack.[30]

But when the accused before making the attack shouted at his victim, "wait for me and we will fight", the crime cannot be murder but only homicide.[31]

Price, reward, promise.[32]

P procured an ignorant man, C, to kill the brother and grandniece of P for reward of ₱60 and other considerations. C, following the instruction of P, at night waylaid the brother and niece in an uninhabited place and killed them. **Held:** To constitute murder by inducement for a price.[33]

Inundation, fire, poison, etc.[34]

It should be borne in mind that **treachery** and **known premeditation** are inherent circumstances in murder by means of poison, and as such, they cannot be considered as aggravating circumstances.[35]

Evident premeditation.[36]

Four persons waited in a lonely place, armed with a club, for the arrival of one R and his companion, a woman S, and then killed R and threw his body into the river. **Held:** These facts constitute homicide, not murder, of which these four persons are

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[28] People vs. Cañete, 44 Phil. 478. See also People vs. Logroño et al., G. R. Nos. L-5714-15, Feb. 28, 1955.
[29] People vs. Cañete, **supra.**
[30] People vs. Mabug-at, 51 Phil. 967.
[31] People vs. Ballugan, G. R. No. L-8267, July 30, 1955.
[32] For definition and example of **price** and **reward,** see Art. 14, par. 11, and notes.
[33] U. S. vs. Parro, 36 Phil. 923.
[34] Regarding inundation, fire, or poison, see Art. 14, par. 12, and notes.
[35] Dec. Sup. Ct. of Spain, May 4, 1883; Viada, 3 Cod. Pen. 29.
[36] For definition and examples of known premeditation, see Art. 14, par. 13, and notes.

guilty as principals. The woman is not guilty of this crime. The sole circumstance that the accused knew that the deceased and his companion would pass by a particular place does not warrant the deduction of known premeditation. In order that this circumstance may properly be considered, it is necessary to determine when the intent to commit the crime was engendered in the mind of the accused, the motive which gave rise to it, the means which they had beforehand selected to carry out their criminal intention (independently of the fact of having waited in ambush for their victim and attacked him without danger to their person, which constitutes the circumstance of **alevosia** already considered); in fine, all those facts and antecedents which combined show that the crime was knowingly premeditated, as required by law, or that the accused acted not only with a preexisting design, which is a condition ordinarily found in all crimes, but with that cold and deep meditation and tenacious persistence in the accomplishment of his criminal purpose, which is the distinctive characteristic of this aggravating circumstance, whether as qualifying or generic.[37]

On the other hand, if it is proved that for some time the accused had lived maritally with the wife of the deceased; that after about four years said woman separated from the accused and returned to her legitimate husband; that in the statement of the accused to his concubine when trying to obtain her clothes then in his control he said although she was leaving him, nevertheless he was not leaving her; and that afterwards, on the morning of the day of the commission of the crime he expressed his criminal purpose regarding the unfaithful woman, the circumstances of known or evident premeditation is clearly established.[38]

Cruelty.[39]

The nature of the aggravating circumstance of cruelty lies in the fact that the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him moral and physical pain which is unnecessary for the consummation of the criminal act. The mere fact of inflicting various successive wounds upon a person to cause his death, no appreciable time intervening between them to show intention to prolong the suffering of a victim, is not sufficient in law to give rise to this aggravating circumstance.[40]

Defendant treacherously attacked deceased with a bolo and cut off his two arms and his legs. In this murder the circumstance

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[37] U. S. vs. Cunanan, 37 Phil. 777; Dec. Sup. Ct. of Spain, Nov. 9, 1895.
[38] U. S. vs. Bisandre, 40 Phil. 78.
[39] For definition and examples of cruelty, see Art. 14, par. 21, and notes.
[40] People vs. Dayug, 49 Phil. 423. See also People vs. Aguinaldo, 55 Phil. 610.

of cruelty cannot be considered, as there is no proof that the victim was alive when the extremities were severed.[41]

Art. 249. HOMICIDE.—Any person who, not falling within the provisions of article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusión temporal.[42]

Reclusión temporal:

Minimum: From 12 years and 1 day to 14 years and 8 months;

Medium: From 14 years, 8 months and 1 day to 17 years and 4 months;

Maximum: From 17 years, 4 months and 1 day to 20 years.

HOMICIDE DEFINED.—Homicide is, therefore, the killing of any person when the killing is not characterized by any of the qualifying circumstances peculiar to parricide and murder.[43]

COMMON LAW RULE AND MODERN RULE IN HOMICIDE.—The defendant and the deceased quarreled. The deceased attacked the defendant and struck him with a piece of wood called "Japanese" about a **vara** in length and about the size of one's wrist. The deceased struck at the accused four or five times. The accused did not retreat, but struck back wounding the deceased on the forearm. This wound caused the death of deceased. This is a justifiable homicide. The ancient common-law rule in homicide denominated "Retreat to the wall" has given way to the "Stand ground when in the right" rule. If the accused was where he had a right to be, the law does not require him to step aside when his assailant was rapidly advancing upon him with a deadly weapon.[44]

CASES OF HOMICIDE.—When the death of a person is due to typhoid fever which was in turn caused or provoked by the abundant hemorrhage from injuries inflicted upon the deceased by the offender, it is homicide.[45]

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[41] People vs. Bersabal, 48 Phil. 439.
[42] Similar to Art. 404 of the old Penal Code.
[43] U. S. vs. Catigbac, 4 Phil. 259.
[44] U. S. vs. Domen, 37 Phil. 57. See U. S. vs. Mack, 8 Phil. 701; U. S. vs. Agbayani, 13 Phil. 178; U. S. vs. Salazar et al., 15 Phil. 315; U. S. vs. Molina, 19 Phil. 227.
[45] Dec. Sup. Ct. of Spain, Oct. 6, 1876; Viada, 3 Cod. Pen., 40. See People vs. Ilustre, 54 Phil. 594; People vs. Almonte, 56 Phil. 54.

In another case, on the night of the commission of the crime, the deceased went to the door of his house to rest, after having drunk some wine. His wife, who was sleeping within the house, was awakened by the noise produced by a blow, looked out, and saw one of the accused on the top of the deceased, holding him by the neck, while his co-accused, who had a club in his hand, was holding him by the knees. **Held:** That the crime was simple homicide, it not having been clearly shown how the aggression was begun nor clearly proved that the aggression was made with treachery nor that the deceased was asleep when he was attacked.[46]

Again, a constabulary soldier who, for the purpose of extorting a confession, strikes his prisoner with a gun, as a consequence of which the prisoner dies after a few moments, is guilty of homicide and not homicide through reckless imprudence, because his intention to do some evil unlawfully, although it is not that of killing, is inconsistent with reckless imprudence.[47]

In a prosecution for homicide the case against the accused was that he had made a criminal assault (threatened another with a knife) upon another person while the two were in a small boat. Under such circumstances, the party assaulted, believing his life in danger, jumped into the river in order to escape. His body disappeared beneath the surface and was seen no more. The affair occurred in broad daylight, and several spectators were so placed that they could in all reasonable probability have seen the body if it had come to the surface in that locality. **Held:** That the death of the party assailed was sufficiently proved, though the body was not subsequently recovered or seen.[48]

Where an aggravating circumstance, which when charged and proved becomes a qualifying circumstance under the provisions of the Code, has not been alleged in the complaint or information, proof of its existence is nevertheless admissible but in that event such circumstance is not to be treated as a qualifying circumstance justifying the conviction of the defendant of a higher offense than that with which he is charged, but merely as an aggravating circumstance justifying the imposition of the penalty in a severe form but within the limits prescribed for the less serious offense charged in the complaint. The court can only sentence the accused for homicide, taking the treachery or **alevosia** to be a single generic aggravating circumstance.[49]

A person may be guilty of homicide through reckless im-

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[46] People vs. Alcala, 46 Phil. 739.
[47] People vs. Nanquil, 43 Phil. 232.
[48] U. S. vs. Valdez, 41 Phil. 497.
[49] U. S. vs. Campo, 23 Phil. 368; U. S. vs. Valdez et al., 40 Phil. 876.

prudence, as in the case of a druggist who sells by mistake a drug sufficient to cause death.[50]

ATTEMPTED AND FRUSTRATED HOMICIDE, DISTINGUISHED FROM PHYSICAL INJURIES.—Where the **intent** of the assailant to kill his victim is clear, the act of the accused in inflicting several injuries upon the offended party constitutes the crime of attempted homicide and not merely physical injuries. For this reason, if the assailant employed adequate means to cause the death of his victim, and at the time he was being prevented by a third person from continuing to attack the offended party, who was already wounded and retreating, he said, "until I kill him," the intent to kill was clear, and the crime committed was not merely physical injuries, but attempted homicide, since the offender had commenced, by direct overt acts, the commission of the crime he intended, although the same was not produced by reason of a cause independent of his will.[51]

Defendant and one Tiburcio Cruz had a quarrel in a public street about some rice straw. A fight ensued in which defendant inflicted upon Cruz a knife wound above the abdomen as a result of which Cruz died. The crime must be classified as homicide and not as assault (**lesiones**). With respect to crimes of personal violence, the penal law looks particularly to the material results following the unlawful acts and holds the aggressor responsible for all the consequences thereof.[52]

So, where on the occasion of a gambling game in which the accused, the deceased, and others participated in an open field, a quarrel broke out between the accused and the deceased, whereupon the accused threw a stone upon the deceased who, in consequence of the blow, fell to the ground and when he attempted to rise the accused threw another stone at him which hit him near the left ear, causing injuries which left the deceased unconscious and caused his death three days later, these facts constitute the crime of homicide.[53]

A child had been seriously ill with fever for three weeks. One day the child lay down on a damp floor, and the defendant told him not to lie there but upon the mat. As the child did not obey, the accused struck him upon the thighs with a slipper and pulled and dragged him toward the mat, throwing him heavily upon the floor. One or two days later, the child died. A doctor testified that the bruises found on the child's thighs could have accelerated his death. The court found this testimony, given solely upon

[50] People vs. Castillo, 76 Phil. 72.
[51] U. S. vs. Joven, 44 Phil. 796; People vs. Montes, 53 Phil. 23.
[52] U. S. vs. Gloria, 3 Phil. 333.
[53] U. S. vs. Gasal, 3 Phil. 354.

the examination of the body, to be insufficient, and held that in order to justify a conviction for homicide it must appear that the acts committed by the accused were the cause of the death. The accused was therefore acquitted of the charge of homicide but condemned to 15 days of **arresto**, under Sec. 29, G. O. 58.[54]

Where in an altercation between Y and C, Y inflicts serious physical injuries upon C which might have been fatal, but from which, through the aid of medical care and attention, his life is saved, Y is not guilty of the crime of either frustrated murder or of frustrated homicide, and C's recovery does not in any manner change the character or nature of the crime of Y.[55]

The first and most essential element necessary to the crime of attempted homicide is the intention on the part of the aggressor to cause the death of the party attacked, and this intention must be proved in such a clear and evident manner as to exclude every possible doubt as to the homicidal intention on the part of the aggressor. And it is a well-known principle of criminal law that when a particular act constitutes a crime by itself, and is separately and distinctly punished by law, like that of **lesiones**, it is not possible in law to classify the act as a greater offense unless well-defined circumstances should show beyond reasonable doubt that the intention of the accused was to commit an offense of greater importance.[56] This is why many cases of attempted homicide have been held to be only **lesiones**.

Art. 250. PENALTY FOR FRUSTRATED PARRICIDE, MURDER, OR HOMICIDE.—The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder, or homicide, defined and penalized in the preceding article, a penalty lower by one degree than that which should be imposed under the provisions of article 50.

The courts, considering the facts of the case, may likewise reduce by one degree the penalty which under article 51 should be imposed for an attempt to commit any of such crimes.[57]

The punishment prescribed by law for consummated parricide is **reclusión perpetua** to death. Under the provisions of Art. 50,

[54] U. S. vs. Embate, 3 Phil. 640.
[55] People vs. Yabot, 45 Phil. 207.
[56] Decs. Sup. Ct. of Spain, Oct. 4 and 25, 1886, and Jan. 18, 1887; U. S. vs. Trinidad, 4 Phil. 152.
[57] Same as Art. 407 of the old Penal Code.

the punishment to be imposed for the frustration of the same crime is the penalty next lower in degree, that is, **reclusión temporal.** In accordance with the provisions of this Article, the Court, in the exercise of its sound discretion, may still lower the penalty of **reclusión temporal** by another degree; that is to say, it can lawfully impose the penalty of **prisión mayor.**

Art. 251. DEATH CAUSED IN A TUMULTUOUS AFFRAY.—When, while several persons, not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it cannot be ascertained who actually killed the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by prisión mayor.

If it cannot be determined who inflicted the serious physical injuries on the deceased, the penalty of prisión correccional **in its medium and maximum periods shall be imposed upon all those who shall have used violence upon the person of the victim.**[58]

Prisión mayor:

Minimum: From 5 years and 1 day to 8 years;

Medium: From 8 years and 1 day to 10 years;

Maximum: From 10 years and 1 day to 12 years.

Prisión correccional in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 day to 6 years.

The offense penalized by this Article is that of tumultuous affray. It takes place when a quarrel occurs among several persons and they engage in a confused and tumultuous affray, in the course of which some person is killed or wounded and the author thereof cannot be ascertained.[59]

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[58] Similar to the provisions of Art. 408 of the old Penal Code.
[59] U. S. vs. Tandoc, 40 Phil. 954.

It is an indispensable element of this offense that the quarrel or affray be of a confused and tumultuous nature; that is to say, that the evidence as to who actually caused the death, is insufficient or cannot be obtained.

Two persons on the one hand and five on the other engaged in a quarrel which resulted in the death of one by the name of Bautista. It could not be ascertained who inflicted the fatal wound, but all inflicted several wounds. The record also does not show that the defendants, acting on agreement or impelled by the sole purpose of killing Bautista, simultaneously attacked the latter without there being any fight. The wounds of some of the offenders showed that there was a fight, but it was not possible to determine which of the contending parties provoked the quarrel. The facts were held to be homicide in a tumultuous affray.[60]

But where a person, jointly with others, committed a preconcerted attack upon police officers engaged in making an arrest, and one of the policemen was killed in the attack, it is an error to hold that the homicide thus committed occurred in a tumultuous affray. Such homicide falls under Art. 249.[61]

So in a quarrel between a group of men which was the assaulted and another group which was the assailant, wherein no confusion took place in the aggression nor in the defense, and wherein the united and common purpose to attack on the part of the aggressor had been established, a prosecution and conviction for tumultuous affray cannot be maintained, because the facts fall within the provisions of Art. 249. The unity of purpose and action determines the aggressors' common responsibility for the consequences of the aggression, and the act constitutes homicide.[62]

Art. 252. PHYSICAL INJURIES INFLICTED IN A TUMULTUOUS AFFRAY.—When in a tumultuous affray as referred to in the preceding article, only serious physical injuries are inflicted upon the participants thereof and the person responsible therefor cannot be identified, all those who appear to have used violence upon the person of the offended party shall suffer the penalty next lower in degree than that provided for the physical injuries so inflicted.

[60] U. S. vs. Yacat, 1 Phil. 443.
[61] U. S. vs. Sevilla, 2 Phil. 162.
[62] U. S. vs. Tandoc, 40 Phil. 954.

When the physical injuries inflicted are of a less serious nature and the person responsible therefor cannot be identified, all those who appear to have used any violence upon the person of the offended party shall be punished by arresto **from five to fifteen days.**[63]

The elements of the offense described in this Article are similar to those of Art. 251, namely: (a) that there be a quarrel or an affray of a tumultuous nature; (b) that there be no sufficient evidence as to who actually caused the serious injuries inflicted upon the participants thereof; and (c) that the two groups participating in the affray had not been specially organized for the purpose of inflicting mutual harm.

Art. 253. GIVING ASSISTANCE TO SUICIDE.—Any person who shall assist another to commit suicide shall suffer the penalty of prisión mayor; **if such person lends his assistance to another to the extent of doing the killing himself, he shall suffer the penalty of** reclusión temporal. **However, if the suicide is not consummated, the penalty of** arresto mayor **in its medium and maximum periods shall be imposed.**[64]

Prisión mayor: See Art. 255.

Reclusión temporal: See Art. 249.

Arresto mayor in its medium and maximum periods:

Minimum: From 2 months and 21 days to 3 months and 24 days;

Medium: From 3 months and 25 days to 4 months and 27 days;

Maximum: From 4 months and 28 days to 6 months.

Art. 254. DISCHARGE OF FIREARMS.—Any person who shall shoot at another with any firearm shall suffer the penalty of prisión correccional **in its minimum and medium periods, unless the facts of the case are such that the act can be held to constitute frustrated or attempted parricide, murder, homicide, or any other**

[63] Same as Art. 420 of the old Penal Code.
[64] Same as Art. 406 of the old Penal Code.

crime for which a higher penalty is prescribed by any of the articles of this Code.[65]

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

In order that this crime may exist, it is necessary that the offender should have discharged the firearm **against** or **at a certain** person. Furthermore, in order that the firing at or against a certain person may be considered as a discharge of firearm punished under this Article, it is necessary that the offender should not have had any intention to kill the offended party, or at least, that there is no sufficient evidence to establish such intention. In case this intention be satisfactorily proved, the case will be treated then as a frustrated or attempted homicide or murder, and not discharge of firearms.

The case of **U. S. vs. Marasigan,** 11 Phil. 27, is an illustration of this crime. Marasigan and Lieutenant Ronimo were engaged on the upper floor of a house in a quarrel. A justice of the peace who happened to pass by and heard the quarrel, and who also carried a gun, ordered these people to come down. The justice of the peace tried to settle the matter, but Ronimo objected. Thereupon Marasigan snatched the revolver or gun from the hand of the justice of the peace and fired it at Ronimo, inflicting upon the latter serious injuries. The crime committed was the complex crime of discharge of firearms with serious physical injuries. In order that the crime may be classified as frustrated murder or homicide, it is absolutely necessary that the intent to deprive the assaulted person of his life be made manifest by acts which may unmistakably tend to attain such results.[66]

Peace officers who are compelled to discharge firearms in order to overcome resistance to arrest are exempt from criminal liability.[67]

One who fires at a person with a revolver twice, not hitting or not intending to hit him, firing toward him, the first shot hitting the tree which said person is cutting, is guilty of the crime

[65] Similar to Art. 408 of the old Penal Code.
[66] See also the cases of U. S. vs. Sabio, 2 Phil. 485; U. S. vs. Montenegro, 15 Phil. 1; U S. vs. Worthington, 27 Phil. 512.
[67] U. S. vs. Resaba, 1 Phil. 311.

of discharge of firearm. The repetition of the shots might constitute a greater crime than that provided for in this Article, but never more than one, taking into account the intention of the accused and the means employed.[68]

One who discharged a shotgun at another from a distance of 200 yards was properly held guilty of illegal discharge of firearms, in the absence of convincing proof that the person discharging the gun could have expected or intended to cause the death of the person at whom the shot was directed.[69]

SECTION TWO

Infanticide and Abortion

Art. 255. INFANTICIDE.—The penalty provided for parricide in article 246 and for murder in article 248 shall be imposed upon any person who shall kill any child less than three days of age.

If the crime penalized in this article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of prisión correccional **in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be** prisión mayor.[70]

Prisión correccional in its medium and maximum periods: See Art. 256.

Prisión mayor:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

Infanticide is, therefore, the killing of a child less than three days (72 hours) old. The punishment, however, varies according to the motive of the crime. If committed by the mother of the infant or its grandparent on the mother's side for the purpose of concealing the dishonor of the mother, the penalty is

[68] U. S. vs. Addison, 10 Phil. 230.
[69] People vs. Agbuya et al., 57 Phil. 238.
[70] Similar to the provisions of Art. 409 of the old Penal Code.

prisión correccional in its medium and maximum periods and **prisión mayor**, respectively.

If the crime is committed under any other circumstance, the penalty to be imposed shall be that corresponding to parricide or murder.

A stranger who cooperates in the perpetration of an infanticide committed by the mother or grandparent on the mother's side, should be treated and punished as a regular murderer under Art. 248 and not under the second paragraph of this Article.[71]

The law, however, exempts a mother who, after giving birth in a thicket, abandons the child because of severe dizziness.[72]

Art. 256. INTENTIONAL ABORTION.—Any person who shall intentionally cause an abortion shall suffer:

1. The penalty of reclusión temporal, **if he shall use any violence upon the person of the pregnant woman;**

2. The penalty of prisión mayor **if, without using violence, he shall act without the consent of the woman;**

3. The penalty of prisión correccional **in its medium and maximum periods, if the woman shall have consented.**[73]

Reclusión temporal: See Art. 249.

Prisión mayor: See Art. 255.

Prisión correccional in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

Carrara has defined abortion as the willful killing of the foetus in the uterus, or the violent expulsion of the foetus from the maternal womb which results in the death of the foetus.

For the crime of abortion to exist, it is indispensable that it be shown: (a) that there was a pregnant woman; (b) that violence was exerted, or drugs or beverages administered, upon such pregnant woman; and (c) that as a result of the use of

[71] Viada, 3 Cod. Pen. 61. See also U. S. vs. Aquino, 34 Phil. 813.
[72] People vs. Bandian, 63 Phil. 530.
[73] Similar to Art. 410 of the old Penal Code.

violence or administration of drugs or beverages upon her, the foetus died. The expulsion of the foetus might or might not have occurred.

Hence, if a person kills a pregnant woman by using personal violence or administering drugs or beverages upon her, he will be liable for the complex crime of homicide or murder with abortion, if the foetus also dies as a result no matter whether the foetus is expelled or not.

When the death of the foetus is the result of its violent expulsion from the maternal womb, or of a premature birth, the crime of abortion is perpetrated; on the other hand, when the death of the foetus is not due to such circumstances, or when it survives in spite of its being violently expelled from the maternal womb, abortion is not committed.[74]

Abortion is produced either intentionally or unintentionally by the pregnant woman herself, through a stranger, or through the intervention of a physician.

The present Article refers to abortion intentionally caused by a stranger. Intentional abortion may be executed in three different forms, viz: (a) through violence exerted upon the person of the pregnant woman, that is, by beating and striking her, or by submitting her to some surgical operation against her will; (b) by means of beverages or medicines administered to the victim without her knowledge and consent; (3) by either of the two means above-mentioned, when executed with the consent of the pregnant woman.[75]

Art. 257. UNINTENTIONAL ABORTION. — The penalty of prisión correccional **in its minimum and medium periods shall be imposed upon any person who shall cause an abortion by violence, but unintentionally.**[76]

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

The crime penalized by this Article is that of abortion which,

[74] See Groizard, 4 Cod. Pen. 489-494.
[75] Viada, 3 Cod. Pen. 61. See U. S. vs. Boston, 12 Phil. 134.
[76] Similar to the provisions of Art. 411 of the old Penal Code.

though produced unintentionally, is nevertheless caused by the use of violence. The violence must be voluntarily exerted.[77]

In view of the peculiar nature of the crime described in this Article, the mitigating circumstance of damage exceeding intent, that is, that the offender had no intention of committing so great an injury as the one produced, cannot be applied here. Neither can we apply in this offense the rule prescribed in paragraph 1 of Art. 49. In other words, even though the offender's purpose was to inflict only physical injuries, but abortion was caused as a consequence of the injuries, the rule prscribed in paragraph 1 of Art. 49 cannot be applied.[78]

A husband who kills his wife during the time of pregnancy, causing the foetus to be expelled a few moments before her death, is responsible for the crime of parricide and abortion.[79]

He who kills a pregnant woman is also responsible for both the crimes of homicide and abortion, even though the foetus is not expelled.[80]

Art. 258. ABORTION PRACTICED BY THE WOMAN HERSELF OR BY HER PARENTS.—The penalty of prisión correccional **in its medium and maximum periods shall be imposed upon a woman who shall practice an abortion upon herself or shall consent that any other person should do so.**

Any woman who shall commit this offense to conceal her dishonor shall suffer the penalty of prisión correccional **in its minimum and medium periods.**

If this crime be committed by the parents of the pregnant woman or either of them, and they act with the consent of said woman for the purpose of concealing her dishonor, the offenders shall suffer the penalty of prisión correccional **in its medium and maximum periods.**[81]

Prisión correccional in its medium and maximum periods: See Art. 256.

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[77] Viada, 3 Cod. Pen. 64.
[78] Dec. Sup. Ct. of Spain, April 23, 1874; Viada, 3 Cod. Pen. 65. See People vs. Genoves, 61 Phil. 382.
[79] Dec. Sup. Ct. of Spain, October 11, 1873; Viada, 3 Cod. Pen. 65-66.
[80] Decs. Sup. Ct. of Spain, June 17, 1880 and February 1, 1887; Viada, 3 Cod. Pen. 66-67. See U. S. vs. Jeffrey, 15 Phil. 391.
[81] Similar to the provisions of Art. 412 of the old Penal Code.

Prisión correccional in its minimum and medium periods: See Art. 257.

The crime described in this Article is abortion with consent. As may be seen, it may be committed either by the pregnant woman herself or by another with her consent.

If the purpose of the abortion is to conceal dishonor, the penalty is milder.

Art. 259. ABORTION PRACTICED BY A PHYSICIAN OR MIDWIFE AND DISPENSING OF ABORTIVES.—The penalties provided in article 256 shall be imposed in its maximum period, respectively, upon any physician or midwife who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same.

Any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer arresto mayor **and a fine not exceeding 1,000 pesos.**

1st. Case—**Reclusión temporal** in its maximum period:

Minimum: From 17 years, 4 months and 1 day to 18 years, 2 months and 20 days.

Medium: From 18 years, 2 months and 21 days to 19 years, 1 month and 10 days;

Maximum: From 19 years, 1 month and 11 days to 20 years.

2nd. Case—**Prisión mayor** in its maximum period:

Minimum: From 10 years and 1 day to 10 years and 8 months;

Medium: From 10 years, 8 months and 1 day to 11 years and 4 months;

Maximum: From 11 years, 4 months and 1 day to 12 years.

3rd. Case—**Prisión correccional** in its maximum period:

Minimum: From 4 years, 2 months and 1 day to 4 years, 9 months and 10 days;

Medium: From 4 years, 9 months and 11 days to 5 years, 4 months and 20 days;

Maximum: From 5 years, 4 months and 21 days to 6 years.

The abortion described in this Article is **qualified** by abuse of scientific knowledge or professional skill. It should be understood, however, that for a physician to be liable for criminal abortion,

it must clearly appear that he did the act for purposes other than to save the life of the pregnant woman.

SECTION THREE

Duel

Art. 260. RESPONSIBILITY OF PARTICIPANTS IN A DUEL.—The penalty of reclusión temporal **shall be imposed upon any person who shall kill his adversary in a duel.**

If he shall inflict upon the latter physical injuries only, he shall suffer the penalty provided therefor, according to their nature.

In any other case, the combatants shall suffer the penalty of arresto mayor, **although no physical injuries have been inflicted.**

The seconds shall in all events be punished as accomplices.[82]

Reclusión temporal: See Art. 249.

Arresto mayor:

Minimum: From 1 month and 1 day to 2 months and 20 days;

Medium: From 2 months and 21 days to 4 months and 10 days;

Maximum: From 4 months and 11 days to 6 months.

Duelling is a formal or regular combat previously concerted between two parties in the presence of two or more seconds of lawful age on each side, who make the selection of arms and fix all the other conditions of the fight.

As will be seen, the present Code makes no distinction as far as the punishment is concerned between killing a human being in the course of duelling and the crime of homicide.

Art. 261. CHALLENGING TO A DUEL.—The penalty of prisión correccional **in its minimum period shall be imposed upon any person who shall challenge another, or incite another to give or accept a challenge to**

[82] Similar to Art. 425 of the old Penal Code.

a duel, or shall scoff at or decry another publicly for having refused to accept a challenge to fight a duel.[83]

Prisión correccional in its minimum period:

Minimum: From 6 months and 1 day to 1 year, 1 month and 10 days;

Medium: From 1 year, 1 month and 11 days to 1 year, 8 months and 20 days;

Maximum: From 1 year, 8 months and 21 days, to 2 years and 4 months.

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[83] Similar to the provisions of par. 2 of Art. 424 of the old Penal Code.

CHAPTER TWO

PHYSICAL INJURIES

Art. 262. MUTILATION.—The penalty of from reclusión temporal **to** reclusión perpetua **shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction.**[1]

Reclusión temporal to reclusión perpetua:
Minimum: From 12 years and 1 day to 16 years;
Medium: From 16 years and 1 day to 20 years;
Maximum: Reclusión perpetua.

Two elements are required in this offense. The first is that there be a castration, that is, mutilation of organs necessary for generation, such as the penis or testes or ovarium; and second, that the injury or mutilation should have been done with the deliberate purpose of depriving the victim of the organ of reproduction.

Thus, a person who becomes impotent or mutilated as a result of an injury caused by another, even though the injury was willfully done, is not included in the protection given under this Article but under Article 263, par. 1, in the absence of evidence showing that the intention of the offender was to deprive his victim of his sexual organ.

Any other intentional mutilation shall be punished by prisión mayor **in its medium and maximum periods.**[2]

Prisión mayor in its medium and maximum periods:
Minimum: From 8 years and 1 day to 9 years and 4 months;
Medium: From 9 years, 4 months and 1 day to 10 years and 8 months;
Maximum: From 10 years, 8 months and 1 day to 12 years.

The term "mutilation" used in this Article and Art. 294, par. 2 means the lopping or the clipping off of some part of the body.[3]

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[1] Similar to the provisions of Art. 414 of the old Penal Code.
[2] Similar to Art. 415 of the old Penal Code.
[3] U. S. vs. Bogel, 7 Phil. 285.

It should be borne in mind that it is also an indispensable element of this offense that the mutilation should have been caused **purposely** and **deliberately.** In the absence of evidence to this effect, the case will be considered as physical injuries falling under Article 263, par. 2.

Art. 263. SERIOUS PHYSICAL INJURIES.—Any person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries and shall suffer:

1. The penalty of prisión mayor, **if in consequence of the physical injuries inflicted, the injured person shall become insane, imbecile, impotent, or blind;**[4]

Prisión mayor:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

The injuries described in this Article are known or classified as **serious physical injuries.** These are injuries or mutilations caused without deliberate intent of producing the mutilation.

In weighing the evidence as to the seriousness of the wounds inflicted upon the complaining witness in a criminal case, in which the accused is charged with **lesiones graves,** due weight should be given any manifestation of a disposition on the part of the complaining witness to exaggerate or over-emphasize the gravity of his wounds, in order to avoid the danger of a conviction of the crime of **lesiones graves** when in truth and in fact the offense committed may have been that of **lesiones menos graves** or merely **lesiones leves.**[5]

The fact of cutting off both ears of the injured party constitutes the crime of **lesiones graves** provided for and punished in this Article of the Penal Code.[6]

When a specific act, such as that of **lesiones,** is defined and punished separately, it is not legally proper to attribute a greater intent on the part of the offender when the crime was committed, in order to classify it as a more serious offense, except when very marked circumstances reveal in a clear and evident manner that the intent was really greater.[7]

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[4] Similar to par. 1, Art. 416 of the old Penal Code.
[5] U. S. vs. Perez et al., 35 Phil. 102.
[6] U. S. vs. Mañaul et al., 4 Phil. 342.
[7] U. S. vs. Cabigao, 9 Phil. 12.

For the due classification of the crime of **lesiones**, it is not sufficient to take into account the number of days of treatment of the wounds of the offended party or the number of days he has been incapacitated from work, but the injury occasioned and the consequence of the wound received must also be considered. For this purpose, the present Article of the Penal Code is divided into four paragraphs, with the specification, in each case, of the nature and character of the wounds and of the damage produced, for the purpose of the application of the corresponding penalty.[8]

The accused, while quarreling with his opponent, drew his bolo from its scabbard. His opponent caught hold of the edge of the blade of the bolo, and wounded himself. Since the accused did not wound, beat, or assault his opponent, he cannot be guilty of the crime of inflicting serious physical injuries, not even by reckless negligence.[9]

2. The penalty of prisión correccional **in its medium and maximum periods, if in consequence of the physical injuries inflicted, the person injured shall have lost the use of speech or the power to hear or to smell, or a leg or shall have lost the use of any such member, or shall have become incapacitated for the work in which he was theretofore habitually engaged;[10]**

Prisión correccional in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

Loss of the power to hear of his right ear is not a loss of the power to hear under Art. 263, par. 2, R. P. C.; but it comes under par. 3, as it is a loss of "the use of any other part of his body."[11]

When the offended party, in consequence of an injury suffered, although he has not lost a principal member nor lost the use of it, has nevertheless become incapacitated for the work in which he has been habitually engaged, the defendant incurs the penalty provided in paragraph 2 of Art. 263. This paragraph

[8] U. S. vs. Santos, 17 Phil. 87.
[9] U. S. vs. Villanueva, 31 Phil. 412.
[10] Similar to the provisions of par. 2 of Art. 416 of the old Penal Code.
[11] People vs. Hernandez, 49 O. G. 5342 (1953).

includes three subdivisions and not two, as has been understood in several cases bearing on the subject.[12]

An injury caused in the eye, which disabled the victim from distinguishing one color from another is a grave injury under par. 2 of this Article.[13]

An arm is a principal member within the meaning of paragraph 2 of this Article.[14]

Incapacity for a certain kind of labor **only**, but not for **all**, is a grave physical injury under par. 2 of this Article.[15]

The index finger of the right hand is not a principal member of the body as that term is used in this paragraph of Art. 263 of the Penal Code.[16]

3. The penalty of prisión correccional **in its minimum and medium periods, if in consequence of the physical injuries inflicted, the person injured shall have become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he was habitually engaged for a period of more than ninety days;**[17]

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

ERRONEOUS TRANSLATION OF THIS ARTICLE.—Another mistake in the translation of the original Spanish text of this Code was committed in this paragraph.

The phrase **"cualquier otro miembro"** appearing in subsection 2, Article 263, of the Revised Penal Code has been translated to read "any other part of his body." The Spanish text scarcely justifies that translation. "Cualquier otro miembro" is more ac-

[12] U. S. vs. Ruello, 31 Phil. 482.
[13] Dec. Sup. Ct. of Spain, December 23, 1878; Viada, 3 Cod. Pen. 74 and Dec. Sup. Ct. of Spain, May 26, 1905; Viada, Supp., 5 Cod. Pen. 310.
[14] Dec. Sup. Ct. of Spain, June 10, 1881; Viada, 3 Cod. Pen. 74. See U. S. vs. Camacho, 8 Phil. 142.
[15] Dec. Sup. Ct. of Spain, Nov. 3, 1881; Viada, 3 Cod. Pen. 75.
[16] U. S. vs. Baluyut, 5 Phil. 129. See U. S. vs. Bugarin, 15 Phil. 189.
[17] Similar to par. 3 of Art. 416 of the old Penal Code.

curately translated "any other member," meaning any other member than an eye, a hand, a foot, an arm, or a leg, which are those mentioned in subsection 2.[18]

SPECIFIC TYPE OF INJURIES UNDER THIS ARTICLE.—Under the provisions of this subsection this particular type of grave physical injuries is committed when the person injured: (1) shall have become deformed; (2) shall have lost any other member of his body; (3) shall have lost the use thereof; or (4) shall have been ill or incapacitated for the performance of the work in which he was habitually engaged for a period of more than ninety days.

The loss of three fingers is considered as grave injuries under this Article, paragraph 3.[19] But a complaint or information charging the crime of **lesiones graves**, which alleges that the injured party lost the use of three fingers as a result of the injuries inflicted upon him, but does not allege that as a result of the loss of his fingers he lost the use of his hand, is not sufficient to sustain a conviction under par. 3 of Art. 263. While the hand is a principal **member**, as that term is used in par. 2 of this Article, a finger is "a member other than a principal member" as that term is used in the present paragraph.[20]

DEFORMITY DEFINED.—A scar produced by an injury on the upper part of the neck, near the jaw, constitutes deformity within the meaning of par. 3 of this Article.[21]

The clipping off of the upper extremity of the ear of about one centimeter long is also deformity under this paragraph.[22]

By deformity is meant physical ugliness, permanent and definite abnormality.[23]

LOSS OF INCISORS; IS IT A DEFORMITY?—The loss of three incisors has been considered by the Supreme Court of Spain as a visible deformity.[24] On the other hand the loss of one incisor, according to the same Court, does not constitute personal deformity.[25]

As to whether or not the loss of incisors should be considered visible deformity, several conflicting decisions have been rendered by our Supreme Court. In the case of **People vs. Rodas**, G. R. No. 31807, promulgated February 7, 1930, where two of the

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[18] People vs. Balubar, 60 Phil. 699.
[19] Dec. Sup. Ct. of Spain, May 21, 1874; Viada, 3 Cod. Pen. 73.
[20] U. S. vs. Punsalan, 23 Phil. 375.
[21] Dec. Sup. Ct. of Spain, May 7, 1876; Viada, 3 Cod. Pen. 76-77.
[22] Dec. Sup. Ct. of Spain, June 9, 1879; Viada, 3 Cod. Pen. 79-80.
[23] Dec. Sup. Ct. of Spain, Dec. 11, 1885.
[24] Decs. Sup. Ct. of Spain, June 15, 1905 and Jan. 22, 1907; Viada, Supp., 5 Cod. Pen. 814.
[25] Dec. Sup. Ct. of Spain, October 15, 1903; Viada, Cod. Pen. Com., Vol. 5, 148, 5th Ed.

offended party's lower incisors were knocked off, a division of the Supreme Court consisting of four members refused to follow the decisions of the Supreme Court of Spain on the ground that they were obsolete because of the progress in dental science, and held that in the United States and in the Philippines, the loss of one or more teeth need not be taken as a permanent physical deformity; and in the case of **People vs. Medina,** G. R. No. 32113, promulgated on the same date and by the same division, it was again held that the loss of four teeth did not constitute a deformity within the meaning of the law, because it was not permanent, the four natural teeth lost by the offended party having been substituted by artificial teeth. However, in a subsequent case of **People vs. Balubar,** 60 Phil. 699, the Supreme Court held that the loss of four incisors constitutes a deformity within the meaning of this subsection. Reasoning out its decision, the Supreme Court said:

"The Rodas and Medina cases, **supra,** were decided upon the finding that there was no disfiguration because the injuries were not permanent, since the teeth that were broken out could be substituted with artificial teeth. In our opinion this was not a correct interpretation of the law. The injury contemplated by the Code is an injury that cannot be repaired by the action of nature, and if the loss of the teeth is visible and impairs the appearance of the offended party, it constitutes a disfiguration. The fact that he may, if he has the necessary means and so desires, have artificial teeth substituted for the natural teeth he has lost does not repair the injury, although it may lessen the disfiguration. The case of a child or an old man is an exception to the rule."

When the case affords no good reason for holding that the assailants positively intended to kill the injured party in spite of the persistent and repeated attacks, however much they plainly demonstrated their intention of doing him injury by striking him in an inhuman manner on various parts of the body, it is improper to classify the crime as frustrated homicide. The case then is one of simple **lesiones.**[26]

4. The penalty of arresto mayor **in its maximum period to** prisión correccional **in its minimum period, if the physical injuries inflicted shall have caused the illness or incapacity for labor of the injured person for more than thirty days.**

If the offense shall have been committed against

[26] U. S. vs. Reyes et al., 30 Phil. 551.

any of the persons enumerated in article 246 or with attendance of any of the circumstances mentioned in article 248, the case covered by subdivision number 1 of this article shall be punished by reclusión temporal **in its medium and maximum periods; the case covered by subdivision number 2 by** prisión correccional **in its maximum period to** prisión mayor **in its minimum period; the case covered by subdivision number 3 by** prisión correccional **in its medium and maximum periods; and the case covered by subdivision number 4 by** prisión correccional **in its minimum and medium periods.**

The provisions of the preceding paragraph shall not be applicable to a parent who shall inflict physical injuries upon his child by excessive chastisement.[27]

Arresto mayor in its maximum period to **prisión correccional** in its minimum period:

Minimum: From 4 months and 1 day to 1 year;

Medium: From 1 year and 1 day to 1 year and 8 months;

Maximum: From 1 year, 8 months and 1 day to 2 years and 4 months.

Reclusión temporal in its medium and maximum periods:

Minimum: From 14 years, 8 months and 1 day to 16 years, 5 months and 10 days;

Medium: From 16 years, 5 months and 11 days to 18 years, 2 months and 20 days;

Maximum: From 18 years, 2 months and 21 days to 20 years.

Prisión correccional in its maximum period to **prisión mayor** in its minimum period:

Minimum: From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days;

Medium: From 5 years, 5 months and 11 days to 6 years, 8 months and 20 days;

Maximum: From 6 years, 8 months and 21 days to 8 years.

Prisión correccional in its medium and maximum periods: See par. 3 of this Article.

Prisión correccional in its minimum and medium periods: See par. 3 of this Article.

As will be seen, the second paragraph of subsection 4 of this Article considers as special aggravation of the crime of serious

[27] Similar to paragraph 4 of Art. 416 of the old Penal Code.

physical injury, the presence of any of the qualifying circumstances common to parricide or murder. With reference to injuries inflicted by parents upon their children, the qualifying circumstance of relationship should not be taken into account if the injuries have been inflicted by way of chastisement, no matter how excessive.

An injury which requires medical attendance for 36 days is a grave physical injury within the meaning of par. 4 of this Article, even though the offended party could have engaged in his customary work after 19 days.[28]

Art. 264. ADMINISTERING INJURIOUS SUBSTANCES OR BEVERAGES.—The penalties established by the next preceding article shall be applicable in the respective cases to any person who, without intent to kill, shall inflict upon another any serious physical injury, by knowingly administering to him any injurious substances or beverages or by taking advantage of his weakness of mind or credulity.[29]

Two elements are present in this offense: (a) that the offender had no intention to take the life of his victim; and (b) that the offender knowingly administered a noxious substance to his victim. If the offender had any intention to kill, the case would be attempted murder. And if the offender was ignorant of the obnoxious nature of the substance, then his case may be treated as criminal negligence or **imprudencia.**

The infliction of injuries **(lesiones)** by throwing mordant chemicals or poisons on the face or upon the body is not in any wise related to the offenses defined and penalized in this Article of the Penal Code.[30]

Art. 265. LESS SERIOUS PHYSICAL INJURIES.—Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of arresto mayor.[31]

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[28] Dec. Sup. Ct. of Spain, April 28, 1873.
[29] Similar to Art. 417 of the old Penal Code.
[30] U S. vs. Chiong Songco, 18 Phil. 459.
[31] Similar to the first paragraph of Art. 418 of the old Penal Code.

Injuries which took seventeen days to cure are less grave injuries within the meaning of this Article, even though a certain doctor testified later that the injuries, in his opinion, could have been cured within seven days (ten days), under proper medical treatment and an adequate hygienic regime.[32]

Whenever less serious physical injuries shall have been inflicted with the manifest intent to insult or offend the injured person, or under circumstances adding ignominy to the offense, in addition to the penalty of arresto mayor, **a fine not exceeding 500 pesos shall be imposed.**[33]

Ignominy is a general aggravating circumstance (Art. 14, par. 17). But when present in the commission of less serious physical injuries, the aggravation of the criminal liability of the offender is specific, namely, a penalty not exceeding 500 pesos in addition to the ordinary penalty of **arresto mayor.**

Arresto mayor:

Minimum: From 1 month and 1 day to 2 months and 20 days;

Medium: From 2 months and 21 days to 4 months and 10 days;

Maximum: From 4 months and 11 days to 6 months.

Any less serious physical injuries inflicted upon the offender's parents, ascendants, guardians, curators, teachers, or persons of rank, or persons in authority, shall be punished by prisión correccional **in its minimum and medium periods, provided that, in the case of persons in authority, the deed does not constitute the crime of assault upon such persons.**[34]

Prisión correccional in its minimum and medium periods: See par. 3 of Art. 263.

It should be borne in mind that whenever the injury has been inflicted upon persons in authority by reason of, or while

[32] Dec. Sup. Ct. of Spain, March 27, 1875.
[33] Same as par. 2 of Art. 418 of the old Penal Code.
[34] Same as Art. 419 of the old Penal Code.

in the performance of their duties, there is an **atentado** as defined and prescribed by Arts. 148 and 149 of this Code, besides the crime of physical injuries herein punished, and the penalty to be imposed is that corresponding to the **atentado** in its maximum degree, because the same act constitutes two crimes.[35]

The vice-president of a municipality, while not discharging the duties of the president, is not a public functionary within the meaning and for the purposes of this Article of the Penal Code.[36]

A foreign consul is not a "public authority" but is included within the term **dignidad** or persons of rank contained in this Article of the Penal Code.[37]

Art. 266. SLIGHT PHYSICAL INJURIES AND MALTREATMENT.—The crime of slight physical injuries shall be punished:

1. By arresto menor **when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period;**[38]

Arresto menor:
Minimum: From 1 day to 10 days;
Medium: From 11 days to 20 days;
Maximum: From 21 days to 30 days.

Note that this paragraph punishes as slight physical injuries, wounds which prevent the offended party from working for a period of from 1 to 9 days. So a physical injury which incapacitates the offended party from working for 9 days and some hours without amounting to 10 days, should be considered only as a slight physical injury under this paragraph.[39]

2. By arresto menor **or a fine not exceeding 200 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical attendance;**[40]

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[35] Viada, 3 Cod., Pen., 89.
[36] U. S. vs. Bucoy et al., 4 Phil. 263.
[37] U. S. vs. Lucinario et al., 6 Phil. 325
[38] Similar to Art. 587 of the old Penal Code.
[39] Dec. Sup. Ct. of Spain, April 23, 1873.
[40] Similar to paragraph 1 of Art. 588 of the old Penal Code.

Typical examples of injuries described in this paragraph are: a contusion on the face produced by a fistic blow; a black eye, and so forth.

3. By arresto menor in its minimum period or a fine not exceeding 50 pesos when the offender shall illtreat another by deed without causing any injury.[41]

Any physical violence which does not produce injury falls under the provision of this paragraph, and the Court is given discretion to impose upon the culprit either **arresto menor** or a fine not exceeding 50 pesos.

An assault committed with the back instead of the cutting edge of a bolo negatives the idea of homicidal intent, and must be penalized under this paragraph.[42]

A person who, while awaiting the train in a railway station, gives a blow and shoves with his fist a justice of the peace whom he accidentally meets, does not commit the crime of **atentado** but simply a maltreatment under this paragraph, for the reason that the justice of the peace is not then exercising the duties of his office.[43]

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[41] Same as par. 1 of Art. 589 of the old Penal Code.
[42] U. S. vs. Taguibao, 1 Phil. 16.
[43] U. S. vs. Sañiel, 33 Phil. 646.

TITLE NINE

Crimes Against Personal Liberty and Security

CHAPTER ONE

CRIMES AGAINST LIBERTY

SECTION ONE

Illegal Detention

Art. 267. KIDNAPPING AND SERIOUS ILLEGAL DETENTION.—Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusión perpetua **to death:**

1. If the kidnapping or detention shall have lasted more than five days;

2. If it shall have been committed simulating public authority;

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made;

4. If the persons kidnapped or detained shall be a minor, female, or a public officer;

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense.[1]

ELEMENTS.—There are three elements in this offense: (1) an act of detention, locking up, or kidnapping of a person; (2) that such act as committed by a private person, because if it were committed by a public officer the crime would be arbitrary de-

[1] As amended by Sec. 2 of Rep. Act No. 18 and by R. A. No. 1084 (June 1954). Similar to the provisions of Arts. 481 and 482 of the old Penal Code and Art. 217 of the proposed Correctional Code of 1916.

tention; and (3) that the detention or kidnapping made be unlawful, that is, without authority of any law or regulation.

As amended by R. A. No. 1084, the penalty shall always be **death** when the kidnapping or detention is committed to extort ransom, regardless of the existence of the circumstances mentioned in the first paragraph.

CASES OF ILLEGAL DETENTION.—Thus, a husband who locks up in a room his lawful wife for more than 20 days, during which time the victim is not allowed to leave the room nor even to peep out of the window, is guilty of illegal detention under par. 1 of this Article.[2]

But a husband who detains his wife in a room for the purpose of protecting her and preventing her from committing suicide, does not commit the crime of illegal detention, especially if it appears that the wife detained is mentally unbalanced.[3]

Neither can there be illegal detention when the person alleged to be detained or deprived of his liberty has been seen freely leaving the place of confinement without any restriction.[4]

Neither is there illegal detention in a case where robbers, after having assaulted a house and carried away plenty of goods, compel the occupant of the house and owner of the goods to follow them, if it appears that the victim is set free a few moments later. The detention in this case is an act of restraint generally resorted to by robbers in order to delay or prevent assistance being tendered by the authorities.[5]

It is an essential element in the crime of illegal detention that there be actual confinement or restriction of the person. So, where the evidence shows that the alleged offended party was allowed to play outside the house, and even to visit her grandmother, and no force was employed in taking the child from her grandmother, in such a case the mere custody and disposal of a minor over seven years of age, without the consent of the parents or guardian, is not in itself a crime.[6]

The seizure by violent means of a child under seven years of age for the purpose of depriving him of liberty, separating him from parents or relatives, and afterwards returning him to the latter, when the purpose of the act is accomplished, does not constitute the crime of kidnapping, defined in Art. 270 of this

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[2] Dec. Sup. Ct. of Spain, April 26, 1905; Hidalgo, II Cod., Pen., 483-484. See also People vs. Ching Suy Siong et al., G. R. Nos. L-6796-97, Sept. 23, 1955.
[3] Dec. Sup. Ct. of Spain, October 24, 1882; Hidalgo, II Cod. Pen., 482.
[4] U. S. vs. Quevengco, 2 Phil. 412; U. S. vs. Herrera, 3 Phil. 515.
[5] U. S. vs. Sol, 9 Phil. 265.
[6] U. S. vs. Cabanag, 8 Phil. 64.

Code, but that of unlawful detention, prescribed and punished by this Article of the Penal Code.[7]

DISTINCTION BETWEEN ILLEGAL DETENTION AND ABDUCTION.—A young man who seizes by force a woman with whom he is in love and brings her to the justice of the peace for the purpose of marrying her does not commit the crime of abduction because the element of lewd designs is lacking. The crime committed in this case is illegal detention.[8]

JUSTIFIED CONFINEMENT.—The fact that the owner of a sugar-cane plantation locked up in the **zaguan** or lobby of their house a boy, who had stolen some sugar canes from the plantation, from 9 o'clock in the morning to 5 o'clock in the afternoon, without giving him anything to eat, does not constitute crime of illegal detention penalized by Art. 267 of this Code, according to a decision rendered by the Supreme Court.[9]

The grounds of such decision are, as we understand it, the following:

(a) That no injury or disturbance of a right was intended by, or resulted from, the act of the accused. As the court said: "Injury or disturbance of a right is a juridical element of the crime of illegal detention, as of any other punishable act; and when this injury or disturbance does not exist, either in the intention of the agent or in the result of his action, an attempt against human liberty penalized under Art. 495 of the Penal Code of Spain, which is Art. 481 of that of the Philippines (Art. 267 of the present Code), is not committed, for without such elements, the detention would not be illegal, and might be, on the part of the perpetrator, either the exercise of a right or the fulfillment of an obligation."[10]

(b) That the act of these accused was to a certain extent justified. The illegality of the detention punished by this Article consists in such detention not ordered by a competent authority or permitted by law, in accordance with the above-cited decision of the Supreme Court of Spain. Now the court says:

"Art. 635 of the compilation of the existing laws on criminal procedure, as modified by a Royal decree of 188, provides that any person may detain, among others, one who attempts to commit a crime, at the moment of going to commit it, or a delinquent caught in **flagranti**; and in the case of a misdemeanor, said compilation provides that the alleged culprit cannot be detained unless

[7] U. S. vs. Peralta, 8 Phil. 200.
[8] People vs. Crisostomo, 46 Phil. 775.
[9] People vs. Tamorro et al., G. R. No. 25373, June 11, 1926.
[10] Dec. Sup. Ct. of Spain, November 30, 1887.

he has no known domicile. In any event, a private person who shall detain another must set him free or deliver him to the judge of the nearest place within twenty-four hours following the detention.

"Taking into account all the circumstances surrounding the present case," the court continues, "we are of the opinion that the appellants deserve the penalty fixed by Art. 589, No. 5, of the Penal Code (now art. 287, second paragraph), and we therefore condemn them to the payment of a fine of 25 pesetas each." Said Art. 589, No. 5, refers to "any person who shall unlawfully coerce or unjustly annoy another in a manner not punishable under Book I of this Code."

Art. 268. SLIGHT ILLEGAL DETENTION.—The penalty of reclusión temporal **shall be imposed upon any private individual who shall commit the crimes described in the next preceding article without the attendance of any of the circumstances enumerated therein.**

The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime.

If the offender shall voluntarily release the person so kidnapped or detained within three days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty shall be prisión mayor **in its minimum and medium periods and a fine not exceeding seven hundred pesos.**[11]

Reclusión temporal: See Art. 249.

Prisión correccional in its minimum and medium periods: See par. 3 of Art. 263.

Art. 268, par. 3 is not applicable where the offender did not **voluntarily** release the offended party but that the latter was set free by a third person, after overcoming the resistance offered by the offender.[12]

Art. 269. UNLAWFUL ARREST.—The penalty of arresto mayor **and a fine not exceeding 500 pesos shall**

[11] As amended by Sec. 3 Rep. Act No. 18. Similar to the second and third paragraphs of Art. 481 of the old Penal Code.

[12] People vs. Undiana et al., 50 Phil. 641.

be imposed upon any person who, in any case other than those authorized by law, or without reasonable ground therefor, shall arrest or detain another for the purpose of delivering him to the proper authorities.[13]

The offense described in this Article may be distinguished from illegal detention in the motive of the offender. If the purpose of locking up or detaining the victim is to have the same delivered to the proper authorities, and it develops that the detention was unlawful, then the offense committed is unlawful arrest. In any other case the detention will render the culprit liable under the provisions of the two foregoing Articles.

SECTION TWO

Kidnapping of Minors

Art. 270. KIDNAPPING AND FAILURE TO RETURN A MINOR.—The penalty of reclusión perpetua **shall be imposed upon any person who, being entrusted with the custody of a minor person, shall deliberately fail to restore the latter to his parents or guardians.**[14]

Prior to the enactment of Republic Act No. 18 amending Arts. 267, 268 and 270 of the Revised Penal Code, there was a distinction made between the crime of illegal detention (Art. 267) and kidnapping of minors (Art. 270).

Under the provisions of Art. 270 of the Revised Penal Code, par. 1, the act of removing a child from the custody or authority of his parents or guardians with some character of permanence, constituted the kidnapping of a minor, which is altogether different from the crime of illegal detention.

The new Republic, desirous of putting more powerful and effective teeth to her Penal Laws in her effort to cope with the emergency created by the lawless and seditious elements commonly known as **Huk-balahap** (army against Japan), **Kapisanan Pangbansang Magbubukid** (National Peasants' Association), has amended Art. 267, by incorporating therein not only cases of illegal detention, but all forms of kidnapping, whether the victim

[13] Similar to Art. 483 of the old Penal Code.
[14] As amended by Sec. 4 of Rep. Act No. 18. Similar to the provisions of Art. 484 of the old Penal Code.

be an adult or a minor, and also by making the crime a capital offense.

With the amendment introduced by Sec. 2 of Republic Act. No. 18 of the provisions of Art. 267, the kidnapping of minors under 7 years of age with some character of permanence is no longer penalized under the provisions of this Article we are now commenting upon, but under the provisions of Article 267.

Section 5 of Republic Act No. 18 amending the present Article punishes, not the kidnapping of minor, as the title of the Article seems to indicate, but rather the deliberate failure of the custodian of such minor to restore the latter to his parents or guardian.

The amendment introduced by the Congress is silent as to the age of the minor. We are inclined to believe that the legal provisions cover all minors, whether under or over 7 years of age, but below 21.

Art. 271. INDUCING A MINOR TO ABANDON HIS HOME.—The penalty of prisión correccional **and a fine not exceeding seven hundred pesos shall be imposed upon anyone who shall induce a minor to abandon the home of his parents or guardians or the persons entrusted with his custody.**

If the person committing any of the crimes covered by the two preceding articles shall be the father or the mother of the minor, the penalty shall be arresto mayor **or a fine not exceeding three hundred pesos, or both.**[15]

Arresto mayor: See par. 2 of Art. 265.

As will be seen, the essential element of the offense is that the victim should be a minor, that is, below 21 but over 7 years of age. Therefore, if the person induced to leave the parental home is under 7 years of age, the inducer does not violate the provisions of this Article.

If the person induced be under 7 years of age, what would be the crime committed by the offender? It all depends upon the circumstances of the case. If the party who induced the minor under 7 years of age takes custody of the person of the child himself, the crime would be either illegal detention (Art. 267) or kidnapping of minors (Art. 270). If the offender after enticing

[15] As amended by Sec. 5 of Rep. Act No. 18. Similar to the provisions of par. 1 of Art. 486 of the old Penal Code.

and inducing the child to abandon his parental home leaves the child alone to act may constitute a violation of par. 3 of Article 275.

SECTION THREE

Slavery and Servitude

Art. 272. SLAVERY.—The penalty of prisión mayor **and a fine not exceeding 10,000 pesos shall be imposed upon anyone who shall purchase, sell, kidnap, or detain a human being for the purpose of enslaving him.**

If the crime be committed for the purpose of assigning the offended party to some immoral traffic, the penalty shall be imposed in its maximum period.[16]

Prisión mayor:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

The mere custody and disposal by a stranger of a minor over seven years of age, with or without the consent of the parents or guardian, is not in itself a crime. The practice of a certain tribe of Igorots, so far as proved in this case, termed by them as selling of children, does not necessarily constitute slavery or involuntary servitude.[17]

Art. 273. EXPLOITATION OF CHILD LABOR.—The penalty of prisión correccional **in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon anyone who, under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian, or person entrusted with the custody of a minor, shall, against the latter's will, retain him in his service.**[18]

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[16] Similar to the provisions of Act 2701 as modified by Section 2 of Act 2300, and those of Art. 88 of the proposed Correctional Code of 1916.
[17] U. S. vs. Cabanag, 8 Phil. 64.
[18] Similar to the provisions of Art. 89 of the proposed Correctional Code of 1916.

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year and 8 months;

Medium: From 1 year, 8 months and 1 day to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

Art. 274. SERVICE RENDERED UNDER COMPULSION IN PAYMENT OF DEBTS.—The penalty of arresto mayor **in its maximum period to** prisión correccional **in its minimum period shall be imposed upon any person who, in order to require or enforce the payment of a debt, shall compel the debtor to work for him, against his will, as household servant or farm laborer.**[19]

Arresto mayor in its maximum period to **prisión correccional** in its minimum period:

Minimum: From 4 months and 11 days to 1 year and 7 days;

Medium: From 1 year and 8 days to 1 year, 8 months and 4 days;

Maximum: From 1 year, 8 months and 5 days to 2 years and 4 months.

[19] Similar to the provisions of Section 2 of Act 2071, of the Philippine Legislature, and to those of Art. 90 of the proposed Correctional Code of 1916.

CHAPTER TWO

CRIMES AGAINST SECURITY

SECTION ONE

Abandonment of Helpless Persons and Exploitation of Minors

Art. 275. ABANDONMENT OF PERSONS IN DANGER AND ABANDONMENT OF ONE'S OWN VICTIM.—The penalty of arresto mayor **shall be imposed upon:**

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months and 20 days;
Medium: From 2 months and 21 days to 4 months and 10 days;
Maximum: From 4 months and 11 days to 6 months.

1. Anyone who shall fail to render assistance to any person whom he shall find in an uninhabited place wounded or in danger of dying, when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense.[1]

2. Anyone who shall fail to help or render assistance to another whom he has accidentally wounded or injured.[2]

3. Anyone who, having found an abandoned child under seven years of age, shall fail to deliver said child to the authorities or to his family, or shall fail to take him to a safe place.[3]

Art. 276. ABANDONING A MINOR.—The penalty of arresto mayor **and fine not exceeding 500 pesos shall be imposed upon anyone who shall abandon a child**

[1] Similar to the provisions of Art. 588, par. 11, of the old Penal Code.
[2] Similar to Art. 223 of the proposed Correctional Code of 1916.
[3] Similar to Art. 588, par. 9, of the old Penal Code.

under seven years of age, the custody of which is incumbent upon him.

When the death of the minor shall result from such abandonment, the culprit shall be punished by prisión correccional **in its medium and maximum periods; but if the life of the minor shall have been in danger only, the penalty shall be** prisión correccional **in its minimum and medium periods.**

The provisions contained in the two preceding paragraphs shall not prevent the imposition of the penalty provided for the act committed, when the same shall constitute a more serious offense.[4]

Arresto mayor: See Art. 275.

Prisión correccional in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 years;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

The abandonment punished in this Article is that which endangers the existence or safety of a child under seven years of age. This offense may be distinguished from that of infanticide in that in the latter the intent to kill the child is manifest, while in the former it is not.

Thus, the act of putting a newly born child at the door of a maternity or charity house is not abandonment of child; neither that of leaving a child in an isolated place, when the abandonment was such as to have been detected or seen by several persons.[5]

Neither in the case of a father who delivers or sells to another his newly born child for a money consideration.[6]

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[4] Similar to the provisions of Art. 487 of the old Penal Code.
[5] Viada, 3 Cod. Pen., 291.
[6] U. S. vs. Capillo, 30 Phil. 349.

But the case of a person who abandons a newly born child at the door of a house without knocking at the door for the purpose of giving notice to the people inside, thereby producing the death of the child, constitutes abandonment of children.[7]

Art. 277. ABANDONMENT OF MINOR BY PERSON ENTRUSTED WITH HIS CUSTODY; INDIFFERENCE OF PARENTS.—The penalty of arresto mayor **and fine not exceeding 500 pesos shall be imposed upon anyone who, having charge of the rearing or education of a minor, shall deliver said minor to a public institution or other persons, without the consent of the one who entrusted such child to his care or in the absence of the latter, without the consent of the proper authorities.[8]**

Arresto mayor: See Art. 275.

One who accompanies the custodian of a child to a house where the latter is delivered to another is not guilty of abandonment where it does not appear affirmatively that he had actual knowledge of the facts constituting the abandonment.[9]

The same penalty shall be imposed upon the parents who shall neglect their children by not giving them the education which their station in life require and financial condition permit.[10]

The provisions of this paragraph may be distinguished from those of Art. 276, in that in the latter case, the abandonment of the child is done under circumstances which endanger the life of the child, while the abandonment referred to in this paragraph simply involves a failure on the part of the father of a family to give his children, who are over seven years of age, the education proper to their station in life and within his means.[11]

Art. 278. EXPLOITATION OF MINORS. — The penalty of prisión correccional **in its minimum and me-**

[7] Dec. Sup. Ct. of Spain, November 24, 1876; Viada, 3 Cod. Pen., 292.
[8] Similar to the provisions of Art. 488 of the old Penal Code.
[9] U. S. vs. Payog et al., 1 Phil. 185.
[10] Similar to the provisions of par. 5 of Art. 588 of the old Penal Code.
[11] Viada, 3 Cod. Pen., 756.

dium periods and a fine not exceeding 500 pesos shall be imposed upon:

1. Any person who shall cause any boy or girl under sixteen years of age to perform any dangerous feat of balancing, physical strength, or contortion.

2. Any person who, being an acrobat, gymnast, rope-walker, diver, wild-animal tamer, or circus manager, or engaged in a similar calling, shall employ in exhibitions of these kinds children under sixteen years of age who are not his children or descendants.

3. Any person engaged in any of the calling enumerated in the next preceding paragraph who shall employ any descendant of his under twelve years of age in such dangerous exhibitions.

4. Any ascendant, guardian, teacher or person entrusted in any capacity with the care of a child under sixteen years of age, who shall deliver such child gratuitously in any person following any of the callings enumerated in paragraph 2 hereof, or to any habitual vagrant or beggar.

If the delivery shall have been made in consideration of any price, compensation, or promise the penalty shall in every case be imposed in its maximum period.

In either case, the guardian or curator convicted shall also be removed from office as guardian or curator; and in the case of the parents of the child, they may be deprived, temporarily or perpetually, in the discretion of the court, of their parental authority.

5. Any person who shall induce any child under sixteen years of age to abandon the home of its ascendants, guardians, curators, or teachers to follow any person engaged in any of the calling mentioned in paragraph 2 hereof, or to accompany any habitual vagrant or beggar.[12]

Prisión correccional in its minimum and medium periods: See Art. 273.

[12] Identical to Art. 489 of the old Penal Code.

This Article is intended to protect children under 16 years of age from exploitation by strangers or persons other than their parents or guardians, and children under 12 years of age from the same exploitation undertaken by their parents or guardians. As may be seen, the exploitation of the children must be of such nature as to endanger their life or safety, in order to constitute the offense described in this Article.

Art. 279. ADDITIONAL PENALTIES FOR OTHER OFFENSES.—The imposition of the penalties prescribed in the preceding articles, shall not prevent the imposition upon the same person of the penalty provided for any other felonies defined and punished by this Code.[13]

SECTION TWO

Trespass to Dwelling

Art. 280. QUALIFIED TRESPASS TO DWELLING. —Any private person who shall enter the dwelling of another against the latter's will, shall be punished by arresto mayor **and a fine not exceeding 1,000 pesos.**

If the offense be committed by means of violence or intimidation, the penalty shall be prisión correccional **in its medium and maximum periods and a fine not exceeding 1,000 pesos.**[14]

Arresto mayor: See Art. 275.

Prisión correccional in its medium and maximum periods: See Art. 276.

ADVERSE WILL, ESSENTIAL ELEMENT OF THE OFFENSE.—This crime is committed when a **private** person enters the dwelling of another **against** the latter's consent. The word **private** is here placed in bold type so as to distinguish the crime penalized by this Article from that described by Art. 128. If the person entering another's dwelling is a public officer, the crime committed would be a violation of Art. 128 of this Code. We also emphasize the word **against** so as to distinguish the case from a mere lack of the consent of the dweller. A mere absence of this

[13] Identical to Art. 490 of the old Penal Code.
[14] Identical to the provisions of Art. 491 of the old Penal Code.

consent is not enough to constitute the crime of trespass to the dwelling. For this reason, a person who clandestinely enters a room or house during the day time, provided that said person passes through the usual gate or passage, may be committing attempted robbery, theft, or any crime against chastity, according to the purpose of the culprit, but he does not commit the crime of trespass to the dwelling.[15]

ADVERSE WILL, WHEN IT SHOULD BE MANIFESTED.—When one is charged with the crime of **allanamiento de morada,** the facts or circumstances from which the objection of the occupant may be inferred should be in existence prior to or at the time of the entry. In no event can facts arising after entry has been effected with the express or implied consent of the occupant change the character of the entry from one with the consent of the occupant to one contrary thereto.[16]

A person who, after being told to wait at the porch and the door that connected the porch from the living room is thereupon closed, enters makes an entry against will of the owner of the house.[17]

CLOSING OR LOCKING OF THE DOOR, WHEN NOT NECESSARY ELEMENTS OF THE OFFENSE.—To constitute, however, the crime punished by this Article, it is not necessary that the door of the house should be closed where there is a prohibition or opposition on the part of the dweller to the person entering. The crime is committed, if said person enters against the will of the occupant.[18]

And it is a well-settled rule that whoever enters the dwelling of another at a late hour of the night, after the inmates have retired and closed their doors, does so against their will and contrary to this Article of the Penal Code. Under these circumstances, an express prohibition is not necessary as it is presumed.[19]

The entrance of a person into the house of another at nighttime, through a window and against the will of the occupant, constitutes the crime defined and penalized in the first paragraph of this Article.[20]

When a person entered a closed room without the permission of the occupant, late at night or before daylight, taking advantage of the fact that the offended party was asleep, accompanied by another woman and a little girl only, as her husband was away from home, it is presumed that the intruder entered the room

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[15] People vs. Peralta, 42 Phil. 69. See also People vs. Tayag et al., 59 Phil. 606.
[16] U. S. vs. Dionisio et al., 12 Phil. 283.
[17] Gabriel et al. vs. People, G. R. No L-6730, Oct. 15, 1954.
[18] U. S. vs. Abanto, 15 Phil. 223.
[19] U. S. vs. Mesina, 21 Phil. 615; U. S. vs. Panes, 25 Phil. 292.
[20] U. S. vs. Cabaraban, 36 Phil. 251. See U. S. vs. Barberan, 17 Phil. 509.

against the will of the offended woman, as shown by her protest and expostulations on seeing him in the room and the complaint she made immediately to the owner of the house.[21]

FORCIBLE OR VIOLENT TRESPASS.—Neither the nature of the crime nor the responsibility of its perpetrator is altered by the fact that the accused was living, as a boarder, in the same house of which the room forcibly entered was a part, or that the door of said room was fastened by a string too weak and inadequate to hold it fast. Inasmuch as the door of said room was closed and fastened by the offended party before she went to sleep, she wished it to be understood that she did not desire anyone to enter without her express consent. He who enters with intimidation and violence, during the darkness of the night, the room of a person asleep therein, is presumed to have done so against the will of its occupant. Such acts constitute a violation of par. 2 of Art. 280 of this Code.[22]

There is a forcible or violent trespass to a dwelling even though the primary intention of the culprit is to commit rape, if the offender, in an endeavor to accomplish this purpose, enters a private dwelling with force and violence.[23]

DWELLING PLACE DEFINED.—Dwelling place as used in this Article means any building or structure exclusively devoted for rest and comfort, as distinguished from places devoted to business, offices, etc.; in other words, that which constitutes the domicile.

An invitation to enter a dwelling, extended by a young girl at least 12 years of age, an inmate thereof, is held sufficient to justify the claim that the entry was not made against the will of the occupant, in the absence of an express prohibition on his part.[24]

The violent and tumultuous entrance to a club house whose regulations prohibit admission to persons other than members thereof constitutes **allanamiento de morada.**[25] The theory is that club houses are an extension of the dwelling place of the members.[26]

The violent entrance to a house of prostitution at late hours at night also constitutes an **allanamiento** under the second paragraph of this Article.[27]

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[21] U. S. vs. Silvano, 31 Phil. 509.
[22] U. S. vs. Silvano, **supra.**
[23] U. S. vs. Barnedo, 36 Phil. 861; U. S. vs. Arceo, 3 Phil. 381; U. S. vs. Tieson, 25 Phil. 67.
[24] U. S. vs. Dulfo, 11 Phil. 75; U. S. vs. Garcia, 10 Phil. 240. See also U. S. vs. Agas, 4 Phil. 67.
[25] Dec. Sup. Ct. of Spain, April 1, 1887; Viada, 3 Cod. Pen. 306.
[26] Dec. Sup. Ct. of Spain, February 7, 1889; Hidalgo, II Cod. Pen., 512.
[27] Decs. Sup. Ct. of Spain, April 9, 1875, March 1, 1895; Viada, 3 Cod. Pen. 307-308; Hidalgo, II Cod. Pen. 513-14.

For the purpose of this Article, the lintel or head-door of a house is a part of a dwelling place, and hence, even though an offender does not go beyond said part of the house, he is committing the crime of **allanamiento**, if he makes the entrance against the will of the dweller.[28]

One Flemister went to a ball without any invitation, danced with an American doctor, had a quarrel with a Captain Davidson, and then went away. He returned after a short time. The host asked if he came to dance, and invited him to be seated. Flemister without making any answer assaulted the hosts, seemingly because the latter attempted to stop him as he was entering the **sala**. Undoubtedly, the purpose of the host was to prohibit the defendant, not from entering his house, but from entering the **sala**, in order to avoid a quarrel between the two Americans. These facts do not constitute the crime of trespass to the dwelling.[29]

Where the defendants force an entrance through an outer door only and do not succeed in forcing the door of the dwelling proper, they are guilty of attempted forcible entry and not of the consummated crime.[30]

The law which forbids a forcible entry into the dwelling of another relates not only to the method by which one may pass the threshold of the dwelling of another without his consent but also to the conduct immediately after entrance of one who so enters.[31]

The fact proved by the testimony of competent witnesses that the defendant did enter a house, exercising violence, and against the will of its occupants, is sufficient to sustain a conviction for the crime of house-breaking as defined in paragraph 2 of this Article.[32]

Mere presumption that the entrance into the house was made against the will of the owner thereof is not sufficient to determine the existence of the crime, but it must be proved that the owner did not consent to it.[33]

Cutting the fastenings of a door and making threats against the inmate of the house is a trespass to the dwelling with violence and intimidation.[34]

In the commission of the crime of trespass to the dwelling by means of violence or intimidation, dealt with in par. 2 of this Article, it is not necessary that the entry should be preceded

[28] Dec. Sup. Ct. of Spain, May 13, 1885; Hidalgo, II Cod. Pen., 509.
[29] U. S. vs. Flemister, 1 Phil. 355.
[30] U. S. vs. Ostrea et al, 2 Phil. 93.
[31] U. S. vs. Arceo et al., 3 Phil. 381.
[32] U. S. vs. Samson, 4 Phil. 123.
[33] U. S. vs. Agas, 4 Phil. 129.
[34] U. S. vs. Lindio, 10 Phil. 192.

by manifest opposition or prohibition on the part of the tenant; it is not to be supposed that a person who forcibly and aggressively enters a house could rely upon the tacit or express consent of the occupant.[35]

The provisions of this article shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling, or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose of rendering some service to humanity or justice, nor to anyone who shall enter cafés, taverns, inns and other public houses, while the same are open.[36]

In case of fire, for example, or other calamity, or in case of unlawful aggression made by the dweller, a private house may be invaded even against the consent of the dweller, if the purpose of the invader is to defend himself from the peril or aggression.

Establishments open to the public cannot therefore be considered as dwelling places so long as they are open. But as soon as they close their doors, they are considered as any other dwelling place.

Art. 281. OTHER FORMS OF TRESPASS.—The penalty of arresto menor **or a fine not exceeding 200 pesos, or both, shall be imposed upon any person who shall enter the closed premises or the fenced estate of another, while either of them are uninhabited, if the prohibition to enter be manifest and the trespasser has not secured the permission of the owner or the caretaker thereof.**[37]

Arresto menor:
Minimum: From 1 to 10 days;
Medium: From 11 to 20 days;
Maximum: From 21 to 30 days.

The intent to prohibit the entrance to an estate may be seen

[35] U. S. vs. Abanto, 15 Phil. 223.
[36] Similar to Arts. 492 and 493 of the old Penal Code.
[37] Identical to the provisions of Art. 592, par. 4, and to those of Art. 594 of the old Penal Code.

or detected either by visible signs on the field, namely: fences and enclosures, or by an express prohibition of the owner manifested verbally or in writing.

SECTION THREE

Threats and Coercions

Art. 282. GRAVE THREATS.—Any person who shall threaten another with the infliction upon the person, honor, or property of the latter or of his family of any wrong amounting to a crime, shall suffer:

1. The penalty next lower in degree than that prescribed by law for the crime he threatened to commit, if the offender shall have made the threat demanding money or imposing any other condition, even though not unlawful, and said offender shall have attained his purpose. If the offender shall not have attained his purpose, the penalty lower by two degrees shall be imposed.

If the threat he made in writing or through a middleman, the penalty shall be imposed in its maximum period.

2. The penalty of arresto mayor **and a fine not exceeding 500 pesos, if the threat shall not have been made subject to a condition.**[38]

Arresto mayor: See Art. 275.

ELEMENTS OF THE OFFENSE.—Threats and coercions penalized under this chapter are those perpetrated against **private persons**, for if they are committed against a **public officer**, the crime would be **atentado**.[39]

In order that there may be a threat under this Article, it is necessary that the warning of some wrong amounting to felony against person, honor, or property be grave or serious. If the threat is made by way of a joke or in the heat of anger, the

[38] Identical to Art. 494 of the old Penal Code.
[39] Art. 148, et seq.

case would be treated as a light threat under Art. 285, pars. 1, 2 and 3.[40]

DISTINCTION BETWEEN THREAT AND ROBBERY.—The crime of threat may easily be confused or mistaken for robbery, especially if the object of threat is extortion or to obtain money. In both cases the element of moral coercion or intimidation is present.

It must be observed, however, that in the crime of robbery the intimidation used by the offender is personal and direct, while in threat such intimidation is indirect, in other words, is made either through message or intermediary.

Thus, a person who threatened another in a letter with death or the burning of her house unless she gave ₱500 which she must deposit in the place indicated in the letter, committed the crime of threat under par. 1 of this Article.[41]

Also the fact that the defendants aimed their revolvers at the injured party and threatened to kill him if he did not give them the sum of ₱20, which they asked, by way of loan, constituted the crime of grave threats punished under this Article.[42]

A threat made by a person armed with a revolver in the heat of anger and by reason of a dispute, there being no evidence that he persisted in his threat, is a light threat.[43]

Threats made at the time of an assault and forming a part of the same do not constitute violation of this Article.[44]

Art. 283. LIGHT THREATS.—A threat to commit a wrong not constituting a crime, made in the manner expressed in subdivision 1 of the next preceding article, shall be punished by arresto mayor.[45]

Arresto mayor: See Art. 275.

Within the provisions of this Article would fall many cases of blackmailing, that is, the unlawful extortion of money by an appeal to the fear of the victim, or by threats of accusation or exposure.

Art. 284. BOND FOR GOOD BEHAVIOR.—In all cases falling within the two next preceding articles, the

[40] U. S. vs. Paguirigan, 14 Phil. 450.
[41] U. S. vs. De la Cruz, 28 Phil. 279.
[42] U. S. vs. Lazaro et al., 4 Phil. 288.
[43] U. S. vs. Estrada, 10 Phil. 583.
[44] U. S. vs. Sevilla, 1 Phil. 143.
[45] Identical to Art. 495 of the old Penal Code.

person making the threats may also be required to give bail not to molest the person threatened, or if he shall fail to give such bail, he shall be sentenced to destierro.[46]

Destierro:

Minimum: From 6 months and 1 day to 2 years and 4 months;

Medium: From 2 years, 4 months and 1 day to 4 years and 2 months;

Maximum: From 4 years, 2 months and 1 day to 6 years.

Under the provisions of this Article a person making a threat may be required to put up bond for good behavior with or without criminal prosecution for the crime of threat.

Art. 285. OTHER LIGHT THREATS.—The penalty of arresto menor **in its minimum period or a fine not exceeding 200 pesos shall be imposed upon:**

1. Any person who, without being included in the provisions of the next preceding article, shall threaten another with a weapon, or draw such weapon in a quarrel, unless it be in lawful self-defense;

2. Any person who, in the heat of anger, shall orally threaten another with some harm not constituting a crime, and who by subsequent acts shows that he did not persist in the idea involved in his threat, provided that the circumstances of the offense shall not bring it within the provisions of article 282 of this Code;

3. Any person who shall orally threaten to do another any harm not constituting a felony.[47]

Arresto menor: See Art. 281.

Many cases of threats fall under the provisions of this Article.

It is very common to see persons who, in the heat of anger, threaten another with weapons or with causing another some harm, but later fail to persist in the idea they signified by their threat. A threat made under such circumstances does not consti-

[46] Identical to Art. 196 of the old Penal Code.
[47] Identical to the provisions of pars. 2, 3 and 4 of Art. 589 of the old Penal Code.

tute a violation of the preceding Article, but simply a slight offense under this Article.[48]

The threat penalized under par. 3 of this Article is similar to that of Art. 283, the only difference being that a threat under said Art. 283 is always supposed to have been made by requiring a sum of money or by imposing some condition, while a threat made under the last paragraph of this Article is always made without any condition at all, and must be made orally.[49]

Art. 286. GRAVE COERCIONS.—The penalty of arresto mayor **and a fine not exceeding 500 pesos shall be imposed upon any person who, without authority of law, shall, by means of violence, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.**

If the coercion be committed for the purpose of compelling another to perform any religious act or to prevent him from so doing, the penalty next higher in degree shall be imposed.[50]

Arresto mayor: See Art. 275.

ELEMENTS OF THE OFFENSE.—There are three elements in this crime: (1) to prevent another from doing something not prohibited by law, or to compel him to do something against his will, whether just or unjust; (2) that in preventing or compelling the victim some violence or force be employed; and (3) that he who prevents or compels another to do or not to do something has no right to do so.

P, a police sergeant, ordered the torture of B, a private individual, to make him tell where the money of a superstitious cult called **Mina** was hidden. P was convicted of coercion by inducement and sentenced to six months of **arresto mayor** and to pay ₱650—the maximum penalty fixed by law for this offense. While the law protects the police officer in the proper discharge of his duties, it must at the same time also effectively protect the individual from the abuse of the police.[51]

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[48] See U. S. vs. Algurra, 9 Phil. 644; U. S. vs. Estrada, 10 Phil. 583.
[49] Viada, 3 Cod. Pen., 791.
[50] Similar to Art. 497 of the old Penal Code. The last paragraph of this Article, however, is an innovation which has no counterpart either in the proposed Correctional Code of 1916 or in the Spanish Penal Code of 1928.
[51] U. S. vs. Pabalan, 37 Phil. 352.

DISTINCTION BETWEEN COERCION AND ROBBERY.—Does a private individual, claiming to be the owner of a parcel of land, who, with others, comes upon this property under cultivation by another and there, by the use of a revolver to intimidate, drives the tenant away and cuts six **cavanes** of **palay**, claiming them as payment for rent, commit the crime of coercion or that of robbery? The prime criterion in this case is the intention of the offender. If the intent was to gain, then the crime committed was robbery. If the purpose was to compel another to do something against his will and to seize property, then the crime was coercion. There was no common robbery in the present case. It was simply the case of a man who had fought bitterly for the title to his ancestral estate, taking the law into his own hands and attempting to collect what he thought was due him. The **animus furandi** was lacking.[52]

OTHER CASES OF COERCION.—The crime committed by a landowner who orders his agents to enter the house of his tenants for the purpose of ousting them, is coercion and not **allanamiento de morada.**[53]

On the other hand, a landlord who closes the door of the house occupied by his tenant, retaining therein furniture of the latter and refusing to deliver it to said tenant, does not commit coercion, because under Art. 1922, par. 7, of the Civil Code, the landlord is justified in holding said furniture.[54]

The crime committed by a policeman who, without warrant, arrests a person who has not committed any crime nor misdemeanor, is also coercion.[55]

While the Municipal Council of Cabuyao was holding a meeting presided over by the vice-president in the absence of the municipal president, the latter and the chief of police of the municipality entered the room where the meeting was being held, and by means of force dissolved the meeting, taking the vice-president to jail. **Held:** Not coercion but violation of Act 1755, the chief of police not being exempt by the fact that he acted in obedience to an order of the president, because the order was unlawful.[56]

A person supposed to be insane attempted to enter the house of one sick with cholera. The doctor in attendance, at the request of the wife of the patient, compelled by force the insane man to leave the house. **Held:** that the doctor was guilty neither of coercion nor threats nor illegal detention.[57]

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[52] U. S. vs. Villa-Abrille, 36 Phil. 807; U. S. vs. Vega, 2 Phil. 167; U. S. vs Tapular, 7 Phil. 8; U. S. vs. Tremoya, 10 Phil. 89; U. S. vs. Mena, 11 Phil. 543.
[53] Dec. Sup. Ct. of Spain, April 7, 1876; Hidalgo, II Cod. Pen. 504-506.
[54] U. S. vs. Sobrepeña, G. R. No. 14817; C. F. I. of Manila, Case No. 16710.
[55] U. S. vs. Alexander, 8 Phil. 29.
[56] People vs. Alemus, 44 Phil. 910.
[57] U. S. vs. Calvo, 4 Phil. 201.

Art. 287. LIGHT COERCIONS.—Any person who, by means of violence, shall seize anything belonging to his debtor for the purpose of applying the same to the payment of the debt, shall suffer the penalty of arresto mayor **in its minimum period and a fine equivalent to the value of the thing, but in no case less than 75 pesos.**

Any other coercions or unjust vexations shall be punished by arresto menor **or a fine ranging from 5 to 200 pesos, or both.**[58]

Arresto mayor in its minimum period:
Minimum: From 2 months and 1 day to 2 months and 20 days;
Medium: From 2 months and 21 days to 3 months and 10 days;
Maximum: From 3 months and 11 days to 4 months.
Arresto menor: See par. 1 of Art. 266.

A person who, believing himself to be the owner of certain personal property in the hands of another, takes possession of that property by intimidation is not guilty of robbery but of coercion.[59]

UNJUST VEXATION DEFINED.—The second paragraph of this Article punishes any unjustifiable annoyance or unjust vexation. The term is broad enough as to include any human conduct which, although not productive of some physical or material harm, would, however, unjustifiably annoy or vex an innocent person.

Thus it has been held that the kissing of a woman against her consent, no matter how chaste is the intention of the offender, constitutes the offense of unjust vexation described in this paragraph.[60]

The offense falling under the second paragraph does not include violence as an element; otherwise it would come under the first paragraph.[61]

Art. 288. OTHER SIMILAR COERCIONS—(COMPULSORY PURCHASE OF MERCHANDISE AND PAY-

[58] Similar to Arts. 498 and 589, par. 5, of the old Penal Code.
[59] U. S. vs. Vega, 2 Phil. 167.
[60] U. S. vs. Gomez, 30 Phil. 22.
[61] People vs. Reyes et al., 520 O. G. 2532, May 1956.

MENT OF WAGES BY MEANS OF TOKENS).—The penalty of arresto mayor **or a fine ranging from 200 to 500 pesos, or both, shall be imposed upon any person, agent, or officer of any association or corporation who shall force or compel, directly or indirectly, or shall knowingly permit any laborer or employee employed by him or by such firm or corporation to be forced or compelled, to purchase merchandise or commodities of any kind.**

The same penalties shall be imposed upon any person who shall pay the wages due a laborer or employee employed by him, by means of tokens or objects other than the legal tender currency of the Philippine Islands, unless expressly requested by the laborer or employee.[62]

Arresto mayor: See Art. 275.

Art. 289. FORMATION, MAINTENANCE, AND PROHIBITION OF COMBINATION OF CAPITAL OR LABOR THROUGH VIOLENCE OR THREATS.—The penalty of arresto mayor **and a fine not exceeding 300 pesos shall be imposed upon any person who, for the purpose of organizing, maintaining, or preventing coalitions of capital or labor, strike of laborers, or lockout of employers, shall employ violence or threats in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work, if the acts shall not constitute a more serious offense in accordance with the provisions of this Code.**[63]

Arresto mayor: See Art. 275.

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[62] Similar to the provisions of Section 1 of Act 3085 of the Philippine Legislature and Art. 233 of the proposed Correctional Code of 1916.

[63] This is another innovation or rather new offense created by the present Code, having no precedent either in the proposed Correctional Code of 1916 or in the Spanish Penal Code, either old or new.

CHAPTER THREE

DISCOVERY AND REVELATION OF SECRETS

Art. 290. DISCOVERING SECRETS THROUGH SEIZURE OF CORRESPONDENCE.—The penalty of prisión correccional **in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon any private individual who, in order to discover secrets of another, shall seize his papers or letters and reveal the contents thereof.**

If the offender shall not reveal such secrets, the penalty shall be arresto mayor **and a fine not exceeding 500 pesos.**

This provision shall not be applicable to parents, guardians, or persons entrusted with the custody of minors with respect to the papers or letters of the children or minors placed under their care or custody, nor to spouses with respect to the papers or letters of either of them.[1]

Prisión correccional in its minimum and medium periods:
Minimum: From 6 months and 1 day to 1 year and 8 months;
Medium: From 1 year, 8 months and 1 day to 2 years, 11 months and 10 days;
Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.
Arresto mayor:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months.

The offender under this Article must be a private person, because if he is a public officer, the case may be considered as a violation of Art. 230 of this Code.

Art. 291. REVEALING SECRETS WITH ABUSE OF OFFICE.—The penalty of arresto mayor **and a fine**

[1] Identical to the provisions of Art. 499 of the old Penal Code.

not exceeding 500 pesos shall be imposed upon any manager, employee, or servant who, in such capacity, shall learn the secrets of his principal or master and shall reveal such secrets.[2]

Arresto mayor: See Art. 290.

It is an indispensable requisite of the offense described in this Article that the secrets revealed by the offender should have come to his knowledge by reason of his office.

Art. 292. REVELATION OF INDUSTRIAL SECRETS.—The penalty of prisión correccional **in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon the person in charge, employee, or workman of any manufacturing or industrial establishment who, to the prejudice of the owner thereof, shall reveal the secrets of the industry of the latter.**[3]

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year and 8 months;

Medium: From 1 year, 8 months and 1 day to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

Industrial secrets referred to in this Article are those exclusively used for the trade or industry of the concern of which the offender is an employee, agent, or workman, or at least, for the use of a very limited trade or industry; because if the device revealed should be of common use by many trades or industries, it would not be then a secret, and hence, its revelation could not be made punishable.[4]

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[2] Identical to Art. 500 of the old Penal Code.
[3] Similar to the provisions of Art. 501 of the old Penal Code.
[4] Viada, 3 Cod. Pen., 337.

TITLE TEN

Crimes Against Property

CHAPTER ONE

ROBBERY IN GENERAL

Art. 293. WHO ARE GUILTY OF ROBBERY.— Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against, or intimidation of any person, or using force upon anything, shall be guilty of robbery.[1]

ROBBERY DEFINED.—The taking away, with intent of gain, of personal property belonging to another, through violence or intimidation against persons, always constitutes the crime of robbery; while the use of force upon things does not always constitute robbery.

The accused, by pretending that they were officers of the law and by employing threats and intimidation to obtain, as they did, from the offended party the amount of ₱200, are guilty of the crime of robbery.[2]

CLASSIFICATION OF ROBBERY.—The crime of robbery may be classified into (a) robbery with violence or intimidation against persons, and (b) robbery with force upon things.

CLASSES OF ROBBERY WITH VIOLENCE AGAINST PERSONS.—There are different types of robbery with intimidation or violence against persons, i. e., (a) robbery with homicide;[3] (b) robbery accompanied by intentional rape or mutilation, or when the victim becomes imbecile, impotent, or blind as a result of the violence, or when the person robbed is held for ransom or deprived of his liberty for more than one day;[4] (c) robbery with injuries as a result of which the victim loses an eye, or any principal member;[5] (d) robbery with violence or intimidation carried to a degree unnecessary for the commission of the crime, or with injuries described in subdivisions 3 and 4 of Art. 263;[6] and

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[1] Similar to the provision of Art. 502 of the old Penal Code.
[2] People vs. Lope et al., 42 O. G. 1819.
[3] Art. 294, par. 1.
[4] Art. 294, par. 2.
[5] Id., par. 3.
[6] Id., par. 4.

(e) robbery when the intimidation or violence does not result in so serious an injury as those mentioned above.[7]

LEGAL ACCEPTATION OF SENTENCE "FORCE UPON THING."—Robbery by means of force upon the thing is committed only when the culprit, in taking the things stolen, enters buildings described in Arts. 299 and 302, through any of the ways therein specified. For this reason, there is no robbery in the case of a person who, by means of force, takes away and steals the tire of an automobile, while said automobile is on the street; nor in the case of a person who, after breaking down a show-window, takes away all the articles which are within the reach of his hand, because one element of robbery under Art. 299 is lacking in these cases, i. e., the penetration or **introduction** of the offender inside the building.[8]

GENERAL PRINCIPLES OF THE LAW ON ROBBERY.—The taking away is complete when the offender secures the unlawful and definite possession of the stolen property; that is, when the offender is found in a position to dispose of and use the stolen property, even though temporarily.[9]

In the commission of the crime of robbery it is not necessary that the person from whom the property is taken, by means of threats and violence, be the **owner.** It is sufficient that the property be taken from him by means of threats and violence, for the purpose of gain. The possession of the property is sufficient. Robbery may be committed by taking a thing from a person who himself has stolen it. Even the owner of the property may be guilty of robbery, as, for instance, when he takes it from the possession of a bailee with the intent to charge the bailee with its value.[10]

It is necessary, however, to establish by sufficient proof in a prosecution for the crime of robbery, or theft, the former existence and subsequent loss of the chattel belonging to the owner.[11]

The subject of robbery must be personal property. Even things of prohibited use, such as opium, may be the subject of robbery.[12]

According to a decision of the Supreme Court of Spain, July 4, 1981, it is not necessary to show who the owner of the stolen

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[7] Art. 294, par. 5.
[8] See report of Atty. General for the Sup. Ct. of Spain, 1902; Hidalgo, II Cod. Pen., 549-500.
[9] Decs. Sup. Ct. of Spain, April 21, 1891, and July 6, 1893; Hidalgo, II Cod. Pen., 351. See also the case of U. S. vs. Adiao, 38 Phil. 754.
[10] U. S. vs. Albao, 29 Phil. 86.
[11] U. S. vs. Guzman, 31 Phil. 494.
[12] U. S. vs. Sana Lim, 28 Phil. 404.

property is, in order to secure a conviction for robbery; it is sufficient if it is clearly established that it belongs to somebody other than the accused.[13]

While it is true that the value of the stolen property is a necessary element of the crime, failure to prove such value, however, will not constitute a sufficient ground for the dismissal of the case, but merely serves to lower its penalty to its minimum degree. A stolen thing must necessarily have some value no matter what the amount may be.[14]

The intent to gain, which is an essential element of an offense against property, is presumed to be alleged in an information for robbery where it is charged that the robber appropriated to himself the things taken from the offended party.[15] Such presumption may be destroyed by evidence of good faith. Thus, one who takes property openly and avowedly under claim of title acquired in good faith is not guilty of robbery or larceny, even though the claim of ownership be untenable.[16]

One who obtains money by pretending to be an officer of the law and by threats of arrest and imprisonment is guilty of the crime of robbery by intimidation and not of **estafa**.[17]

The fact that a person carries a **bolo** in his belt at the time he stops another person to ask the latter for some money is not sufficient to support a complaint for the crime of robbery with violence and intimidation, when it has not been proved that the money was given by reason of fear or intimidation.[18]

The fact that the owner of the money and his companions were tied at the time the money was taken, and had been so tied for some hours previously for a reason entirely foreign to the fact of the taking of the money (namely, because they were suspected by the accused, members of the Constabulary, of aiding and concealing a band of brigands), cannot be considered as violence for the purpose of the Penal Code in defining the crime of robbery.[19]

A person who takes money from an open drawer does not use force on the things.[20]

A boy was carrying two jewel boxes to his master's store, and met in his way a girl who had been a servant of his said master. As it was then raining they entered a Chinaman's store to shelter themselves. She asked him to go and buy some pine-

[13] Viada, Supp., 2 Cod. Pen., 327.
[14] U. S. vs. Galanco, 11 Phil. 575.
[15] U. S. vs. Alabot, 38 Phil. 698.
[16] U. S. vs. Manluco, 28 Phil. 360.
[17] U. S. vs. Smith, 3 Phil. 20.
[18] U. S. vs. Sosa et al., 4 Phil. 172.
[19] U. S. vs. Birueda, 4 Phil. 229.
[20] U. S. vs. Birueda, **supra**.

apples for her. The boy turned over the boxes to her for safe-keeping while he went out. Upon returning to the Chinaman's store, he found that the girl had disappeared with the jewel boxes, which were forced open. This being so, the court said there was no actual taking (**apoderamiento**) of the jewels. The girl did not in fact possess herself of, or take the jewels, but simply "received" them from the boy, who voluntarily delivered them to her in trust. If there was no actual taking, there could have been no robbery.[21]

SECTION ONE

Robbery with violence against or intimidation of persons

Art. 294. ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSON—PENALTIES.—Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusión perpetua **to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed;**[22]

Reclusión perpetua to death:
Minimum: Reclusión perpetua;
Medium: Reclusión perpetua;
Maximum: Death.

INDISPENSABLE REQUISITE OF THE CRIME OF ROBBERY WITH HOMICIDE.—In order that this crime may exist it is necessary that it be clearly established that a robbery has actually taken place and that, as a consequence or on the occasion of such robbery, a homicide be committed. If the evidence is not conclusive as to the commission of robbery, no matter whether the offender had in fact the intention to commit homicide or not, the case will be considered as a simple homicide.[23]

And likewise, under a complaint charging that murder was committed with intent to rob, the accused cannot be convicted of the complex offense of robbery with homicide, the consumma-

[21] U. S. vs. Alcantara et al., 6 Phil. 387.
[22] Identical to Art. 503, par. 1, of the old Penal Code.
[23] Dec. Sup. Ct. of Spain, July 13, 1871; Viada, 3 Cod. Pen., 347; U. S. vs. Baguiao et al., 4 Phil. 110.

tion of robbery being an essential ingredient in said complex crime.[24]

The following is an illustration of two independent crimes of robbery and homicide and not a complex crime: Several robbers took away from a house, through force and violence, goods and other personal property belonging to another. The robbers left the house without being detected. A few minutes thereafter, however, the robbers came back to the place with the intention to close the door which they had left open. On their return, they found the janitor, whom they killed. Such acts do not constitute the complex crime of robbery with homicide, because the homicide in this case was not the consequence of robbery nor was it committed on the occasion of the robbery.[25]

When there is a direct relation and intimate connection between the robbery and the death of the owner of the property stolen, by reason of the death having preceded the robbery and of the fact that the crime sprang from the idea of robbery, the accused beginning the criminal act by killing their victim, such crimes cannot be separated into two distinct crimes of robbery and of homicide or murder, nor consequently, can the criminal liability of the defendants be divided in accordance with such participation as they may have had in one part of the crime or the other, nor can they be sentenced for the crime of robbery independently of that of homicide or murder.[26] In other words, if there is a direct relation, an intimate connection between the robbery and the killing—whether the latter be prior or subsequent to the former, or whether both crimes be committed at the same time or not, it is unquestionable that they constitute the complex crime defined in Art. 294, par. 1, of the Penal Code.[27]

EFFECTS WHEN THE STOLEN PROPERTY BELONGS TO PERSON OTHER THAN THE DECEASED.—A complaint charging the commission of the complex crime of robbery with homicide must necessarily charge each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints. It is well recognized in this jurisdiction that where a complex crime is charged and the evidence fails to support the charge as to one of the component parts of the offenses, the defendant cannot be convicted of the other. The mere fact that the two crimes are so related as to constitute one transaction in no way affects the principles of pleading involved in the case. For this reason, upon a complaint charging a person

[24] U. S. vs. Paddit et al., 1 Phil. 426; U. S. vs. Zara, 42 Phil. 308.
[25] Dec. Sup. Ct. of Spain, May 23, 1889; Viada, Supp., 2 Cod. Pen. 372.
[26] U. S. vs. Perez, 32 Phil. 163; U. S. vs. Briones, 28 Phil. 367.
[27] People vs. Hernandez, 46 Phil. 48.

with having robbed ₱100 belonging to one Juana Seran whom the offender killed on the occasion of the robbery, the offender cannot be convicted of the complex crime of robbery with homicide but that of homicide only, if it develops later on that the stolen money belongs to another person.[28]

CLASSIFICATION OF THE OFFENSE IF MURDER, INSTEAD OF HOMICIDE, IS COMMITTED.—The nature of the special and complex crime of robbery with homicide is not changed by the fact that the killing of the person robbed may be termed as murder and not homicide, because the greater term includes the lesser. In this Article the Code uses the word homicide in its broadest and most generic sense, without distinctions which have not been made in practice; and which, if made, would be of no ultimate utility to the person convicted who, in all events, would be sentenced to the same penalty.[29] Under such circumstances, treachery will be regarded as a generic aggravating circumstance.[30]

CRIMINAL LIABILITY OF PERSONS PARTICIPATING IN THE OFFENSE.—Whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who took part as principals in the commission of robbery will also be held guilty as principals in the complex crime of robbery with homicide, although they did not actually take part in the homicide, unless it appears that they endeavored to prevent the killing.[31]

Again, a person who furnishes the means by which the crime of robbery by a band is committed, and insists upon the commission thereof, is a principal therein, even though he is not personally present at the time when the acts constituting the crime are committed. When, however, in the commission of robbery by a band, the actual perpetrators thereof capture and carry away one of the persons whose property is robbed, and several hours later such person is killed by the parties capturing him, the person furnishing the means for the commission of robbery and insisting upon the commission of the same is not responsible for such killing, he not having counselled the act, and the killing not having taken place at the very time when the robbery itself took place.[32]

When robbery is accompanied with violence or intimidation, the crime falls under Art. 294 of the Penal Code, even if committed with arms and in an inhabited house.[33]

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[28] U. S. vs. Lahoyahoy, 38 Phil. 330.
[29] U. S. vs. Landasan, 35 Phil. 359; People vs. Manuel, 44 Phil. 333.
[30] U. S. vs. Antonio, 21 Phil. 205; U. S. vs. Tan Corteso, 32 Phil. 104.
[31] U. S. vs. Macalalad, 9 Phil. 1; U. S. vs. Santos et al., 4 Phil. 189; People vs. Morados et al., 40 O. G. Supp. (9th) 75; People vs. Lingad, 51 O. G. 6191, Dec. 1955.
[32] U. S. vs. Ibañez, 19 Phil. 463.
[33] U. S. vs. Manansala et al., 9 Phil. 529.

2. The penalty of reclusión temporal **in its medium period to** reclusión perpetua, **when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of article 263 shall have been inflicted;**[34]

Reclusión temporal in its medium period to **reclusión perpetua:**
Minimum: From 14 years, 8 months and 1 day to 17 years and 4 months;
Medium: From 17 years, 4 months and 1 day to 20 years;
Maximum: Reclusión perpetua.

NATURE OF THE INJURIES REFERRED TO IN THIS ARTICLE.—The acts of violence to which this paragraph refers are: rape, mutilation deliberately done, physical injuries whereby the victim shall become imbecile and impotent.[35]

EXAMPLE OF THE COMPLEX CRIME DEFINED IN THIS ARTICLE.—A band of malefactors committed the crime of robbery with rape, and two of them, that of rape upon two women who were inmates of the assaulted house. Since this latter crime is one against chastity, perpetrated on the occasion of the robbery, both offenses should be punished as one single complex crime defined and classified by Art. 294, par. 2, of the Penal Code. All the robbers who took part in the robbery are liable for said complex crime, inasmuch as the companions of the men who committed the rape did not oppose nor prevent the consummation of this repugnant crime. Therefore, in abhorrence to such offenses against property and chastity, which crimes, as well as sanguinary ones, are often committed in cases of robbery with violence and intimidation—the penal law has considered them as forming in conjunction a complex them as forming in conjunction a complex crime and punishes them by one single penalty. Thus it is said that paragraph 2 of Art. 294 provides that whenever the robbery shall have been accompanied by rape, etc., all the robbers who participated in said complex crime are liable for all the offenses falling within the limitation of certain circumstances specified by law, committed by the members of the band.[36]

3. The penalty of reclusión temporal, **when by**

[34] As amended by Sec. 6 of R. A. No. 18. Similar to paragraph 2 of Art. 503 of the old Penal Code.
[35] Viada, 3 Cod. Pen. 360.
[36] U. S. vs. Tiongco, 37 Phil. 951.

reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted;[37]

Reclusión temporal:

Minimum: From 12 years and 1 day to 14 years and 8 months;

Medium: From 14 years, 8 months and 1 day to 17 years and 4 months;

Maximum: From 17 years, 4 months and 1 day to 20 years.

PRINCIPAL MEMBER DEFINED.—This Article refers to physical injuries which result in the loss of an eye or any principal member enumerated and described in par. 2 of Art. 263. For further reference as to what a principal member is, etc., see par. 2, Art. 263, and comments and notes thereon.

ESSENTIAL ELEMENT OF THE OFFENSE.—In order that a defendant in a criminal case, charged with the crime of robbery by a band with serious physical injuries, may be punished under par. 3 of Art. 294 in relation to Art. 295 of this Code, the complaint must show that in consequence of the physical injuries the injured party lost a principal member or the use thereof.[38]

4. The penalty of prisión mayor **in its maximum period to** reclusión temporal **in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said article 263;**[39]

Prisión mayor in its maximum period to **reclusión temporal** in its medium period:

Minimum: From 10 years and 1 day to 12 years, 5 months and 10 days;

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[37] Similar to par. 3 of Art. 503 of the old Penal Code.
[38] U. S. vs. Lazaro, 34 Phil. 871.
[39] As amended by Sec. 6 of R. A. No. 18. Similar to par. 4 of Art. 503 of the old Penal Code.

Medium: From 12 years, 5 months and 11 days to 14 years, 10 months and 20 days;

Maximum: From 14 years, 10 months and 21 days to 17 years and 4 months.

UNNECESSARY VIOLENCE ILLUSTRATED.—It is quite difficult to determine the degree of violence or intimidation which is clearly unnecessary to the commission of the crime of robbery.

However, the case of a robber who, after having secured from the offended party money and goods without the least resistance and opposition, beats and strikes the latter on the head with a club, is a typical illustration of violence unnecessarily exerted in the commission of robbery.[40]

The snatching away and taking possession of money carried by a woman in the street and pushing her when she tries to prevent the consummation of the crime constitutes the crime of robbery because violence was exercised when the criminal act was committed.[41]

DEFORMITY AND LOSS OF MEMBER OTHER THAN PRINCIPAL, DEFINED.—See Art. 263, pars. 3 and 4, **ante**.

The second part of this paragraph is quite plain. It refers to physical injuries which produce deformity or the loss of some member **other** than a principal one, or other injuries which incapacitate the offended party for more than ninety days.

The fact that one of the accused on the occasion of robbery attacked the inmates of the house, inflicted wounds which took more than 90 days to cure, and produced deformity of the face of the injured person, who was incapacitated from his customary work during said period, constitutes the crime of robbery with **lesiones** defined and penalized in this paragraph of Art. 294 of the Penal Code.[42]

And in the complex crime of robbery with **lesiones**, those who took part in the robbery are responsible for the assault committed by any of them on the occasion of the robbery.[43]

The penalty prescribed by this paragraph of Art. 294 of the Penal Code is applicable not only to cases of robbery where violence or intimidation employed in committing the crime is "carried to a degree unnecessary to the commission of the crime" but also to cases where, in the commission of the robbery, wounds are inflicted upon the victim which result in deformity.[44]

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[40] Dec. Sup. Ct. of Spain, Sept. 27, 1877; Viada, 3 Cod. Pen., 363-364.
[41] U. S. vs. Samonte, 8 Phil. 286.
[42] U. S. vs. Melchor et al., 41 Phil. 453.
[43] U. S. vs. Tiongco, 37 Phil. 951; U. S. vs. Melchor et al., **supra**. See People vs. Manzanilla, 43 Phil. 167.
[44] People vs. Alli, 25 O. G. 1.

5. The penalty of prisión correccional in its maximum period to prisión mayor in its medium period in other cases.[45]

Prisión correccional in its maximum period to **prisión mayor** in its medium period:

Minimum: From 4 years, 2 months and 1 day to 6 years, 1 month and 10 days;

Medium: From 6 years, 1 month and 11 days to 8 years and 20 days;

Maximum: From 8 years and 21 days to 10 years.

NATURE OF THE OFFENSE DESCRIBED IN THIS PARAGRAPH.—This paragraph is a sort of supplementary provisions to the preceding ones.

Any other robbery, when the violence or intimidation exerted upon the persons does not amount to any of the injuries heretofore described, shall be punished under this paragraph.

CONTROLLING QUALIFICATION WHEN ROBBERY IS COMMITTED IN AN INHABITED HOUSE AND AT THE SAME TIME WITH INTIMIDATION.—Where a robbery, committed by armed men in an inhabited house, is accompanied by violence or intimidation against the inmates, the latter element supplies the controlling qualification; and it is the practice of the Supreme Court to apply the penalty prescribed in this Article and not that prescribed in Art. 299, although every element of the offense defined in Art. 299, may be present. This practice is observed even where the penalty to be applied under Art. 294 is lighter than that which would result from the application of Art. 299. The reason for this rule is to be found in the fact that robbery accompanied by violence or intimidation against the person is graver than ordinary robbery committed by force upon things, and where violence or intimidation against the person is present there is a great disturbance to the order of society and the security of the individual.[46]

Although the crime of robbery is committed in an inhabited house and in its commission a piece of furniture, which was locked, is broken open, if, for the purpose of its perpetration, the robbers employed intimidation upon the persons of the inmates of the building, the crime should be punished in accordance with the provisions contained in Art. 294, par. 5, of the Penal Code, fol-

[45] As amended by Sec. 6 of R. A. No. 18. Similar to the first sentence of par. 5 of Art. 503 of the old Penal Code.

[46] U. S. vs. Baluyot, 40 Phil. 89; U. S. vs. Macamay, 36 Phil. 893.

lowing the rule, now considered authoritative, laid down in several decisions of the Supreme Court, and in harmony with the one set up by the Supreme Court of Spain in decisions deciding appeals where application is made of Art. 516, No. 5, of the Spanish Penal Code, which is Art. 294, par. 5, of the present Code. The reason for this is that the employment of violence or intimidation upon persons, even though the robbery is committed in an inhabited house, and in its perpetration, chests and wardrobes are broken open, determines the application of said Art. 294, par. 5, instead of Art. 290, which is a counterpart of Art. 521 of the old Penal Code of Spain, the **morada** (or commission of the crime in the dwelling place of the offended party) being an aggravating circumstance.[47]

ROBBERY AND BRIBERY, DISTINGUISHED.—A policeman who, knowing that a person has committed no crime for which he can lawfully be arrested and tried, nevertheless arrests such persons, falsely accusing him of a crime, and then by means of threat of prosecution and imprisonment, thus playing upon his ignorance and fear, obtains money from such person, secures such money by force and intimidation and commits the crime of robbery.[48]

F, a sanitary inspector, upon discovering that some lard exposed for sale in the store of H was unfit for consumption, threatened the latter to take him to the municipal building, and to have him arrested, prosecuted, and convicted, unless ₱2.00 is paid to him. H, for fear of prosecution, paid the sum demanded. **Held:** To constitute robbery under this paragraph.

Art. 295. ROBBERY WITH PHYSICAL INJURIES, COMMITTED IN AN UNINHABITED PLACE AND BY A BAND, OR WITH THE USE OF FIREARM ON A STREET, ROAD, OR ALLEY.—If the offenses mentioned in subdivisions three, four, and five of the next preceding article shall have been committed in an uninhabited place or by a band, or by attacking a moving train, street car, motor vehicle, or airship, or by entering the passenger's compartments in a train or, in any manner, taking the passengers thereof by surprise in the res-

[47] Decs. Sup. Ct. of Spain, December 26, 1870, October 10, 1871, and June 11, 1872; U. S. vs. Turla, 38 Phil. 346.

[48] U. S. vs. Dedulo, 31 Phil. 298; U. S. vs. Sanchez, 26 Phil. 83; U. S. vs. Martin, 23 Phil. 58; U. S. vs. Osorio, 21 Phil. 237; U. S. vs. Flores, 19 Phil. 178; U. S. vs. Fulgencio, 2 Phil. 425; U. S. vs. Navarro et al., 18 Phil. 357.

pective conveyances, or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm, the offender shall be punished by the maximum period of the proper penalties.[49]

For a definition and illustration of the words **uninhabited place** and **band**, see par. 6, of Art. 14, and notes thereon, and the next following Article.

Art. 296. DEFINITION OF A BAND AND PENALTY INCURRED BY THE MEMBERS THEREOF.—When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm.

Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same.[50]

SPECIAL TYPE OF CRIMINAL RESPONSIBILITY.—As will be seen, when the crime of "robo en cuadrilla" or robbery committed by a band of more than three armed malefactors is perpetrated in an uninhabited place, the Code, setting aside the general rule of criminal conspiracy, makes all members of the gang criminally liable for any personal injury inflicted by any member of the gang, whether there was a conspiracy to commit assault against person or not. Supposing, for instance a group of five armed malefactors had conspired to rob a house located in a lonely place. Three members of the gang remained on the ground floor in search of loot while two went to the upper story, for the same purpose. Unexpectedly, a personal encounter took place in

[49] As amended by R. A. No. 12, and by R. A. No. 373. Similar to the provisions of Art. 504 of the old Penal Code.
[50] Similar to the provisions of Art. 505 of the old Penal Code, as amended by R. A. No. 12.

the upper story between two gangsters on one side and the owner of the house on the other, with the result that the latter was killed on the spot. Under the provisions of the second paragraph of this Article, the three members of the gang who remained below and who were absolutely ignorant of what transpired in the upper story would also be held jointly and criminally liable with the two assailants for the complex crime of robbery with homicide.

ESSENTIAL REQUISITES OF THE OFFENSE.—There are three indispensable requisites, however, for this particular type of robbery, namely: (1) that a robbery be committed; (2) that such robbery was committed by a band of more than three armed persons; and (3) that it was perpetrated in an uninhabited place, that is to say, isolated place or a place where the possibility of help to the victim is slim.

In order to sustain a charge that the accused committed the crime of **robo en cuadrilla** it must appear from the evidence that more than three of the party committing the crime were armed. Proof that three of the party were armed, without proof as to whether the other members were or were not armed, is not sufficient.[51]

A club or **garrote** within the meaning of this Article is a weapon.[52]

"CUADRILLA" AND BRIGANDAGE, DISTINGUISHED.—Where it appears that the defendants were inhabitants of the town in which the robbery was committed, and there is no evidence of a purpose other than to commit the particular crime in question, the offense committed is robbery **en cuadrilla** and not brigandage.[53]

Art. 297. ATTEMPTED AND FRUSTRATED ROBBERY COMMITTED UNDER CERTAIN CIRCUMSTANCES.—When by reason or on occasion of an attempted or frustrated robbery as homicide is committed the person guilty of such offenses shall be punished by reclusión temporal **in its maximum period to** reclusión perpetua, **unless the homicide committed shall deserve a higher penalty under the provisions of this Code.**[54]

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[51] U. S. vs. Melegrito, 11 Phil. 229; Dec. Sup. Ct. of Spain, May 22, 1871; Viada, 3 Cod. Pen. 375-376; U. S. vs. Aquino et al., 11 Phil. 244; U. S. vs. Celestino, 14 Phil. 34.

[52] Dec. Sup. Ct. of Spain, May 1, 1895; Hidalgo, II Cod. Pen. 594. See U. S. vs. De la Cruz, 12 Phil. 87.

[53] U. S. vs. Feliciano, 3 Phil. 422.

[54] Similar to the provisions of Art. 503 of the old Penal Code.

Reclusión temporal in its maximum period to **reclusión perpetua:**

Minimum: From 17 years, 4 months and 1 day to 18 years and 8 months;

Medium: From 18 years, 8 months and 1 day to 20 years;

Maximum: Reclusión perpetua.

If the killing of the victim is characterized by treachery or relationship which qualifies the homicide as murder or parricide, then under the provisions of this Article the proper penalty for murder or parricide, which is more severe than the one prescribed in this Article, may be imposed.

Art. 298. EXECUTION OF DEEDS BY MEANS OF VIOLENCE OR INTIMIDATION.—Any person who, with intent to defraud another, by means of violence or intimidation, shall compel him to sign, execute, or deliver any public instrument or document, shall be held guilty of robbery and punished by the penalties respectively prescribed in this chapter.[55]

In order that this crime may exist, it is necessary that the instrument or document executed by force or intimidation should refer to pecuniary liability or obligation in favor of the offender and against the interest of the offended party or his heirs. This Article covers, therefore, a case of a person who compels another by force or violence to execute a will wherein he is designated as a legatee, or to draw a check in his favor, etc.[56]

SECTION TWO

Robbery by the use of force upon things[57]

Art. 299. ROBBERY IN AN INHABITED HOUSE

[55] Similar to Art. 507 of the old Penal Code.

[56] *Viada*, 3 *Cod. Pen.* 378.

[57] LEGAL ACCEPTATION OF THE PHRASE "FORCE UPON THINGS"—"Force upon things," as element of robbery, described in this section, has a restricted meaning. A culprit may use all his might, or the most destructive weapon for carrying away goods belonging to another, but if such culprit did not use any of the means described in pars. (a) and (b) of Article 299, the crime committed will be common theft, or malicious mischief, and not robbery under this section. **Illustration:** A burglar enters a vacant premises and by means of force tears off the electrical and sanitary fixtures of the house, carrying them along with him afterwards. The crime committed in this case is **theft,** not robbery, inspite of the employment of **force,** unless it can be demonstrated that the culprit had gained entrance into the house through any of the means described in paragraph (a), subsections 1, 2, 3 and 4 of Article 299, that is, by breaking through window, wall, roof, etc.

OR PUBLIC BUILDING OR EDIFICE DEVOTED TO WORSHIP.—Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by reclusión temporal, **if the value of the property taken shall exceed 250 pesos, and if—**

(a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:[58]

ROBBERY COMMITTED IN AN INHABITED HOUSE OR PUBLIC BUILDING.—We have heretofore (from Art. 294 up to Art. 298, inclusive) described and discussed the crime of robbery with violence and intimidation against persons. The topic of the present Article is the crime of robbery with **force** upon things.

CLASSES OF ROBBERY WITH FORCE UPON THINGS.—The first distinction to be made in the crime of robbery with force upon things, is the robbery committed in an inhabited house or public building (Arts. 299 and 301) and the robbery committed in an uninhabited house or building other than those described in Art. 299 (Art. 302).

CRITERIA FOR DETERMINING THE PENALTY.—In either case (whether the robbery be committed in an inhabited or uninhabited house) the value of the stolen property is an element for the purpose of determining the penalty, as well as the circumstances of whether or not the offenders were carrying arms.

CASES OF ROBBERY WITH FORCE UPON THINGS.—It has been held that an information which charges the commission of the crime defined and penalized by Art. 299, subsection (a), pars. 1 and 2, of this Code, is sufficiently explicit as to the character of the building broken into, i. e., whether it was an inhabited house, a public building or edifice devoted to religious worship, by alleging that it was the "**tienda** of the Chinaman Go Bongco."[59]

A railroad station is a public building. Thus, a person who steals and carries away from a railroad station a certain sealed box and by force opens the same somewhere else, is guilty of robbery under this Article.[60]

The criminal liability fixed under this Article for persons car-

[58] As amended by Sec. 7 of R. A. No. 18. Similar to the provisions of Art. 521 of the Spanish Penal Code of 1870.
[59] U. S. vs. Vega, 31 Phil. 450.
[60] Dec. Sup. Ct. of Spain, January 21, 1881; Hidalgo, II Cod. Pen. 603.

rying arms while robbing an inhabited house is extended to each of the offenders who takes part in the robbery, even if some of them do not carry arms.[61]

INDISPENSABLE ELEMENT OF THE OFFENSE.—One of the indispensable elements of the crime of robbery described in Art. 299, as may be seen from the language thereof, is the **entrance** of the culprit into the house or building where the robbery is committed by any of the means specified in paragraphs 1, 2, 3, and 4 of subsection (a) of the said Article. Unless the culprit, therefore, enters the house or edifice by any of these four ways, the taking away of personal property, even though some force is employed or used, will be considered as a simple theft or **estafa** and not robbery.

Thus, a person who opens by force and violence a certain locked or sealed receptacle which has been confided into his custody, and steals the money contained therein, is guilty of **estafa** and not robbery, for the reason that the culprit did not enter the house of the offended party by any of the means described in the above-mentioned paragraphs in order to get the stolen properties.[62]

The element of entrance of the culprit in the house or building is not necessary when the robbery committed is the one described under paragraphs 1 and 2 of subsection (b) of this Article. Thus, a servant or a guest in a house who breaks the door of a locked wardrobe belonging to his host and steals and carries away some Articles contained therein, is guilty of robbery under this Article, in spite of the fact that the offender did not enter the house by any of the means indicated in pars. 1, 2, 3, and 4 of subsection (a) of this Article.[63]

A small store in which a robbery was committed, located on the ground floor of the house belonging to the owner of the store, should, for the purposes of the definition of the criminal act and for those of the penalty applicable thereto, be deemed a dependency of the house.[64]

It has been held that in the absence of evidence to show how the defendants effected an entrance into a convent which they robbed, there can be no conviction under Art. 299 of this Code.[65]

A robbery committed by an armed band in an inhabited house, or in a building attached to an inhabited house, of property ex-

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[61] Dec. Sup. Ct. of Spain, Oct. 27, 1882; Hidalgo, II Cod. Pen. 603.
[62] Decs. Sup. Ct. of Spain, Jan. 3, 1876, June 16, 1877, and Sept. 29, 1883; Viada, 3 Cod. Pen. 380-381.
[63] Dec. Sup. Ct. of Spain, February 5, 1896; Hidalgo, II Cod. Pen. 624.
[64] U. S. vs. Ventura, 39 Phil. 523.
[65] U. S. vs. Callotes, 2 Phil. 16; People vs. Rivera, 54 Phil. 577.

ceeding 1,250 pesetas[66] in value, after the robbers had effected entry by scaling a protecting fence of considerable height, falls within the terms of Art. 299 of the present Code.[67]

1. Through an opening not intended for entrance or egress;[68]

As has already been stated, it is an indispensable element for the perpetration of robbery under this paragraph that the offender shall have entered the house or building. Thus, a person who, with the aid of another, climbs to the window of a house, and without entering the house, takes from outside the window everything within the reach of his hand, does not commit robbery under this paragraph because the element of introduction is lacking.[69]

2. By breaking any wall, roof, or floor or breaking any door or window;[70]

The **penetration** or **introduction** of the offender inside the building or house is also an indispensable element of robbery under this paragraph.

Thus, a person who breaks down a show window and, **without introducing** *himself in the hole thus produced*, takes and carries away every Article within the reach of his hand, is guilty of simple theft and not of robbery.[71]

A person who breaks into a high school building, by breaking a shell in a window and opening the window, and afterwards takes from the building two microscopes belonging to the Government of the Philippines, is guilty of robbery as penalized in Art. 299, subsection (a), par. 2 of this Code.[72]

So, also, the mere forcing open of a door without breaking it, and entering through it, is not robbery but theft.[73]

3. By using false keys, picklocks, or similar tools;[74]

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[66] ₱250.00 according to this revised Code.
[67] U. S. vs. Tiquio et al., 2 Phil. 21.
[68] Identical to par. 1 of Art. 508 of the old Penal Code. See People vs. Co Chu, 62 Phil. 228.
[69] Dec. Sup. Ct. of Spain, Dec. 27, 1882; Hidalgo, II Cod. Pon. 610.
[70] Identical to par. 2 of Art. 508 of the old Penal Code.
[71] See Dec. Sup. Ct. of Spain, Nov. 7, 1889, and opinion of Atty. General for the Sup. Ct. of Spain, 1902; Hidalgo, II Cod. Pen. 540, 613.
[72] U. S. vs. Acacio, 37 Phil. 70. See also the case of U. S. vs. Bonete, 40 Phil. 958.
[73] People vs. Fernandez, 58 Phil. 674.
[74] Similar to par. 3 of Art. 508 of the old Penal Code.

It is to be understood that false keys, picklocks, or other similar instruments are used by the culprit **in order to gain entrance** into the house or building where he commits robbery.

Whenever the perpetration of robbery is characterized by the presence of several qualifying circumstances, namely, the use of false keys, that of violence and intimidation (or that of robbery committed in band), the offender must be dealt with in accordance with the provisions of par. 5, Art. 294, in connection with Art. 296 of this Code, rather than by the provisions of subsection b, par. 3, of Art. 299 of this Code.[75]

4. By using any fictitious name or pretending the exercise of public authority;[76] or if—

This paragraph means that the fictitious name or simulation of authority be employed or used by the culprit as a means to gain entrance into the house or building.

(b) The robbery be committed under any of the following circumstances:

1. By the breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle;

2. By taking such furniture or objects away to be broken or forced open outside the place of the robbery.[77]

Under this paragraph the breaking of doors, wardrobes, or sealed receptacles, or the taking away of the same to be broken or forced open outside the place of the crime is robbery, no matter whether the culprit introduces himself in the house by any of the unlawful means described in pars. 1, 2, 3 and 4 of subsection (a) or not.[78]

Furthermore, a person who carries away a sealed box or receptacle for the purpose of breaking the same and taking out its contents outside the place of robbery, is guilty of consummated robbery under this paragraph even though he does not succeed in forcing or opening the box.[79]

Although a chest containing money is opened with a cutting and dangerous weapon, it does not follow that the accused should

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[75] U. S. vs. Cabamngan, 7 Phil. 191.
[76] Similar to par. 5 of Art. 508 of the old Penal Code.
[77] Similar to par. 4 of Art. 508 of the old Penal Code.
[78] See U. S. vs. Cas, 14 Phil. 21.
[79] Dec. Sup. Ct. of Spain, Oct. 3, 1881: Hidalgo, II Cod. Pen. 620-621.

be classed as one who with arms robs an inhabited house by breaking open a locked chest as penalized in Art. 299, par. 1, subsection (b), of this Code; in this case, he should be classified with those who do not carry arms, and where the robbery exceeds ₱250, the penalty should be the next lower penalty, taking into consideration the wording of this Article and the methods employed in the robbery.[80]

When the offenders do not carry arms, and the value of the property taken exceeds 250 pesos, the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed 250 pesos.

When said offenders do not carry arms and the value of the property taken does not exceed 250 pesos, they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period.

If the robbery be committed in one of the dependencies of an inhabited house, public building, or building dedicated to religious worship, the penalties next lower in degree than those prescribed in this article shall be imposed.[81]

CLASSIFICATION OF ROBBERY WITH FORCE UPON THINGS BY REASON OF THE PENALTY WHICH MAY BE IMPOSED.—For the purpose of the penalty imposed by this Article, the Code makes five classifications: (1) robbery with arms and the value of the stolen property exceeding ₱250; (2) robbery without arms and the stolen property of the same value; (3) robbery with arms and of value not exceeding ₱250; (4) robbery without arms and of value not exceeding ₱250; and (5) when the robbery is committed in one of the dependencies of an inhabited house, public building, or building dedicated to religious worship.

First case.—Robbery committed in an inhabited house or public buildings, by persons carrying arms, when the value of the property stolen is more than ₱250 is punished with **prisión mayor** in its medium period to **reclusión temporal** in its minimum period:

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[80] U. S. vs. Saludo, 9 Phil. 213.

[81] Similar to the last paragraph of Art. 508 of the old Penal Code.

Minimum: From 8 years and 1 day to 10 years;

Medium: From 10 years and 1 day to 12 years;

Maximum: From 12 years and 1 day to 14 years and 8 months;

Second and third cases.—Robbery committed by a person without arms, of property valued at over ₱250, or by persons carrying arms but of an amount not exceeding ₱250. The penalty in these cases is that next lower in degree than the above, that is, **prisión correccional** in its medium period to **prisión mayor** in its minimum period (from 2 years, 4 months and 1 day to 8 years) for the principal of the consummated crime; **arresto mayor** in its medium period to **prisión correccional** in its minimum period (from 2 months and 1 day to 2 years and 4 months) for the accomplice of the consummated crime or for the principal of the frustrated crime; and from a fine of ₱250 to **arresto mayor** in its minimum period (from 1 month and 1 day to 2 months) for the accomplice of the frustrated crime for the principal of the attempted crime.

Fourth case.—Robbery committed by malefactors who do not carry arms and the value of the property does not exceed ₱250. The penalty will be **prisión correccional** in its medium period, that is, from 2 years, 4 months and 1 day to 4 years and 2 months:

Minimum: From 2 years, 4 months and 1 day to 2 years, 11 months and 10 days;

Medium: From 2 years, 11 months and 11 days to 3 years, 6 months and 20 days;

Maximum: From 3 years, 6 months and 21 days to 4 years and 2 months.

Fifth case.—The penalty to be imposed is that next lower in degree than that above-specified.

Art. 300. ROBBERY IN AN UNINHABITED PLACE AND BY A BAND.—The robbery mentioned in the next preceding article, if committed in an uninhabited place and by a band, shall be punished by the maximum period of the penalty provided therefor.[82]

Art. 301. WHAT IS AN INHABITED HOUSE, PUBLIC BUILDING, OR BUILDING DEDICATED TO RELIGIOUS WORSHIP AND THEIR DEPENDENCIES.

[82] Similar to the provisions of Art. 509 of the old Penal Code.

—Inhabited house means any shelter, ship, or vessel constituting the dwelling of one or more persons, even though the inhabitants thereof shall temporarily be absent therefrom when the robbery is committed.

All interior courts, corrals, warehouses, granaries, barns, coachhouses, stables, or other departments or inclosed places contiguous to the building or edifice, having an interior entrance connected therewith, and which form part of the whole, shall be deemed dependencies of an inhabited house, public buildings, or building dedicated to religious worship.

Orchards and other lands used for cultivation or production are not included in the terms of the next preceding paragraph, even if closed, contiguous to the building, and having direct connection therewith.

The term "public building" includes every building owned by the Government or belonging to a private person but used or rented by the Government, although temporarily unoccupied by same.[83]

DWELLING PLACE DEFINED.—By inhabited house is understood that shelter which constitutes the dwelling place of one or more persons. A dwelling place is something more than a place where a number of persons temporarily meet (for example, the office of a lawyer, or the establishment of a wholesale). It is that place specially devoted to and intended for comfort and rest; in other words, the dwelling place is that which constitutes the domicile.[84]

The small store in which the robbery was committed, located on the ground floor of the house belonging to the owner of the store, should, for the purposes of the definition of the criminal act and for those of the penalty applicable thereto, be deemed a dependency of the house, not only because the house and the store form one single whole, there being no partition or wall between them, but also because, on the contrary, such communication or connection does exist, for the owners or inmates of the house, in going down its main stairway and passing through the lot of the house, enter the store through its door of ingress which is fastened

[83] Identical to Art. 510 of the old Penal Code.
[84] Dec. Sup. Ct. of Spain, Nov. 28, 1899; Hidalgo, II Cod. Pen. 632.

with a padlock. This crime is classified in the last paragraph of Art. 299 as robbery in a dependency of an inhabited house.[85]

Art. 302. ROBBERY IN AN UNINHABITED PLACE OR IN PRIVATE BUILDING.—Any robbery committed in an uninhabited place or in a building other than those mentioned in the first paragraph of article 299, if the value of the property taken exceeds 250 pesos, shall be punished by prisión correccional **in its medium and maximum periods provided that any of the following circumstances is present:**

1. If the entrance has been effected through any opening not intended for entrance or egress;

2. If any wall, roof, floor, or outside door or window has been broken;

3. If the entrance has been effected through the use of false keys, picklocks, or other similar tools;

4. If any door, wardrobe, chest, or any sealed or closed furniture or receptacle has been broken;

5. If any closed or sealed receptacle, as mentioned in the preceding paragraph, has been removed, even if the same be broken open elsewhere.

When the value of the property taken does not exceed 250 pesos, the penalty next lower in degree shall be imposed.

In the cases specified in articles 294, 295, 297, 299, 300, and 302 of this Code, when the property taken is mail matter or large cattle, the offender shall suffer the penalties next higher in degree than those provided in said articles.[86]

Prisión correccional in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

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[85] U. S. vs. Ventura, 39 Phil. 523. But see People vs. Baguyo, 50 Phil. 585.

[86] Identical to the provisions of Art. 512 of the old Penal Code, as amended by Commonwealth Act No. 417.

ROBBERY COMMITTED IN UNINHABITED HOUSE.—This Article refers to robbery committed in houses or structures not devoted to dwelling purposes, or buildings other than those mentioned in Art. 299.

It is to be noted that the present Article enumerates almost the same ways of penetrating or entering a building as those described in Art. 299, with the exception, of course, of entrance to the house or building by use of a fictitious name or the simulation of authority.

The notes and comments made in the different cases of Art. 299 are applicable to the present Article.

UNINHABITED HOUSE DEFINED.—The word **building** mentioned in Art. 302 of the present Code embraces any kind of structure not mentioned in Art. 299 of this Code, used for storage and safekeeping of personal property, and embraces a freight car in which sugar is transported. Thus, the un-nailing of a strip of cloth nailed over the door, the customary manner of sealing a freight car, constitutes breaking by force within the meaning of this Article.[87]

The above doctrine, however, seems to be in conflict with the ruling of the Supreme Court of Spain. This court held that a railroad employee who, by force, opens a sealed or locked receptacle deposited in a freight car, does not commit robbery, but simply theft, for the reason that a railroad car is neither a house nor a building within the meaning of this Article. This Article refers to houses or buildings which, while not actually inhabited, are, however, habitable.[88]

Thus, a pig sty cannot be considered a building within the meaning of this Article nor within that of Art. 299. So the stealing of hogs from a pig sty cannot be considered robbery, but only theft, even though the culprit breaks into it. The buildings mentioned in Art. 299 and 302 are those places which may be used as shelter or dwelling places for persons.[89]

CASES OF ROBBERY IN AN UNINHABITED HOUSE.—The servant of the owner of an oil mill who takes away the key of the warehouse and hands it to another, who in turn opens the warehouse and steals and takes away oil from the mill, is guilty as principal in the crime of robbery committed in an uninhabited place penalized under this Article.[90]

Urrutia & Co. and Muñoz & Co. shipped money from the City of Manila, destined for Canton. While en route, the ship

[87] U. S. vs. Magsino, 2 Phil. 710.
[88] Decs. Sup. Ct. of Spain, April 25, 1887, and March 2, 1888; Hidalgo, II Cod. Pen. 642.
[89] Dec. Sup. Ct. of Spain, March 2, 1886; Hidalgo, II Cod. Pen. 636-637.
[90] Dec. Sup. Ct. of Spain, Feb. 25, 1889; Hidalgo, II Cod. Pen. 641.

encountered a storm and was sunk, with passengers, crew and cargo. The next day Rey, together with others, discovering the locality of the sunken ship, entered the same and took therefrom the sum of ₱15,000, inclosed in sealed boxes. It was held that the cargo was not abandoned property and that the defendant and his companions were guilty of robbery; and that property cannot be considered abandoned under the law and the possession left vacant for the finder until the **spes recuperandi** is gone and the **animus revertendi** is finally given up.[91]

Art. 303. ROBBERY OF CEREALS, FRUITS, OR FIREWOOD IN AN UNINHABITED PLACE OR PRIVATE BUILDING.—In the cases enumerated in articles 299 and 302, when the robbery consists in the taking of cereals, fruits, or firewood, the culprit shall suffer the penalty next lower in degree than that prescribed in said articles.[92]

The translation of the phrase "semilla alimenticia" in Art. 303 of the Revised Penal Code in Spanish to "cereal" in English is evidently incorrect. Inasmuch as hulled rice (arroz) cannot be considered as seedling, the offense with which the appellee is charged in the information does not fall under the provisions of Art. 303 but under the second to the last paragraph of Art. 302.[93]

Art. 304. POSSESSION OF PICKLOCKS OR SIMILAR TOOLS.—Any person who shall, without lawful cause, have in his possession picklocks or similar tools specially adapted to the commission of the crime of robbery, shall be punished by arresto mayor **in its maximum period to** prisión correccional **in its minimum period.**

The same penalty shall be imposed upon any person who shall make such tools. If the offender be a locksmith, he shall suffer the penalty of prisión correccional **in its medium and maximum periods.**[94]

Arresto mayor in its maximum period to **prisión correccional** in its minimum period:

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[91] U. S. vs. Rey, 8 Phil. 500.
[92] Similar to the provisions of Art. 511 of the old Penal Code.
[93] People vs. Mesias, 38 O. G. 445.
[94] Similar to Art. 515 of old Penal Code.

Minimum: From 4 months and 11 days to 1 year and 7 days;

Medium: From 1 year and 8 days to 1 year, 8 months and 4 days;

Maximum: From 1 year, 8 months and 5 days to 2 years and 4 months.

Prisión correccional in its medium and maximum periods:

Minimum: 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

A blacksmith who manufactures instruments of the kind described in this Article should be punished under the first paragraph hereof, and not under the second, for the reason that blacksmith is quite different from a locksmith, to which the second paragraph refers.[95]

Art. 305. FALSE KEYS.—The term "false keys" shall be deemed to include:

1. The tools mentioned in the next preceding article;

2. Genuine keys stolen from the owner;

3. Any keys other than those intended by the owner for use in the lock forcibly opened by the offender.[96]

[95] Dec. Sup. Ct. of Spain, Feb. 9, 1878; Hidalgo, II Cod. Pen. 647.
[96] Identical to Art. 516 of the old Penal Code.

CHAPTER TWO

BRIGANDAGE

Art. 306. WHO ARE BRIGANDS—PENALTY. — When more than three armed persons form a band of robbers for the purpose of committing robbery in the highway, or kidnapping persons for the purpose of extortion or to obtain ransom, or for any other purpose to be attained by means of force and violence, they shall be deemed highway robbers or brigands.

Persons found guilty of this offense shall be punished by prisión mayor **in its medium period to** reclusión temporal **in its minimum period if the act or acts committed by them are not punishable by higher penalties, in which case, they shall suffer such higher penalties.**

If any of the arms carried by any of said persons be unlicensed firearms, it shall be presumed that said persons are highway robbers or brigands, and in case of conviction the penalty shall be imposed in the maximum period.[1]

Prisión correccional in its medium period to **reclusión temporal** in its minimum period:

Minimum: From 8 years and 1 day to 10 years;

Medium: From 10 years and 1 day to 12 years;

Maximum: From 12 years and 1 day to 14 years and 8 months.

The amendment introduced by Republic Act No. 12 of the First Congress of the Philippines is primarily intended to forestall the wave of lawlessness in Central Luzon which of late has seriously threatened the stability of the Republic. Holdups and kidnappings all along the highways of Luzon were and are still a matter of daily occurrence after the liberation. Two outstanding dissident groups, commonly known as **Hukbalahap** (Army against Japan or Japanese) and P. K. M. (National Peasants' Association), taking advantage of the arms they received to fight the Japanese, have used and are now still using said arms to commit depredations and to fight against the constituted power. The government by proclamation

[1] As amended by Rep. Act No. 12. Similar to the provisions of Section 1 of Act 518 of the Philippine Commission as amended by Section 1 of Act 2036 of the Philippine Legislature.

set August 31 of 1946 as the dead-line for the surrender or registration of all firearms in the possession of unauthorized persons.

Under the last paragraph of the Article we are now commenting upon, which, by the way, is a new provision introduced by said Republic Act No. 12, if any of the arms carried by the gang happen to be unlicensed, that circumstance creates a presumption **juris tantum** that the persons composing the gang are highway robbers or brigands, and in case of conviction the penalty shall be imposed in its maximum period.

Note, however, that Art. 306, as amended, requires 3 essential elements, namely (1) that there are at least four persons in the gang, (2) that each and every one of them is armed and (3) that the purpose for which the offenders have grouped together is to commit robbery in the highway or kidnap persons for extortion or ransom or for any other purpose to be attained by force or violence.

Arm is understood to mean any deadly weapon, such as dagger or knife, not necessarily firearm. Under the provisions of this Article, at least four members of the gang must be armed. If only two or three of them are armed, the second essential element of the crime would be lacking.

PURPOSE FOR WHICH THE BAND IS ORGANIZED, AN ESSENTIAL ELEMENT OF THE OFFENSE.—In prosecutions for the crime of brigandage, the evidence should show the purpose for which the band was organized. It is not necessary to make this proof by direct testimony; this may be shown by circumstances, but there must be something in the case from which the inference can properly be deduced.[2]

Where it appears that the defendants were inhabitants of the town in which the robbery was committed, and there is no evidence of any agreement betwen them other than to commit the particular crime in question, the offense committed is robbery **en cuadrilla** under the Penal Code and not brigandage.[3]

The theft of a horse grazing the field, committed by men who are not armed and do not form a band of three or more thieves provided with arms and engaged in robbery and other crimes against persons and property, does not constitute the crime of brigandage.[4]

The fact that the band of which the accused were members was organized for political purposes is not a defense against a charge of brigandage where the evidence shows that this band, provided with firearms and other weapons, wandered about the

[2] U. S. vs. Usis et al., 3 Phil. 373.
[3] U. S. vs. Feliciano et al., 3 Phil. 422.
[4] U. S. vs. Manique et al., 3 Phil 675.

country and engaged in robbery and other offenses against persons and property and in armed resistance to the authorities, and that the accused took part in the commission of some of these crimes.[5]

ROBBERY COMMITTED IN BAND, AN OFFENSE INCLUDED IN BRIGANDAGE.—The crime of robbery **en cuadrilla** being necessarily included in that of brigandage, the defendants can be convicted of the former notwithstanding that they have been charged with the latter, in accordance with the doctrine established in several decisions of the Supreme Court.[6]

Art. 307. AIDING AND ABETTING A BAND OF BRIGANDS.—Any person knowingly and in any manner aiding, abetting, or protecting a band of brigands as described in the next preceding article, or giving them information of the movement of the police or other peace officers of the Government or of the forces of the United States Army, when the latter are acting in aid of the Government, or acquiring or receiving the property taken by such brigands, shall be punished by prisión correccional **in its medium period to** prisión mayor **in its minimum period.**

It shall be presumed that the person performing any of the acts provided in this article has performed them knowingly, unless the contrary is proven.[7]

Prisión correccional in its medium period to **prisión mayor** in its minimum period:

Minimum: From 2 years, 4 months and 1 day to 4 years and 2 months;

Medium: From 4 years, 2 months and 1 day to 6 years;

Maximum: From 6 years and 1 day to 8 years.

The defendant, president of an organized municipality, knowing of the existence of a band of brigands in the vicinity of the town, supplied the band with provisions and gave them information concerning the movements of the Constabulary forces. **Held:** that the facts constitute a violation of the provisions of section 4 of Act No. 518.[8]

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[5] U. S. vs. Zafra et al., 4 Phil. 71.
[6] U. S. vs. De la Cruz et al., 4 Phil. 430.
[7] Similar to the provisions of Section 4 of Act 518 of the Philippine Commission as amended by Section 2 of Act 2036 of the Philippine Legislature.
[8] U. S. vs. De Padua, 3 Phil. 265.

One who furnishes money to a band of brigands is not guilty of the offense of furnishing supplies to such a band under section 4 of Act No. 518.[9]

The defendant was charged with aiding and abetting a band of brigands under section 4 of Act No. 518. The evidence showed that he had carried a letter from one of the leaders of a band of brigands to an address given to him. It was alleged that the letter contained a demand for supplies for the band, but it was not shown that the accused had any knowledge of its contents. **Held:** that his conviction was error.[10]

Evidence that the defendants gave aid and comfort and also information on the movements of the insular police to a band of **ladrones,** knowing that said band of **ladrones** was organized for the purpose of stealing carabaos and other personal property by means of force and violence, is sufficient to sustain a conviction upon a charge of brigandage.[11]

The fact that the defendant remained three days with a band of brigands is not sufficient to convict him of a violation of section 4 of Act No. 518.[12]

The delivery by a tenant to his landlord of a part of the crop, such landlord being the leader of a band of brigands, is not sufficient to convict the tenant of a violation of this Article.[13]

Procurar (procuring) as used in the Spanish text of section 4 of Act No. 1121, means "to obtain," "to secure," "to get," and as the defendant did not thus "secure" money for the bandits, he is not guilty.[14]

The defendant entertained one night at supper in his house a friend of his and the companion of the latter. Both carried revolvers. In fact, the two men then belonged to a band of brigands, but there was no evidence that the defendant knew this. **Held:** that he could not be convicted of a violation of section 4 of Act No. 518.[15]

Section 4 of Act No. 518 of the Philippine Commission does not attempt to punish one who aids and abets a band of brigands by giving them food, etc., unless such aiding and abetting be rendered with the knowledge at the time that the band is a band of brigands. Furnishing food, etc., to a band of brigands is not necessarily punishable under said law.[16]

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[9] U. S. vs. De la Cruz, 3 Phil. 573.
[10] U. S. vs. Onti, 4 Phil. 78.
[11] U. S. vs. Navarrete et al., 4 Phil. 108.
[12] U. S. vs. Aguilar, 4 Phil. 361.
[13] U. S. vs. Cantil et al., 6 Phil. 418.
[14] U. S. vs. Oruga, 6 Phil. 351.
[15] U. S. vs. Saulo et al., 6 Phil. 417.
[16] U. S. vs. Poblete et al., 7 Phil. 127.

CHAPTER THREE

THEFT

Art. 308. WHO ARE LIABLE FOR THEFT. — Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.[1]

THEFT DEFINED.—Theft may be defined, therefore, as the taking away of another's personal property, with intent to gain, and without the consent of its owner.

In the early Roman law we find theft defined by Gaius in terms broad enough to include any kind of physical handling of property belonging to another against the will of the owner; and in this connection we note that the term was then made to include misappropriation and misuse by the bailee, a species of offense which in our Penal Code is transferred to subsection 5 of Article 535 (equivalent to Art. 315 of this Code) dealing with estafa. **"Furtum autem fit non solum cum quis intercipiendi causa rem alienam amovet, sed generaliter cum quia alienam rem ivito domino contrectat. Itaque, sive creditor pignore, sive is apud quem res deposita est, ea re utatur, sive is qui rem utendam accepit, in alium usum eam transferat quam cujus gratia ei data est, furtum committit."**[2]

Substantially the same definition is given by Paulus: "A thief is he who with evil intention handles (touches, moves) the property of another." **Fur est qui dolo malo rem alienam contrectat.** In the **Institutes of Justinian** a more elaborate definition is given as follows: "Theft is the fraudulent handling of a thing with the object of acquiring gain either from the thing itself or from its use, or from the possession of it." **Furtum est contrectatio rei fraudulosa, lucrí faciendi causa vel ipsius rei, vel etiam usus ejus possessionisve.**[3]

The corresponding provision of the **Partidas** follows in the main the definition given in the **Institutes** but contains the additional qualification that the taking must be without the consent of the owner. **"Furto es malfetria que fazen los omes que toman al-**

[1] Similar to par. 1 of Art. 517 of the old Penal Code.
[2] Gai, iii, 195, 196.
[3] Inst. 4, 1, 1.

guna cosa mueble agena encubiertamente sin plazer de su señor, con intención de ganar el señorio o la posesión o el uso della."[4]

From a comparison of the definitions given above, it is obvious that the most fundamental notion in the crime of theft is the taking of the thing to be appropriated into the physical power of the thief, which idea is qualified by other conditions, such as that the taking must be effected **animo lucrandi** and without the consent of the owner; and it will be noted that the definition does not require that the taking should be effected against the will of the owner but merely that it should be without his consent,—a distinction of no slight importance.[5]

ESSENTIAL DIFFERENCE FROM ROBBERY.—The essential difference between robbery and theft is the violence, intimidation, or force employed in the commission of the crime. In robbery, there must exist violence or intimidation against persons, or force upon the thing or the property taken, while the taking of property without the existence of these facts is simply theft.[6]

ELEMENTS OF THE OFFENSE.[7]—As a general rule, the following are the elements of theft:

(a) **Taking of a chattel or personal property.** This element is important in the case of theft, and in most cases, marks the boundary line between it and **estafa.** In a case of theft the offender takes the thing; while in **estafa,** the offender receives the thing, that is, the offender is given the thing. There are a few cases, however, in which, in spite of the fact that the offender is apparently given the thing, e. g., the case of a servant who receives from his master a certain sum of money to buy something and runs away with the money, or the case of a truck driver who steals or takes away the load of his truck, or that of a shepherd who steals sheep confided into his custody, or a jeepney driver who takes away the jeepney entrusted to him for hire,[8] etc., the crime committed is qualified theft, that is, theft with serious abuse of confidence, and not estafa under Art. 315, sub-sec. 1 par. (7).[9] According to a very learned opinion rendered by the Attorney General of the Supreme Court of Spain expressed in his report for the year 1901,[10] in order that a conviction for **estafa** under Art. 315, subsec. 1, par. (b) may be sustained, it is necessary that there be a **previous** contract or agreement between the offended party and the offender by virtue of which the thing was given or

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[4] Ley 1.a, Tit. XIV, Part. VII.
[5] People vs. Avila, 44 Phil. 720.
[6] U. S. vs. Nueva, 7 Phil. 511. See also U. S. vs. Birueda, 4 Phil. 229.
[7] See People vs. Malasugui, 63 Phil. 223.
[8] People vs. De Jesus, 51 O. G. 2411, May 1955.
[9] Decs. Sup. Ct. of Spain, July 14, 1904, and October 24, 1904; Hidalgo, II Cod. Pen. 670.
[10] Hidalgo, II Cod. Pen. 648-651.

parted away with, i. e., articles given to another to be sold on commission, or things given for deposit, etc. And when the thing is given without this **previous** agreement, as in the case of a servant who runs away with the money given to him for the purpose of buying something, etc., the legal fiction is that the owner or offended party still has the **constructive possession** of the thing, and for this reason, he who appropriates the thing given, under such circumstances, takes the same **without** the consent of the owner; that is, he commits the crime of theft.

Checks and commercial papers of similar character are personal property, and, as such, may be the subject of theft.[11]

So also is a certificate of title or its duplicate issued under Art. 496.[12]

Gas and electric current may also be the subject of theft.[13]

(b) **That the article stolen belongs to another.** For this reason a wife cannot commit theft against the property of her husband, etc. There are, however, certain exceptions to this rule. For example: A landowner who takes the fruits of a certain estate under lease to another, without the consent of the lessee, commits the crime of theft; or a partner or member of a partnership who fraudulently takes away for his own benefit articles belonging to the company, also commits theft, etc.[14]

(c) **That the taking away of the thing was done with the intent of gain.** This element is necessary in order to distinguish theft from wanton destruction or damage to property. An offender may take a certain article, not for the purpose of benefiting himself, but simply to destroy or damage the thing, etc.

The defendant took and carried away some building material without the owner's knowledge and consent and gave it to another person. **Held:** That the taking and carrying away of the material constituted theft, notwithstanding the fact that the defendant did not take it for his own use.[15]

Desire or intent to gain is enough.[16]

(d) **That the taking of the thing be done without violence or intimidation against persons, nor force upon the thing.** It should be understood, however, that the term "force" as used herein is limited to the meaning given by Art. 299. So, unless the force employed in the taking away of personal property be indicated by Art. 299, the case will be considered as a simple theft and not robbery.

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[11] U. S. vs. Wickersham, 20 Phil. 440.
[12] Sec. 115, Act 496.
[13] U. S. vs. Tambunting, 41 Phil. 364; U. S. vs. Carlos, 21 Phil. 553.
[14] Viada, 3 Cod. Pen. 4141.
[15] People vs. Santos, 53 Phil. 863.
[16] People vs. Mercado, 38 O. G. 2092.

Thus, the taking of a bull from an isolated and uncovered corral, committed by pulling up some of the stakes of the fence constitutes the crime of theft and not robbery.[17] Likewise, when a thief enters a dwelling by passing through the doors which are open or not secured by a lock or bolt, and abstracts from a wardrobe articles belonging to the inmates, the offense must be classified as theft.[18]

A person whom an electric light company furnishes electric current for lighting purposes, and who, by means of a "jumper," uses electricity which does not pass through the meter installed for the purpose of measuring the current, is guilty of theft.[19]

PRESUMPTION OF THEFT.—The rule is well established by an abundance of jurisprudence that when stolen property is found in the possession of one, not the owner, without satisfactory explanation of his possession, he will be presumed to be the thief. The possession of the stolen property is **prima facie** evidence that the possessor is the thief and throws on him the burden of accounting for his possession.[20]

When property alleged to have been stolen is found in the possession of a person not the owner, before it can be presumed however that he acquired property by theft or robbery, it must first be proved that such a crime has been committed.[21]

Furthermore, a conviction based upon proof of the unexplained possession of stolen property will not be reversed on the ground that it deprived the accused of his right to decline to go upon the witness stand without having his failure or refusal to testify used against him. The true rule in cases of this kind is not that the unexplained possession of recently stolen property creates a presumption of law that the possessor committed the larceny, thus casting the burden of proving the innocent character of the possession upon the possessor, but that proof of possession of recently stolen goods, taken together with proof of the commission of the theft, may be and generally will be sufficient to establish the guilt of the accused, if there is nothing in the record to raise a doubt as to the guilty character of the possession, though there is no presumption of law to that effect. The inference is one of fact resting on the common experience of men which leads them to believe in the identity of the possessor of recently stolen goods and the thief when nothing to the contrary appears; and a judgment of conviction in such cases rests on the

[17] U. S. vs. Rosales, 1 Phil. 300.
[18] U. S. vs. Aronce, 12 Phil. 291.
[19] U. S. vs. Carlos, 21 Phil. 553.
[20] U. S. vs. Ungal, 37 Phil. 835.
[21] U. S. vs. Carreon, 12 Phil. 51.

evidence introduced by the prosecution and not upon the refusal or failure of the accused to testify.[22]

WHEN A THIEF IS RESPONSIBLE FOR ALL OF MISSING PROPERTY.—When only a part of the stolen property which was stolen at the same time and place is found in the possession of one who is unable to give a satisfactory explanation of his possession of the same, that fact is sufficient in itself to sustain a finding that he is guilty of the larceny of all of the property.[23]

And where there are two principals in the commission of a theft and they divide the stolen property between them, each is punishable as for the theft of the entire amount. The degree of theft and the corresponding penalty is to be determined by the value of all the property taken and not by that of the property in the thief's possession.[24]

OTHER CASES OF THEFT.—C had been in possession of a parcel of land. He had planted the land with rice and had harvested it. V commenced a civil action in the justice of the peace court to recover the possession of said land. From the decision of the justice of the peace, an appeal was taken to the Court of First Instance where it was decided that C was entitled to its possession. During the pendency of the appeal in the Court of First Instance, V preferred criminal charges against C, and had him arrested and lodged in jail. While C was in jail and after the decision of the Court of First Instance holding that C was entitled to the possession of the land, V entered upon it, and took and carried away the palay which had been harvested and piled upon the land by C. **Held:** that V was guilty of the crime of larceny punishable under the provisions of the Penal Code.[25]

But a person who has possession of a property, both **de facto** and **de jure**, has a right to dispose of an aliquot part of the crop. His unlawful disposition of the share belonging to his partner or joint owner (such contract being governed by the provisions relative to the contract of partnership, by stipulations of the parties, and by the custom of the country as provided in Article 1579 of the Civil Code) is undoubtedly a violation of their contract and a trespass upon the rights of another, but is not an act constituting the crime of theft. If the defendant is lawfully in possession of the property, he certainly does not, when he disposes of it, take it or abstract it from another. Such taking and abstracting is what constitutes the crime of theft.[26]

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[22] U. S. vs. Catimbang, 35 Phil. 367.
[23] U. S. vs. Ayardi, 11 Phil. 549; U. S. vs. Solinap, 18 Phil. 77; U. S. vs. Ungal, 37 Phil. 835; People vs. Buada, 60 Phil. 363.
[24] U. S. vs. Madama, 1 Phil. 559.
[25] U. S. vs. Villacorta, 30 Phil. 108.
[26] U. S. vs. Reyes, 6 Phil. 441.

The cutting of cane on land of which title is in dispute and is the subject of civil litigation by one of the claimants does not constitute theft, especially where the evidence indicates that the land claimed by the complainant is different from that on which the cane was cut.[27]

An agent of the authorities who takes possession of cattle, because of lack of registration papers, without any opposition or protest on the part of the cattleman in charge thereof, commits no theft; if he sells the cattle so seized and appropriates the value thereof to his own use, he commits **estafa**.[28]

The abstraction of funds from a safe by a clerk without the consent of the person charged with their custody, with the intent to convert them to his own use is held to be theft and not **estafa** or a kindred offense, where it appears that while the clerk was entrusted with the combination and the key of the safe, he had no control over its contents and was not authorized to open the safe or withdraw the contents or any part thereof except by the express direction of the person charged with the custody of the contents and responsible therefor.[29]

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;[30]

DISTINCTION BETWEEN THEFT QUALIFIED BY ABUSE OF CONFIDENCE AND ESTAFA.—The gist of this offense is the furtive taking and misappropriation of the property found, with knowledge of its true ownership, and the word "finding" must not be treated as a cabalistic or sacramental term limiting the application of the provision of the literal first finder. The furtive appropriation of the found property, under the conditions stated, is the principal thing. In other words, the form of theft described in this paragraph is not limited to the actual finder, but it includes misappropriation by any one into whose hands the property may be placed by the actual finder for delivery to the true and known owner. The reason is quite obvious. Where the finder of lost or mislaid property entrusts it to another for delivery to a designated owner, the person to whom it is thus confided assumes by voluntary substitution, as to both the property and its owner, the same relation as was occupied by the finder.

[27] U. S. vs. Andrade, 1 Phil. 308.
[28] U. S. vs. Dacanay, 8 Phil. 617.
[29] U. S. vs. Wickersham, 20 Phil. 440.
[30] Similar to the provisions of par. 2 of Art. 517 of the old Penal Code.

Thus, one Mrs. P carelessly left in a carretela or rig which she occupied a certain purse containing jewels, coins, etc., valued at ₱4,500. The driver of the rig picked up the purse and knowing who its owner was gave the purse to A, the accused, who was then a policeman, with the request to deliver it to its owner. The accused took the purse, but failed to turn it over to its owner. Such facts constitute the crime of theft under this paragraph, qualified by abuse of confidence, and not **estafa.**[31]

OTHER CASES OF THEFT UNDER THIS PARAGRAPH.—Any one who picks up money dropped by another and, although he returns a part, retains a part with intent of gain, is guilty of the crime of theft of the amount not returned, under the provisions of this paragraph.[32]

Under the same principle, a carpenter or workman who, while making certain repairs upon a house, finds some money hidden in the sill and takes away the money instead of giving it to the owner of the house, is guilty of theft penalized in this paragraph.[33]

He who steals and takes away a deposit book belonging to another, and afterwards, representing himself to be the owner of the book, succeeds in withdrawing from the savings bank the money therein deposited is guilty of theft and not of **estafa,** because the false representation, if any, made by the offender was nothing but a continuation and a natural development and consequence of the crime of theft already committed.[34]

The stealing of an animal and the selling of it to a third party constitute two different and distinct crimes, theft and **estafa.** When a person is convicted of a certain specified crime, he cannot be condemned to indemnify another injured party for damages resulting from the commission of a separate and distinct crime.[35]

A checker of the Bureau of Customs, charged with the duty of making deliveries of imported merchandise from a pier to persons presenting the requisite delivery permits, who surreptitiously sends out merchandise without making note of the delivery on the back of the proper permit and who, with a view to concealing the act, falsifies another delivery permit in such a manner as to cause it to show falsely that the merchandise sent out pertains to another consignment, at the same time issuing a gate pass purporting to show falsely that the goods pertain to such purported consignment, all with the evident purpose of concealing the disappearance of the goods and of assisting confederates in

[31] People vs. Avila, 44 Phil. 720.
[32] U. S. vs. Santiago, 27 Phil. 483.
[33] Dec. Sup. Ct. of Spain, May 5, 1884; Viada, 3 Cod. Pen. 428.
[34] Dec. Sup. Ct. of Spain, Nov. 22, 1883; Viada, 3 Cod. Pen. 498.
[35] U. S. vs. Barambañgan, 34 Phil. 645.

the misappropriation thereof, is guilty of theft, if the goods are thereby lost to the owner.[36]

An official having only a qualified charge of property, without the right to part with physical possession of it except upon written orders from his immediate superior, the person accountable for it to the Government and improperly disposing of it without orders is guilty of theft.[37]

A person finding personal property which is not treasure, must return it to its former possessor, or should the latter be unknown, deliver it immediately to the mayor of the town. Failure to deliver it to the mayor does not constitute a crime, nor does it add any element whatever to the crime defined in par. 1, Art. 308 of the Penal Code. The finder can be properly charged with theft only when he knows or learns who the owner is and still continues to retain possession of the property.[38]

The attempt on the part of the defendant to collect the amount due on certain checks, when he knew who the owner was, amounts to an appropriation of the checks, and he is therefore guilty of the crime of larceny.[39] The amount which such documents represent serves as the basis for grading the penalty.[40] In measuring the value of commercial paper, its value to the owner should be considered as its real value.[41]

2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him;[42] and

This paragraph refers to those persons who after having maliciously damaged or destroyed the property of another shall remove or make use of the thing damaged.

3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and, without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.[43]

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[36] People vs. Tantoco, 44 Phil. 66.
[37] U. S. vs. Webster, 6 Phil. 393.
[38] U. S. vs. Cerna et al., 21 Phil. 144.
[39] Par. 1, Art. 308, Pen. Cod.; U. S. vs. Comis, 7 Phil. 332.
[40] U. S. vs. Tan Lenjua, 1 Phil. 38.
[41] U. S. vs. Wickersham, 20 Phil. 440; Dec. Sup. Ct. of Spain, April 23, 1888; U. S. vs. Raboy, 25 Phil. 1.
[42] Similar to the provisions of par. 3 of Art. 517 of the old Penal Code.
[43] Similar to the provisions of Arts. 519 and 593, par. 1, of the old Penal Code.

Art. 309. PENALTIES. — Any person guilty of theft shall be punished by:

1. The penalty of prisión mayor **in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed** prisión mayor **or** reclusión temporal, **as the case may be.**

Prisión mayor in its minimum and medium periods:
Minimum: From 6 years and 1 day to 7 years and 4 months;
Medium: From 7 years, 4 months and 1 day to 8 years and 4 months;
Maximum: From 8 years, 4 months and 1 day to 10 years.

2. The penalty of prisión correccional **in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.**

Prisión correccional in its medium and maximum periods:
Minimum: From 2 years, 6 months and 21 days to 4 years, 9 months and 10 days;
Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;
Maximum: From 4 years, 9 months and 11 days to 6 years.

3. The penalty of prisión correccional **in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.**

Prisión correccional in its minimum and medium periods:
Minimum: From 6 months and 1 day to 1 year 8 months and 20 days;
Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;
Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

4. Arresto mayor **in its medium period to** prisión correccional **in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.**

Arresto mayor in its medium period to **prisión correccional** in its minimum period:
Minimum: From 2 months and 1 day to 4 months;
Medium: From 4 months and 1 day to 6 months;
Maximum: From 6 months and 1 day to 2 years and 4 months.

5. Arresto mayor **to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.**

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months and 20 days;
Medium: From 2 months and 21 days to 4 months and 10 days;
Maximum: From 4 months and 11 days to 6 months.

6. Arresto mayor **in its minimum and medium periods, if such value does not exceed 5 pesos.**

Arresto mayor in its minimum and medium periods:
Minimum: From 1 month and 1 day to 2 months and 3 days;
Medium: From 2 months and 4 days to 3 months and 6 days;
Maximum: From 3 months and 7 days to 4 months and 10 days.

7. Arresto menor **or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provi-**

sions of any of the five preceding subdivisions shall be made applicable.

Arresto menor:
Minimum: From 1 to 10 days;
Medium: From 11 to 20 days;
Maximum: From 21 to 30 days.

There are three requisites here: (1) that the offender committed the crime in an enclosed estate or a field where trespass is forbidden or which belongs to another, without the consent of its owner; (2) that the stolen property be game, fish, fruits, cereal, or other forest or farm products; and (3) that the value of the stolen property does not exceed five pesos.

8. Arresto menor in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

Arresto menor in its minimum period:
Minimum: From 1 to 3 days;
Medium: From 4 to 6 days;
Maximum: From 7 to 10 days.

Art. 310. QUALIFIED THEFT.—The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter, or large cattle or consists of coconuts taken from the premises of a plantation, or fish taken from a fishpond or fishery.[44]

Under the provisions of the old Penal Code, Article 592, par. 1, the stealing of fruits (including coconuts of course), grains, etc., provided the offender ate them on the spot, was a misde-

[44] Based on the provisions of Art. 520 of the old Penal Code as amended by Commonwealth Acts Nos. 273 and 417, and by R. A. No. 120.

meanor only, punishable by not less than 1 nor more than 15 days. The present Article, however, does not make any exception in favor of those who steal coconuts for the purpose of eating them on the spot.

It would appear somewhat harsh to convict a person of the crime of qualified theft for having taken and eaten on the spot one coconut.

DOMESTIC THEFT.—Domestic theft is the theft committed by a servant in the house where he is employed as such.[45]

The case of a servant who runs away with the money which his master gave him to buy something is also domestic theft.[46]

The case of a servant who opens with a false key a locked box belonging to his master and steals and takes away its contents is likewise domestic theft, and not robbery.[47]

But a stranger who cooperates with a servant in the commission of the domestic theft is responsible only for simple theft.[48]

THEFT WITH SERIOUS ABUSE OF CONFIDENCE; DISTINGUISHED FROM MISAPPROPRIATION OR ESTAFA.—The crime of **estafa** or misappropriation described in Art. 315, subsection 1, par. (b), may easily be confused with or mistaken for the crime of theft qualified by abuse of confidence. In both offenses, the offender **receives** the thing from the victim and **misapplies** the same to his own personal use or benefit. In the crime of misappropriation described in Art. 315, subsection 1, par. (b), however, the offender receives the thing through any of the four specific transactions described therein, to wit: **in trust, or on commission, or for administration, or under any other circumstance involving the duty to make delivery of or to return the thing.** Whereas, in the crime of theft qualified by abuse of confidence, the delivery of the thing to the culprit is **not** preceded by any of the above-mentioned conditions. If the conveyance of the thing by the owner to the culprit is not preceded by any of the above-mentioned agreements, the latter acquires only the **physical** and not the **juridical** possession of the thing, and should he run away with the same, he is virtually taking it away without the consent of the owner and is, therefore, guilty of theft. On the other hand, if the delivery of the thing is **preceded** by any of such agreements, the culprit acquires not only the physical, but also the juridical possession of the thing, and if he misapplies the same to his own personal use or benefit, he is guilty of misappropriation or **estafa.**

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[45] Dec. Sup. Ct. of Spain, December 2, 1872; Viada, 3 Cod. Pen. 444.
[46] Dec. Sup. Ct. of Spain, May 25, 1874; Viada, 3 Cod. Pen. 445.
[47] Dec. Sup. Ct. of Spain, July 7, 1881; Viada, 3 Cod. Pen. 446.
[48] Dec. Sup. Ct. of Spain, July 1, 1887; Viada, 3 Cod. Pen. 447.

The following are examples of theft qualified by abuse of confidence instead of misappropriation or **estafa:**

The teller of a bank, who, with grave abuse of confidence, removes and appropriates to his own use the money in his possession without the consent of the bank, is guilty of the crime of qualified theft defined in this Article, for the reason that there is a taking or **apoderamiento** contemplated therein. The money in such case is in the possession of the teller as the receiving clerk of the bank and as such, therefore, his possession is the possession of the bank.[49]

A guest, who, after having been furnished with lodging, takes away and steals goods belonging to his host, commits the crime of theft with serious breach of confidence, that is, of qualified theft under the provisions of this paragraph.[50]

So is the shepherd who steals sheep confided into his care and custody likewise guilty of qualified theft with serious abuse of confidence.[51]

The qualifying circumstance of breach of confidence, which in regard to the principal justifies the imposition of a penalty one degree higher than that prescribed for theft, does not apply to an accomplice who is not in confidential relations with the offended party.[52]

A coachman who absconds with the property of a relative of his employer who is living with such employer as a member of the family should receive the penalty next higher in degree than that prescribed in Art. 309 of this Code.[53]

Suppose that the stolen property is a carabao valued at ₱100. According to the value of the thing, the case comes under par. 4 of Art. 309, and had it not been for the circumstance that the thing classified is cattle, the penalty would have been **arresto mayor** in its medium period to **prisión correccional** in its minimum period. Now, because the stolen property is a **carabao**, the penalty to be imposed is that next higher in degree, that is, **prisión correccional** in its medium period to **prisión mayor** in its minimum period (from 2 years, 4 months and 1 day to 8 years).

LARGE CATTLE DEFINED.—For the purpose of this Article the term "large cattle" shall be held to include carabaos, horses, mules, asses, and all members of the bovine family.

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[49] People vs. Locson, 57 Phil. 325.
[50] Dec. Sup. Ct. of Spain, October 15, 1872; Viada, 3 Cod. Pen. 448.
[51] Dec. Sup. Ct. of Spain, March 26, 1881; Viada, 3 Cod. Pen. 449.
[52] People vs. Valdellon, 46 Phil. 245.
[53] U. S. vs. Lescano, 2 Phil. 47.

Art. 311. THEFT OF THE PROPERTY OF THE NATIONAL LIBRARY AND NATIONAL MUSEUM.— If the property stolen be any property of the National Library or of the National Museum, the penalty shall be arresto mayor **or a fine ranging from 200 to 500 pesos, or both, unless a higher penalty should be provided under other provisions of this Code, in which case, the offender shall be punished by such higher penalty.**[54]

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months and 20 days;
Medium: From 2 months and 21 days to 4 months and 10 days;
Maximum: From 4 months and 11 days to 6 months.

The provisions of Act 2293 cover not only the stealing and taking away of objects belonging to the Philippine National Library, but likewise the wanton mutilation or destruction thereof.

Such wanton mutilation or destruction is also penalized by Art. 238 of this Code.

[54] Similar to the provisions of Section 1 of Act 2293 of the Philippine Legislature.

CHAPTER FOUR

USURPATION

Art. 312. OCCUPATION OF REAL PROPERTY OR USURPATION OF REAL RIGHTS IN PROPERTY.—Any person who, by means of violence against or intimidation of persons, shall take possession of any real property or shall usurp any real rights in property belonging to another, in addition to the penalty incurred for the acts of violence executed by him, shall be punished by a fine of from 50 to 100 per centum of the gain which he shall have obtained, but not less than 75 pesos.

If the value of the gain cannot be ascertained, a fine of from 200 to 500 pesos shall be imposed.[1]

REQUISITES OF THE OFFENSE.—There are three requisites in this offense: (a) occupation of some real property or usurpation of real rights; (b) that the property occupied belongs to another; and (c) that the occupation or usurpation be done with violence or intimidation against the person of the offended party.

ACTS CONSTITUTING USURPATION.—In order, therefore, to sustain a conviction for the crime of usurpation, the proof must show that the real property occupied or usurped belongs not to the occupant or usurper, but to some third person, and that the possession of the usurper was obtained by means of intimidation or violence done to the person deprived of the possession of the property.[2]

A right to the use of water granted to a person is a real right within the meaning of this Article, and as such, may be the subject-matter of usurpation.[3]

Art. 313. ALTERING BOUNDARIES OR LANDMARKS.—Any person who shall alter the boundary marks or monuments of towns, provinces, or estates, or

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[1] Same as Art. 521 of the old Penal Code.
[2] U. S. vs. Lozada, 2 Phil. 496. See U. S. vs. Fuster, 2 Phil. 695.
[3] Dec. Sup. Ct. of Spain, Oct. 3, 1883; Viada, 3 Cod. Pen. 460-461.

any other marks intended to designate the boundaries of the same, shall be punished by arresto menor **or a fine not exceeding 100 pesos, or both.**[4]

Arresto menor:
Minimum: From 1 to 10 days;
Medium: From 11 to 20 days;
Maximum: From 21 to 30 days.

The present Article, however, unlike the old Penal Code, does not require fraudulent intent for the crime to exist. The crime is committed and consummated, whatever may be the intention of the offender, so long as there has been removal of marks or monuments of towns, provinces, or estates.

Sec. 2753 of the Administrative Code makes it an offense for any person to deface, destroy, or remove any monument placed by the Bureau of Lands, or to alter the location of any such monument.

[4] Similar to the first paragraph of Art. 522 of the old Penal Code.

CHAPTER FIVE

CULPABLE INSOLVENCY

Art. 314. FRAUDULENT INSOLVENCY. — Any person who shall abscond with his property to the prejudice of his creditors, shall suffer the penalty of prisión mayor, **if he be a merchant, and the penalty of** prisión correccional **in its maximum period to** prisión mayor **in its medium period, if he be not a merchant.**[1]

Prisión mayor.
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

Prisión correccional in its maximum period to **prisión mayor** in its medium period:
Minimum: From 4 years, 2 months and 1 day to 6 years;
Medium: From 6 years and 1 day to 8 years;
Maximum: From 8 years and 1 day to 10 years.

THE PROVISION OF THIS ARTICLE NOT INCONSISTENT WITH SEC. 11 OF THE INSOLVENCY LAW.—The question of whether or not this Article is inconsistent with or repugnant to Section 71 of Act No. 1965, commonly known as the Insolvency Law, was decided by the Philippine Supreme Court in the case of **People vs. Chong Chuy Limgobo and Lim Kan,** 45 Phil. 372. In this case, the defendant, a businessman, maliciously absconded with all of his property, simulating a conveyance and transfer of all his business in favor of his co-accused, who was his brother, for the sole purpose of defrauding his lawful creditors who, by reason of said simulation of sale, were prejudiced in their interests, because they would not be able to collect their credits. The Supreme Court held that said facts constituted a violation of this Article. The unexpected disappearance of the stock of the company which was at the time on the verge of insolvency, and of which company the accused was then the managing partner falls within the purview of this Article. **(People vs. Ong Juat Suy,** G. R. No. 42005, April 12, 1935.)

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[1] Same as Art. 523 of the old Penal Code.

DISTINCTION BETWEEN THE PROVISIONS OF THE INSOLVENCY LAW AND FRAUDULENT INSOLVENCY.—In drawing the distinction between the provisions of the present Article and those of Section 71 of the Insolvency Law (Act 1965), the same Court said:

"The latter requires for its application that the criminal act should have been committed after the institution of insolvency proceedings, whereas the former contains no such requirements, nor makes it necessary that the defendant should have been adjudged bankrupt or insolvent, as was held by the Supreme Court of Spain.

"According to the decision of the Supreme Court of Spain of June 10, 1885, the crime penalized by this Article is committed by any means whereby any property of the debtor is made to disappear, for the purpose of evading the fulfillment of the obligations and liabilities contracted with one or more creditors to the damage of the latter, it being not an essential element of said crime that the debtor should depart or abscond in some way at the same time that he abstracted said property, because neither the meaning of the word 'concealment' authorizes such an interpretation, nor is it in line with the procedure provided in the compiled Spanish legislation. Neither is it necessary that the property concealed be personal property so that it may be physically concealed, as was held by the Supreme Court of Spain in decisions of October 29, 1886, April 6, 1897, and February 28, 1906."

CHAPTER SIX

SWINDLING AND OTHER DECEITS

Art. 315. SWINDLING (ESTAFA). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

SWINDLING AND OTHER DECEITS.—Under the generic denomination of **estafa** or swindling, as translated into English, the Revised Penal Code has grouped together not only the crime of misappropriation or conversion of another's property through serious abuse of confidence or unfaithfulness (the subject matter of subsection 1, paragraphs **a, b** and **c** of the present Article) but also all other cases of obtaining money through fraud, false pretenses or deceit (the subject matter of sub-section 2, paragraphs **a, b, c, d,** and **e,** and subsection 3, paragraphs **a, b,** and **c,** of Article 315, and also of Articles 316, 317, and 318).

DISTINGUISHING FEATURES BETWEEN ESTAFA AND OTHER CRIMES AGAINST PROPERTY.—A swindler never employs force or intimidation against the person of the owner of the property. But instead of the elemental force or violence, which is the characteristic feature of robbery, a swindler uses ingenious and shrewd means consisting chiefly of disguising a lie or falsehood with some color of truth for the purpose of inducing the victim to part with something belonging to him. Furthermore, a swindler ordinarily receives the thing from the victim, and in this respect, it differs from theft, wherein the offender usually **takes** the thing from its owner.

The only element which **estafa** has in common with robbery and theft is the **animus lucrandi,** or intent of gain.

ELEMENTS OF THE CRIME OF ESTAFA.—As a general rule, there are two indispensable elements in the crime of **estafa,** namely: (a) deceit or abuse of confidence, and (b) damage or prejudice capable of pecuniary estimation.[1]

Without damage or any prejudice capable of pecuniary estimation, there can be no **estafa,** even if there be deceit, for the reason that the value of the damage or the prejudice is the basis for the determination of the penalty.[2]

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[1] U. S. vs. Rivera, 23 Phil. 383; U. S. vs. Fernandez, 9 Phil. 199; People vs. Abana, 76 Phil. 1.

[2] U. S. vs. Leaño, 6 Phil. 368; U. S. vs. Fernandez, **supra.**

The damage or prejudice, however, need not be effective, for a mere disturbance in the property rights of the offended party will be deemed to be a sufficient element of **estafa.**[3] Hence, the receipt through deceit of a check payable to "cash" is estafa, even if said check had never been cashed, inasmuch as during the time the accused had said check in his possession, the offended party could not dispose of the amount thereof and consequently suffered at least temporary prejudice.[4]

In the cases of estafa, the seriousness of the crime is not determined by the value which the offender fails to return after the criminal action has been instituted but by the value which he fails to deliver **at the time the obligation to do so arose and before** criminal action was instituted. Hence, where an offender failed to return ₱3,722.75 for which he was prosecuted, and later delivered ₱1,053, thus reducing his civil liability to ₱2,669.75, the penalty to be imposed should be based on the former value.[5]

1st. The penalty of prisión correccional **in its maximum period to** prisión mayor **in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed** prisión mayor **or** reclusión temporal, **as the case may be.**

Prisión correccional in its maximum period to **Prisión mayor** in its minimum period:

Minimum: From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days;

Medium: From 5 years, 5 months and 11 days to 6 years, 8 months and 20 days;

Maximum: From 6 years, 8 months and 21 days to 8 years.

[3] U. S. vs. Malong, 36 Phil. 821.
[4] People vs. Santiago, 54 Phil. 814.
[5] People vs. Pagayon, 40 O. G. Supp. (13th) 133.

2nd. The penalty of prisión correccional **in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos.**

Prisión correccional in its minimum and medium periods:
Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;
Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;
Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

3rd. The penalty of arresto mayor **in its maximum period to** prisión correccional **in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos.**

Arresto mayor in its maximum period to **prisión correccional** in its minimum period:
Minimum: From 4 months and 1 day to 1 year;
Medium: From 1 year and 1 day to 1 year and 8 months;
Maximum: From 1 year, 8 months and 1 day to 2 years and 4 months.

4th. By arresto mayor **in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:**

1. With unfaithfulness or abuse of confidence, namely:

(a) By altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration;

ESTAFA THROUGH UNFAITHFULNESS OR ABUSE OF CONFIDENCE; ITS ELEMENTS: From a cursory reading of paragraph (a), subsection 1, of Article 315, it can readily be inferred that there are two indispensable elements in this particular type of **estafa**, namely: (a) that the offender be in a legal obliga-

tion to deliver to the victim some article or goods, and (b) that such an offender should have altered, to the prejudice of the victim, the **substance** or **quality** of such article or goods.

Since the alteration of the substance, quantity or quality must produce or cause damage to the victim, it is understood that the alteration must be made with a view to lower the substance, or reduce the quality or quantity of the thing to be delivered.

Thus for example: A person who sells to another molasses instead of opium, for which he was paid, is undoubtedly defrauding the buyer in the **substance** of a thing which he is in duty bound to deliver by virtue of an obligation; and as such, is guilty of estafa under this paragraph.[6] Likewise a person who, after having agreed to the sale of a certain quantity of goods—as 100 cavanes of palay—and having received the payment therefor, delivers to the purchaser a lesser amount of the goods, is undoubtedly committing estafa under this paragraph for having altered the **quantity** of the thing he is in duty bound to deliver.

DISTINGUISH ESTAFA UNDER THIS PARAGRAPH FROM VIOLATION OF PURE FOOD LAW.—When the fraud committed consists in the adulteration or mixing of some extraneous substance in an article of foods so as to lower its quality and constituents, the provision of the Pure Food Law should prevail.[7]

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other circumstance involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property;[8]

MISAPPROPRIATION OR ESTAFA THROUGH CONVERSION OF ANOTHER'S PROPERTY; ITS INDISPENSABLE REQUISITES.—The first requisite of **estafa** penalized under this paragraph is that the offender be in possession of the thing conveyed by the offended party, this being one of the distinguishing features between this kind of **estafa** and theft. The delivery of the thing should be made for the purpose of transmitting the juridical possession thereof. For this reason the crime committed by

[6] People vs. Manansala, 58 Phil. 796.
[7] Section 2698 et seq., Administrative Code.
[8] Similar to par. 6 of Art. 535 of the old Penal Code.

one who, having received a certain article from another for the purpose of examining it, runs away with the thing, is **theft** and not **estafa**, because the delivery of the thing under such circumstance does not imply any purpose to convey the possession thereof.[9]

The second requisite is that the thing delivered consists of money, goods, or other personal property.

The third requisite is that the agreement between the offended party and the offender be of such a nature as to transmit only the **possession** of the thing, but not its **ownership**. For this reason the thing must have been conveyed or delivered either for **safe-keeping**, on **commission**, for **administration**, or under any other circumstance giving rise to the obligation to make delivery of or to return the same.[10]

And the fourth requisite consists in the conversion or misappropriation of the thing by whomever received it under such an agreement thus obliging him to make restitution thereof, or in a denial of the fact that he received it.

The fact that the accused is bonded does not relieve him from criminal liability.[11]

ELEMENT OF DECEIT MAY CO-EXIST WITH ABUSE OF CONFIDENCE.—The following is an example of **estafa** under this paragraph wherein deceit enters as an element, besides, of course, the abuse of confidence: If a person intervenes as a mediator and voluntary manager (**gestor**) for the execution of certain contracts of sale between the vendor and the purchaser who have not yet entered into any direct relationship whatever between themselves for the perfection and consummation of the contracts, except by means of said intermediary agent; and if, by carrying on mediatory negotiations between both contracting parties, he succeeds in bringing about the consummation of the sale at a price greater than that stated by him to the vendor and owner of the land, concealing from him with fraud and deceit the true and greater price obtained, and after having gotten the vendor to sign the deeds of sale, with the lines therein intended for the insertion of the prices of the contract left in blank, appropriates to himself the rest of the price he receives from the purchaser which constitutes the difference between the true and greater price he receives from the purchaser and the lesser price he delivers fraudulently and **deceitfully** to the vendor, then such mediator and voluntary

[9] Groizard, 7 Cod. Pen. 169. See also U. S. vs. Webster, 6 Phil. 393; U. S. vs. De Vera, 43 Phil. 1000. See also People vs. Trinidad, 50 Phil. 65.

[10] See U. S. vs. Manlimos, 11 Phil. 547; U. S. vs. Villareal, 27 Phil. 481; U. S. vs. Camara, 28 Phil. 238.

[11] People vs. Leachon, 56 Phil. 737.

manager commits the crime of **estafa** provided for in this paragraph of Art. 315 of the Penal Code, for he has incurred criminal liability by retaining a part of the sum so collected and appropriating it to himself for his own benefit and to the prejudice of the vendor, who has not authorized him to retain such part of the price of the sale.[12]

Another illustration of **estafa** under this paragraph wherein deceit is an integral element is the following: Supposing an agent has been given a certain sum of money for travelling expenses to be incurred by him while performing certain services which he was instructed to do. A mere failure on the part of the agent to perform the work entrusted to him after having appropriated for himself the money is not sufficient, **a priori**, to conclude that he committed **estafa**. The crime of **estafa** would exist in this case if it be proved that the offender **did not** travel at all in connection with the performance of his duty, and still misappropriated for his own use the money received by him; that is, if it be proven that the offender, when he misapplied the money for his own use, had acted with **fraudulent intent**.[13]

INTENT TO APPROPRIATE, INDISPENSABLE ELEMENT. —In determining whether conversion or misappropriation exists, it is necessary that the **intent to appropriate** be clearly established. Thus, momentary use by an agent of funds belonging to his principal does not constitute **estafa**, if it be clearly shown that the agent, in so using the funds, did not have intention of appropriating them for his own use.[14]

For this reason, a person who receives money to be applied to a particular purpose is guilty of **estafa** if he fraudulently converts or misappropriates the same to the prejudice of the person from whom he received it. However, mere delay in the fulfillment of the trust, or a refusal upon justifiable grounds to apply the money to the destined purpose, involves only civil liability.[15]

Upon the question as to what circumstances will justify a party so receiving money in withholding the application of the same to the agreed purpose, no fixed rule is announced; and it is stated that each case should be decided on its own particular facts, reference being had primarily to the good or bad faith exhibited by the accused in withholding the money from the use to which it was intended to be applied.

For this reason, a conviction for **estafa** under this paragraph of Art. 315 cannot be sustained against a person, be he agent,

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[12] U. S. vs. Lim, 36 Phil. 682.
[13] Groizard, 7 Cod. Pen. 175.
[14] Viada, 3 Cod. Pen. 515-516; Groizard, 7 Cod. Pen. 175.
[15] U. S. vs. Rastrollo, 1 Phil. 22.

partner, or what not—who has in good faith retained the property committed to his care for the purpose of necessary self-protection against his principal in civil controversies arising between the two with reference to the same or related matter.[16]

ESTAFA OR MISAPPROPRIATION OF GOODS OR MONEY RECEIVED IN TRUST.—The fact that a person, after having been duly appointed as a member of a committee for the purpose of making collections for the construction of a public school building, and after having made such collections for said purpose, failed and refused to deliver the amount collected to the proper authorities and later denied that he had received said sum for said purpose or for any other purpose, is also **estafa** under this paragraph.[17]

ESTAFA OR MISAPPROPRIATION OF GOODS RECEIVED ON COMMISSION.—As a general rule, a person who receives from another goods or articles on commission is guilty of **estafa** if he fails either to return the goods or pay their value, it being no good excuse or defense of the offender to allege that he, in his turn, gave the goods to another person who lost them, or in whose possession they were stolen.[18]

However, since misappropriation is the gist of the offense, the Supreme Court, in two other cases, qualified the above doctrine by holding that a person who takes jewelry to sell on commission for cash, and sells the same on credit, and who, taking promissory notes for the purchase price thereof, tenders said notes to the owner of the jewelry, does not commit **estafa.** Such sale on credit does not constitute a conversion of the property.[19]

NATURE OF COMMISSION.—The **right** to a commission does not make one a joint owner with the right to the money collected, but only establishes the relation of principal and agent. The agent is under obligation to turn over to the principal the amount collected minus his commission. If such agent unlawfully retains more than his commission, he is guilty of **estafa** under this paragraph.[20]

ESTAFA OR MISAPPROPRIATION OF GOODS OR MONEY RECEIVED FOR ADMINISTRATION.—The manager of a Corporation, for instance, who would dispose of, for his own personal benefit, the property of the firm under his charge, would be guilty of **estafa** under this paragraph. For this offense to exist, it is

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[16] U. S. vs. Berbari, 42 Phil. 152. See also the case of U. S. vs. Santiago, 27 Phil. 408.
[17] U. S. vs. Villarta, 31 Phil. 335. See also the case of U. S. vs. Gallego, 10 Phil. 222.
[18] U. S. vs. Guzman, 1 Phil. 138; U. S. vs. Panes, 37 Phil. 116.
[19] U. S. vs. Morales, 15 Phil. 236; U. S. vs. Bleibel, 34 Phil. 227.
[20] U. S. vs. Reyes, 36 Phil. 791.

necessary that the offender be clothed with authority to dispose of or to exercise some dominical acts over the things entrusted to his custody; otherwise, if the offender's power were only clerical or ministerial, like that of a caretaker or a warehouseman, for instance, the offense committed would be theft, qualified by abuse of confidence instead of **estafa** under this paragraph.

Thus, where a bank official lends money of the bank upon the purported security of a warehouse receipt which is known to him to be fictitious, he may be declared guilty of **estafa** under this paragraph, and the person who induces the official to lend the bank's money upon such fictitious receipt, and thus colludes in the embezzlement, may be convicted as joint principal in the same offense.[21]

ESTAFA OR MISAPPROPRIATION OF GOODS OR MONEY RECEIVED UNDER ANY OTHER CIRCUMSTANCE INVOLVING THE DUTY TO MAKE DELIVERY OF OR TO RETURN THE SAME.—This particular type of **estafa** refers, among others, to transactions of the nature of **commodatum**. For instance, if a person borrows a book from another and, instead of returning it to the owner, sells the same for his own benefit, he would be guilty of **estafa** under this paragraph. Likewise a person who took possession of a certain box of **sinamay**, delivered to him by mistake, converted it to his own use, and upon demand being made some days later by the owner of the goods or his representative, denied that he had received it, and declared that he knew nothing about it, was guilty of **estafa** under this paragraph.[22]

A public official who, in his private capacity, receives money upon his promise to pay it in the municipal treasury, and fails to make such payment, is guilty of **estafa** and is punishable, not as a public official under Art. 217 of this Code, but as a private individual under this paragraph.[23]

There has been some doubt as to whether a person who sells or disposes of an article delivered to him by his debtor as a pledge may be guilty of **estafa**. Groizard,[24] however, believes that such an act constitutes **estafa**, regardless of the circumstance of whether the value of the pledge is in excess or not of the value of the debt. We believe this opinion is sound for the reason that a creditor holding an article belonging to his debtor as pledge is under **obligation** to surrender and return such article to the latter when the debt is paid, or in case of default in payment

[21] People vs. Concepcion, 44 Phil. 544.
[22] U. S. vs. Yap Tian Jong, 34 Phil. 10.
[23] U. S. vs. Casin, 8 Phil. 589; U. S. vs. Dacuycuy, 9 Phil. 84; U. S. vs. Figueroa, 22 Phil. 269.
[24] 7 Cod. Pen. 174-175.

to have the thing sold and to collect his credit from the proceeds of the sale.

But a pledgee named in a pledge executed in the form of a bill of sale, who fails to take possession of the property pledged, does not acquire any lien upon said property. For this reason, where a bill of sale of personal property is executed as security for a loan and the borrower remains in possession of the property, the subsequent sale thereof to a certain person does not constitute the crime of **estafa.**[25]

When two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves, a contract is formed which is called partnership.[26] According to paragraph (b), subsec. 2, of this Article, those are guilty of **estafa** "who, to the prejudice of another, shall appropriate or misapply any money, goods, or any kind of personal property which they may have received as a deposit, or on commission, or for administration, or in any other character producing the obligation to deliver or return the same" (as, for example, in **commodatum, precarium,** and other unilateral contracts which require the return of the same thing received), this paragraph does not include money received for a partnership; otherwise the result would be that if the partnership, instead of obtaining profits, suffered losses, as it could not be held liable civilly for the share of the capitalist partner who reserved the ownership of the money brought in by him, it would have to answer to the charge of **estafa,** for which it would be sufficient to argue that the partnership had received the money **under obligation to return it.** Therefore, a mere failure on the part of an industrial partner to return to the capitalist partner the capital brought into the partnership by the latter is not an act constituting the crime of **estafa** as defined in this paragraph.[27]

The above doctrine seems to convey the idea, therefore, that mere failure to liquidate does not constitute **estafa.** But if there is present an element of fraudulent appropriation by the industrial partner of money delivered to him with specific instructions for the use of the partnership, then **estafa** is committed under this paragraph. The following case is an illustration of this rule: One Isabelo de la Cruz and Maximo Ponce formed a partnership for the purpose of purchasing and selling pigs, Maximo Ponce being the responsible manager and Isabelo de la Cruz, the industrial partner. On January 28, 1923, Maximo Ponce delivered the sum of ₱2,999 to Isabelo de la Cruz with instructions to go to Villasis,

[25] U. S. vs. Terrell, 2 Phil. 222.
[26] Art. 1665, Civil Code.
[27] U. S. vs. Clarin, 17 Phil. 84.

Pangasinan, and, after paying various debts to persons in that municipality, to invest the remainder of the money in the purchase of pigs. Isabelo de la Cruz failed to make the payment of the debts, failed to purchase the pigs, and appropriated the money for his own use. **Held:** Such acts constituted the crime of **estafa** under this paragraph of Art. 315, the doctrine in the case of **U. S. vs. Clarin** being inapplicable. It was held in the case of Clarin that the failure on the part of an industrial partner to return to the capitalist partner the capital brought into the partnership by the latter, does not constitute the crime of **estafa**. But it will be noted that in that case there was a mere failure on the part of the industrial partner to liquidate the affairs of the partnership and pay to the persons interested the amount respectively due them. The **estafa** in the present case does not consist in the failure to pay over the profit, but consists in the fraudulent appropriation by one of the partners of money which had been delivered to him with specific directions to apply it to the uses of the partnership.[28]

But a policeman who fails to return found property to its true owner upon information of the finder, and misappropriates some, is guilty of theft, and not **estafa**.[29]

ESTAFA OR MISAPPROPRIATION OF MONEY OR GOODS WHICH THE CULPRIT DENIES HAVING RECEIVED.—The last type of **estafa** described in this paragraph by the expression "or by denying having received such money, goods, or other property" has given rise to elaborate arguments and conflicting opinions. Viada believes that a debtor who denies having received the money loaned to him does not commit the crime of **estafa**, he being of the opinion that the expression "having received such money, etc." refers to agreements of safe-keeping, commission, administration, or any other circumstances giving rise to the obligation to return the goods.[30] The Supreme Court of Spain, in its decisions of February 20, 1885, and October 14, 1875, held that a person who denied having received money loaned to him by his creditor committed of **estafa** under the last sentence of this paragraph.[31]

Our Supreme Court apparently dissented from the Supreme Court of Spain and followed the opinion of Viada, when it held that one who refuses to pay an indebtedness or denies its existence, when the former relation between the parties was merely that of creditor and debtor, is not liable for the crime of **estafa** under

[28] People vs. De la Cruz, G. R. No. 21732.
[29] People vs. Avila, 44 Phil. 720.
[30] 3 Cod. Pen. 517.
[31] Viada, 3 Cod. Pen. 518-19.

the provisions of the Penal Code, where the evidence discloses no relation of any of the classes of bailments, agency or fidelity.[32]

In a case falling under the provisions of this paragraph we are now commenting upon, it is immaterial that the supposed offended party named in the information suffered no loss or damage; or that the accused gave surety for the fulfillment of his obligation.[33]

(c) By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person.[34]

INDISPENSABLE REQUISITES OF THE OFFENSE.—Two requisites are present in the **estafa** penalized under this paragraph: (1) That the paper or document bearing the signature of the offended party be in blank. This is necessary because, if the document be already written out, and some changes or alterations are thereafter made, the crime committed would be falsification and not **estafa** under this paragraph. (2) That on said blank paper or document, above the signature of the offended party, the offender has written some stipulations or statements which would create liability or cause damage to the interests of the offended party, that is, the person whose signature appears on said blank paper or document, or of any third person. It is also essential that the person who signed the document or paper in blank should have **delivered** it to the offender, otherwise the penalty provided for in Art. 172 would be applicable.

EXAMPLE.—Such will be the case of a person who leaves in the possession of a friend of his a blank paper with his signature with a request to the latter to make with the paper bearing his signature a receipt for a future payment to be made by a debtor, but instead of issuing a receipt he draws up thereon a promissory note in his favor.[35]

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property,

[32] U. S. vs. Ibañez, 19 Phil. 559. See also U. S. vs. Villareal, 27 Phil. 481.
[33] People vs. Yu Chai Ho, 53 Phil. 874.
[34] Similar to par. 6 of Art. 535 of the old Penal Code.
[35] Viada, 3 Cod. Pen. 545.

credit, agency, business, or imaginary transactions, or by means of other similar deceits.[36]

GENERAL CHARACTERISTIC OF ESTAFA THROUGH FALSE PRETENSES.—This is the class of **estafa** committed through fraudulent means, to wit, the use of fictitious names, etc., in order to obtain gain. The last sentence of this paragraph which reads: "or by means of other similar deceits" is sufficiently broad, and, as a matter of fact, many cases of **estafa** have been instituted on the strength of this provision of the Penal Code.

As a general rule, in order to constitute deceit, there must be a false representation to a matter of fact, a **positive assertion** of **falsehood**, otherwise the crime of **estafa** cannot be said to have been committed. Thus, the fact that the defendant represented to the offended party, when trying to obtain a loan, that the transaction was made on behalf of the estate of which the defendant was an administrator, does not amount to a deceit, although the defendant did not apply all the money borrowed from the offended party to the expenses of the estate, it appearing that the defendant did not state that he was authorized to borrow money for the estate.[37]

It should be taken into account, however, that in order that the crime of **estafa** exist under this paragraph of Art. 315, it is necessary that the false statement or fraudulent representation be made prior to, or at least, simultaneously with, the delivery of the thing, it being essential that such false statement or fraudulent representation constitutes the very cause or the only motive which induces the offended party to part with the thing. In the absence of such requisite, any subsequent act of an accused, however fraudulent and suspicious it might appear, if same has not been executed prior to, or at least, simultaneously with the delivery of the thing, cannot serve as a basis for prosecution for the crime of **estafa** under this paragraph. Thus, the mere fact that a person has received from another a certain sum of money by virtue of an obligation contracted by the former and not complied with by him, to secure a change in the position of a son of the latter so that he might not serve in the Cuban army, does not constitute the crime of **estafa** under this paragraph, according to the decision of the Supreme Court of Spain dated December 31, 1885.[38] The element of deceit in this case should have been proved and established by acts distinct from, and independent of, the mere non-compliance of the promise. The reason is that, from a mere

[36] Similar to paragraph 1 of Article 535 of the old Penal Code.
[37] See U. S. vs. Adriatico, 7 Phil. 187.
[38] Viada, 3 Cod. Pen. 505.

non-compliance of promise, it is hard to determine and infer a priori the criminal intent of the person promising. It is not impossible that when he asked and received the money, he had the intention to render the service contracted by him but, later on, for some reason or another, he changed his mind.

Material injury is not essential in the crime of **estafa**. It is enough that there be a disturbance of personal rights.[39] Thus, when a person, pretending to be an agent, induced the offended party to give him a check for ₱20 as part payment for a filter which was never delivered, such person is guilty of **estafa** even though the check was never cashed. The reason is because, during the time the accused had said check in his possession, the offended party could not dispose of the said amount, and consequently, suffered at least temporary prejudice.[40]

However, those who obtain from a member of a wild tribe any money, property, or thing of value, without adequate consideration, by preying upon his ignorance and superstition, such as alleging and representing to him that a certain piece of paper, which they deliver to him and induce him to accept as the price of a carabao, is an instrument which will make and coin paper and silver money after the lapse of seven Fridays provided he will offer, upon each of said Fridays, appropriate prayers, which representations induce him to part with his carabao without other consideration than said paper, are guilty of **estafa**.[41]

CASES OF ESTAFA THROUGH FALSE PRETENSES.—A person, pretending to be a **procurador judicial** without being lawfully qualified and authorized to act as such, represented a party to a suit in a justice of the peace court, and after having successfully managed the case, collected fees from his "client." This was held to be **estafa** by the Supreme Court for the following reason: "It would seem to be clear that one who, falsely representing his own qualifications, renders a service which the law expressly declares to be unlawful defrauds the person who in good faith receives and pays for such service. In **U. S. vs. Castillo**, 35 Phil. 413, this Court held that a man who obtains the title deeds of another upon the false representation that he is qualified to represent him in litigation in a court of a justice of the peace is guilty of **estafa**.[42]

When the money or property is received by means of fraud

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[39] U. S. vs. Goyenechea, 8 Phil. 117; U. S. vs. Malong, 36 Phil. 821.
[40] People vs. Santiago, 54 Phil. 814.
[41] U. S. vs. De los Reyes et al., 34 Phil. 693. See also U. S. vs. Molina, 38 Phil. 747.
[42] U. S. vs. Durban, 36 Phil. 797. See also U. S. vs. Dedicatoria, 4 Phil. 183.

and false representation, a demand for the return of the same is not necessary in order to constitute the crime of **estafa.**[43]

A title deed may be the subject matter of **estafa.** Thus, where an owner is unlawfully deprived of the title deeds to his real estate by false and fraudulent representation followed by a refusal of the person so obtaining them to return them on demand or to account for them in any way, the crime of **estafa** is committed.[44]

Defendant promised a person prosecuted before a justice of the peace to secure his acquittal for ₱100. Not having ₱100, the offended party delivered to the defendant a horse and was later convicted by the justice. The Court held that the defendant was guilty of **estafa** under this paragraph of Art. 315 of the Penal Code.[45]

A conviction for **estafa** in the sense of obtaining money under false pretenses, contrary to the provisions of subsection 2, par. (a), of Art. 315 of the Penal Code, cannot be had where the person from whom the money is obtained is aware of the fictitious nature of the pretense. In such a case there is no deception.[46]

One who promises an ignorant and unlettered man that he will obtain for him from the Court of Land Registration a certificate of title to his land, and therefore, in pretended fulfillment of said agreement, taking advantage of the ignorance of the other, delivers to him a mere affidavit that the latter is the owner of the land in question and collects from him the sum of ₱150 therefor, the owner relying wholly upon his representations that the document so delivered is in fact a certificate of title to the land duly obtained from the proper court as per said agreement, is guilty of **estafa.**[47]

Defendant, a Chinese merchant, prepared or had prepared an instrument which, upon its face, purported to be a draft for ₱600, drawn by one Lim Chi Hian in favor of Ong Chik Nen and accepted by the defendant, upon the back of which document were placed three "chops" purporting to be the signatures of three indorsers. With the exception of that of the defendant, all other names were fictitious. The alleged draft was sold on behalf of defendant to Gotauco, the prosecuting witness, for ₱590. The latter, upon maturity of defendant's acceptance, presented the instrument for payment and was then informed that defendant had already made a general assignment in favor of creditors. Thereupon defendant was charged with the crime of **estafa.** While upon

[43] U. S. vs. Asensi, 34 Phil. 750.
[44] U. S. vs. Del Castillo, 35 Phil. 413. See also U. S. vs. Kilayko, 34 Phil. 796.
[45] U. S. vs. Añonuevo, 5 Phil. 336.
[46] People vs. Concepcion, 44 Phil. 544.
[47] U. S. vs. Pimentel, 15 Phil. 416.

first impression the instrument would be adjudged a fraud, yet there is a reasonable doubt as to defendant's intention to deceive, on account of the existence of this most reprehensible practice among the Chinese to issue instruments of this character. In the present case the defendant gave full and particular instructions for the preparation of the so-called draft, in the presence and within the hearing of several persons who were in his place of business, and he had frequently prepared and had discounted similar drafts. The conduct of the witness who purchased the instrument was such as to raise a doubt as to whether he was or was not aware of the true nature of the paper which he discounted. **Held:** That, as it has not been proved beyond a reasonable doubt that the transaction involved any false pretense or deceit on the part of the defendant whereby the complaining witness was defrauded, while disapproving the practice of issuing such instruments, the conviction of the defendant for the crime of **estafa** cannot be sustained.[48]

(b) By altering the quality, fineness, or weight of anything pertaining to his art or business.[49]

The provisions of this paragraph are modified by Section 2732 of the Administrative Code in so far as weights and measures sealed and authorized by the Bureau of Internal Revenue are concerned.

(c) By pretending to have bribed any Government employee, without prejudice to the action for defamation which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.[50]

A person who obtains money from another by falsely pretending that with that money he will bribe the doctor in charge of the physical examination of the offended party so as to declare him unfit for compulsory service in the Army is guilty of **estafa** under this paragraph.[51]

(d) By postdating a check, or issuing any check in payment of an obligation, the offender knowing that

[48] U. S. vs. Pau Te Chin, 15 Phil. 507.
[49] Similar to par. 3 of Art. 535 of the old Penal Code.
[50] Similar to the provisions of par. 4 of Art. 535 of the old Penal Code.
[51] Dec. Sup. Ct. of Spain, Nov. 22, 1888; Hidalgo, II Cod. Pen. 795.

at the time he had no funds in the bank, or the funds deposited by him in the bank were not sufficient to cover the amount of the check, and without informing the payee of such circumstances.[52]

REQUISITES OF THE OFFENSE.—As will be seen, there are four requisites in the offense described in this paragraph, namely: (1) postdating or issuing a check in payment of an obligation contracted at the time of the issuance of the check; (2) lack of sufficient funds in the bank to cover the check; (3) knowledge on the part of the offender of such circumstances; and (4) failure of the offender to inform the payee of such circumstances.

CASES OF ESTAFA UNDER THIS PARAGRAPH.—A person who issues a check, without previously making a deposit in the bank sufficient to meet the amount of the check, is guilty of **estafa** under this paragraph.[53]

But an accused who issued a postdated check, believing in good faith that he would be able to deposit in the bank sufficient funds to pay said check when presented for collection, but, contrary to his expectations, was unable to make the necessary deposit, does not commit the crime of **estafa** under this paragraph.[54]

And when the dishonored check has been delivered in payment of a prior debt, the crime of **estafa** is not committed since the deceit, if there was any, in the issuance of the check, did not precede the defraudation.[55]

A check drawn for the purchase price of certain sugar was delivered by the buyer to the seller, with the request that the check should be held for a few days without presentment, and until the drawer could deposit in the account the money which he expected to get from the immediate sale of the sugar. The payee assented and held the check for about a week when, upon receiving notice from the drawer of the check that it might now be presented, he presented it to the bank, and payment was denied for lack of funds. It was held that the information given by the drawer concerning the state of the account when the check was delivered was sufficient to take the case out of (subsection **d** of No. 2 of Article 315) the provision of this paragraph of the Revised Penal Code. The obligation created by the delivery of the check was therefore of a civil nature only, and the offense of **estafa** was not

[52] Based on the provisions of Act 3313 of the Philippine Legislature.
[53] U. S. vs. San Jose, G. R. No. 4956; People vs. Velazco, 42 Phil. 75. See also People vs. Isleta & Topacio Nueno, 61 Phil. 332.
[54] People vs. Villapando, 56 Phil. 31.
[55] People vs. Lilius, 59 Phil. 339.

committed. Subsection "d" of No. 2 of Article 315 of the Revised Penal Code, contemplates not only the issuance of a post-dated check but of any check issued under the conditions there defined. The word "such" in the English translation of this provision is improperly used.[56]

(e) By obtaining any food, refreshment, or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like without paying therefor, with intent to defraud the proprietor or manager thereof, or by obtaining credit at a hotel, inn, restaurant, boarding house, lodging house, or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house, or apartment house after obtaining credit, food, refreshment, or accommodation therein without paying for his food, refreshment or accommodation.[57]

Commonwealth Act No. 157, amending Art. 315, par. 2 of the Revised Penal Code by adding thereto a new subsection, is superfluous and unnecessary, for the simple reason that the acts described therein were, even prior to the enactment of said Act on Nov. 9, 1936, already punishable under the same paragraph of the Revised Penal Code as constructive **estafa**. Thus, according to the Supreme Court of Spain (Dec. of Feb. 16, 1881; Viada, 3 Cod. Pen. 496), the crime committed by a person who enters a cafe or restaurant and, after having taken articles offered therein for sale, goes away without paying for them is **estafa** punishable under Art. 315, par. 2, of the Revised Penal Code. The same offense is committed by a person who travels in a railroad train without paying his fare.[58]

3. Through any of the following fraudulent means:

(a) By inducing another, by means of deceit, to sign any document;[59]

Deceit and injury to another are also the elements of **estafa** under this paragraph.

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[56] People vs. Fernandez, 59 Phil. 615. See also People vs. Quesada, 60 Phil. 515.
[57] Commonwealth Act No. 157, amending Art. 315, par. 2 R. P. C.
[58] Dec. Sup. Ct. of Spain, May 6, 1892; Hidalgo, II Cod. Pen. 773.
[59] Similar to par. 7 of Art. 535 of the old Penal Code.

Thus, to induce illiterate persons to sign a document which they believe to be a power of attorney but which in reality is a bill of sale in favor of the accused is **estafa** under this paragraph and not falsification of a private document. The two essential elements of **estafa**, deceit and injury to the complainant, are present.[60]

(b) By resorting to some fraudulent practice to insure success in a gambling game;[61]

The case of **U. S. vs. Ner**, 18 Phil. 534, offers an example of this kind of **estafa**. The facts were as follows: Agaton Ner, without authority from Florentina Ledin, the owner of a gamecock, **giraw** in color, which was matched against another, **mayahin** in color, pretending to be authorized by the said owner and while she was absent some moments before the fight, removed the knife-edged gaff from the bird belonging to Florentina and replaced it in an entirely different manner from that in which it was before, which act only became known to Florentina after the fight. It was proven that Agaton Ner, at the moment the fight began, crossed his bets and laid a wager on the **mayahin** against the **giraw** whose gaff had been taken off and replaced by him. And it was also shown to the satisfaction of the court that in view of the way the gamecock belonging to Florentina Ledin was fixed, it could not inflict mortal wounds and could not kill its opponent; and that the gamecock of Florentina Ledin was a good one, a fighter, and that in the fight it struck the **mayahin** first several times without being able to inflict any serious wound, and that the **mayahin** when it attacked the bird belonging to Florentina succeeded in killing it, for which reason the latter and her son, Jose Laureo, lost their respective bets of ₱100 and ₱82. The Supreme Court held that the above facts were sufficient to constitute **estafa** under this paragraph.

(c) By removing, concealing or destroying, in whole or in part, any court record, office files, document, or any other papers.[62]

ESSENTIAL ELEMENT OF THE OFFENSE.—For the crime described in this paragraph to exist, it is necessary that some prejudice be caused by or as a consequence of the removal, con-

[60] U. S. vs. Malong, 36 Phil. 821.
[61] Similar to par. 8 of Art. 535 of the old Penal Code.
[62] Similar to par. 9 of Art. 535 of the old Penal Code.

cealing, or destruction of the document. For this reason he who conceals the records of an appealed case is guilty of **estafa** under this paragraph, since the concealment of the records under such circumstances will necessarily entail at least delay in the disposition of the case.[63]

It should be borne in mind that under the provisions of this paragraph, the intent to gain on the part of the offender is not a necessary ingredient or element of the crime if the removal or destruction of the document be done by the offender for the purpose of depriving the owner thereof of his right to collect certain annuity or rent.[64]

CASES OF ESTAFA UNDER THIS PARAGRAPH.—A debtor who has asked his creditor for the return of a promissory note in order that he might renew it, but later on fails to return the note because he destroyed the same when it came into his possession, is guilty of **estafa** under the first paragraph.[65]

And the concealment of a document of credit, thereby making it difficult to collect a debt, constitutes the crime of **estafa** under this paragraph, and the basis of the penalty is the amount of credit evidenced in the document.[66]

DISTINCTION BETWEEN ESTAFA AND MALICIOUS MISCHIEF.—If the intention of the culprit is not to defraud but solely to cause some prejudice to the holder of the document or to a third person, then the offense committed is malicious mischief, punishable under Art. 327 of this Code.[67] For this reason, the crime committed by a person who destroys the records of a criminal case for the purpose of affording immunity to the persons accused therein, is malicious mischief and not **estafa**.[68]

Art. 316. OTHER FORMS OF SWINDLING.—The penalty of arresto mayor **in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:**

Arresto mayor in its minimum and medium periods:
Minimum: From 1 month and 1 day to 2 months;

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[63] Dec. Sup. Ct. of Spain, April 2, 1889; Hidalgo, II Cod. Pen. 824.
[64] Dec. Sup. Ct. of Spain, April 23, 1880; Hidalgo, II Cod. Pen. 824.
[65] U. S. vs. Kilayko, 31 Phil. 371.
[66] U. S. vs. Tan Jenjua, 1 Phil. 38 See also the case of U. S. vs. Ricoy, 1 Phil 595.
[67] Dec. Sup. Ct. of Spain, July 6, 1906; Hidalgo, II Cod. Pen. 826-827.
[68] Dec. Sup. Ct. of Spain, Oct. 26, 1889; Hidalgo, II Cod. Pen. 918-919.

Medium: From 2 months and 1 day to 3 months;
Maximum: From 3 months and 1 day to 4 months.

1. Any person who, pretending to be the owner of any real property, shall convey, sell, encumber, or mortgage the same;

2. Any person who, knowing that real property is encumbered, shall dispose of the same although such encumbrance be not recorded;[69]

REQUISITES OF THE OFFENSE.—Three elements are present in the first paragraph of this Article, namely: (1) that the subject-matter of the transaction be real property; (2) that the offender shall have falsely represented himself as being the owner of the thing conveyed, and (3) that some act of dominion or ownership be executed by the offender to the damage and prejudice of the real owner of the thing.

CASES OF ESTAFA UNDER PARAGRAPHS 1 AND 2 OF ART. 316.—The act of a real estate owner who, knowing his property to be encumbered or otherwise subject to some lawful lien, shall dispose of the thing as if it were free from such encumbrance or lien to the damage of the purchaser of the thing, constitutes **estafa** under the second paragraph of this Article.

In the offense of **estafa** defined in this Article it is not necessary that the damage inflicted should fall upon the same person against whom the deceit is directed. Thus, suppose D sold real property to E, but the conveyance was not registered, and D remained in possession under an agreement to pay rent to E. Later D, representing himself to be the owner of the property, sold the same to an innocent purchaser who registered his conveyance, whereby the title of the first purchaser was destroyed. D in this case was guilty of **estafa.**[70]

Under the provisions of the old Penal Code (Art. 537) this crime is not committed if the lien of the property disposed of is not registered.[71]

In **U. S. vs. Mendezona,** 1 Phil. 696, the court held that the breach of a promise to execute a mortgage as security for a loan does not constitute **estafa** if the loan was not fraudulently obtained by making such promise without intent of fulfilling the same, and that it is not **estafa** to sell property as free and unencumbered,

[69] Similar to Art. 537 of the old Penal Code.
[70] U. S. vs. Drillon, 36 Phil. 834.
[71] People vs. Bacolod, G. R. No. 44063.

although there was an enforceable verbal agreement to mortgage said property.

In **U. S. vs. Reyes**, 1 Phil. 341, the court held that one who makes application for and obtains a deed to public lands alleged to be in his possession, is not guilty of **estafa** under this Article of the Penal Code, even if it transpires that his claim is unfounded.

COMMENTS ON THE SECOND PARAGRAPH OF THIS ARTICLE.—The second paragraph of this Article is entirely a new provision. Article 537 of the old Penal Code, which is the source of the present Article, contained two different provisions, one covering the encumbrance or disposition of some real property not belonging to the actor, and another, covering a person who, knowing a thing to be encumbered, shall dispose of the same as free from encumbrance irrespective of whether the thing is personal or real property.

The present Article had done away with the proviso concerning the disposition of encumbered personal property.

Under the provisions of the second paragraph of the present Article, the crime of **estafa** would be committed by any person who, knowing that that real property is encumbered, shall dispose of the same although such encumbrance is not recorded.

As will be seen, the statute uses the term "encumber" which is broader than mortgage. The term includes not only mortgaged property but likewise properties undergoing usufruct, limitation or restriction of any kind.

As to whether a property, whether personal or real, which has been pledged as security in payment of any obligation, in other words, mortgaged, but the mortgage has not been recorded, may come within the provisions of this paragraph, we entertain serious doubt. It is because for a mortgage to be considered as such, it is absolutely indispensable that it be recorded. So that whether the case be one of mortgage of real property or chattel, the condition of registration is the **sine qua non.**

3. The owner of any personal property who shall wrongfully take it from its lawful possessor, to the prejudice of the latter or any third person;[72]

A person who takes from the possession of his creditor goods which he has delivered to the latter as security for his debts commits the crime of **estafa** under this paragraph.

[72] Similar to par. 1 of Art. 538 of the old Penal Code.

4. Any person who, to the prejudice of another, shall execute any fictitious contract;[73]

A person who simulates a conveyance of his property to another, for the purpose of defrauding his creditors, commits the crime of **estafa** under this paragraph.

5. Any person who shall accept any compensation given him under the belief that it was in payment of services rendered or labor performed by him, when in fact he did not actually perform such services or labor;[74]

The delivery of a compensation to a person who is not entitled to it produces an obligation to return said compensation. A failure to fulfill this obligation constitutes **estafa** under this paragraph.

6. Any person who, while being a surety in a bond given in a criminal or civil action, without express authority from the court or before the cancellation of his bond or before being relieved from the obligation contracted by him, shall sell, mortgage, or, in any other manner, encumber the real properties with which he guaranteed the fulfillment of such obligation.

The present provision is intended to protect the Government against fraud committed by many unscrupulous professional bondsmen who are in the habit of disposing of the property pledged when called upon to fulfill their obligations with the Government.

Art. 317. SWINDLING A MINOR. — Any person who, taking advantage of the inexperience or emotions or feelings of a minor, to his detriment, shall induce him to assume any obligation or to give any release or execute a transfer of any property right in consideration of some loan of money, credit, or other personal property, whether the loan clearly appears in the document or is shown in any other form, shall suffer the penalty of

[73] Similar to par. 2 of Art. 538 of the old Penal Code.
[74] Identical to par. 2 of Art. 253 of the proposed Correctional Code of 1916.

arresto mayor **and a fine of a sum ranging from 10 to 50 per cent of the value of the obligation contracted by the minor.**[75]

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months.

This Article is intended to protect inexperienced minors from exploitation of money-lenders and usurers. The act of causing a minor to sign a receipt for ₱480 when as a matter of fact the latter received only ₱240, coupled with the circumstance that the minor was a fugitive from the house of his parents and was, therefore, very badly in need of money, was held to be sufficient to constitute **estafa** penalized under this Article.[76]

Art. 318. OTHER DECEITS.—The penalty of arresto mayor **and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.**

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of arresto menor **or a fine not exceeding 200 pesos.**[77]

Arresto mayor: See Art. 317.
Arresto menor:
Minimum: From 1 to 10 days;
Medium: From 11 to 20 days;
Maximum: From 21 to 30 days.

NATURE AND SCOPE OF THE OFFENSE.—The provisions of this Article are supplementary to the provisions of all the preceding Articles regarding **estafa.** Any other fraud not specially covered by the next preceding Articles is penalized under this

[75] Similar to Art. 540 of the old Penal Code.
[76] Dec. Sup. Ct. of Spain, Oct. 24, 1895; Hidalgo, II Cod. Pen. 872.
[77] Similar to the provisions of Articles 541 and 591 of the old Penal Code.

Article, provided the usual elements of **estafa**, i. e., deceit and prejudice, are present.[78]

The crime committed by a person who pays for goods bought by him with handbills having the appearance of paper money or bills is also **estafa** under this Article.[79]

To give genuine copper cents the appearance of silver pesetas by whitening them with quicksilver for the purpose of defrauding third persons by deceiving them as to the real value of the coins in question, constitutes the crime of **estafa** under this Article and not that of counterfeiting money.[80]

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[78] Dec. Sup. Ct. of Spain, July 9, 1896; Hidalgo, II Cod. Pen. 878.
[79] Dec. Sup. Ct. of Spain, July 12, 1900; Hidalgo, II Cod. Pen. 879.
[80] U. S. vs. Basco, 6 Phil. 110.

CHAPTER SEVEN

CHATTEL MORTGAGE

Art. 319. REMOVAL, SALE, OR PLEDGE OF MORTGAGED PROPERTY.—The penalty of arresto mayor **or a fine amounting to twice the value of the property shall be imposed upon:**

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months.

1. Any person who shall knowingly remove any personal property mortgaged under the Chattel Mortgage Law to any province or city other than the one in which it was located at the time of the execution of the mortgage, without the written consent of the mortgagee or his executors, administrators or assigns.[1]

The expression "province or city," in which property is located at the time of the execution of the mortgage, refers to the place where the thing is kept for the use of the mortgagor. A mortgagee, without the consent of the mortgagor, cannot legally remove the property to another municipality or province for the purpose of selling it. The mortgagee is liable for damages in its full value at the time of removal.[2]

Automobiles and other motor vehicles are supposed to move from one place to another in view of the nature of the use to which they are devoted. For this reason, it would not constitute a violation of this paragraph if a car which is duly mortgaged, for instance, in the City of Manila, should occasionally make a trip to the Ilocos or other provinces. But if the same car, for instance, is permanently removed from the City of Manila, or hidden in any place other than the City of Manila, then the offender is liable under the provisions of this paragraph.

Defendant removed a piano upon which he had executed a chattel mortgage from the City of Manila to Kalibo, Province of

[1] Same as Section 9 of Act 1508 of the Philippine Commission.
[2] Bachrach vs. Golingco, 39 Phil. 138.

Capiz, without the permission of the mortgagee. The latter discovered the piano on board a ship bound for that port too late to regain possession before the ship sailed. **Held:** To be a clear violation of Section 9 of Act No. 1508, known as the Chattel Mortgage Law (now par. 1 of Art. 319 of this Code).[3]

This action for violation of Secs. 10 and 12 of the Chattel Mortgage Law by a mortgagor accused of selling part of the mortgaged property presents two aspects, civil and criminal; it partakes of the nature of a civil case as it arises out of a civil transaction, and in that the amount of the account between the mortgagor and the mortgagee must be liquidated with accuracy and definiteness. A preponderance of the evidence would prove the obligation of the mortgagor of the **palay** to the mortgagee. The case, however, is distinctly criminal, and being so, innocence must be presumed, and thus the defendant must be proved guilty beyond a reasonable doubt, until the defense is shown to be untenable. If the defendant here is under any obligation to the mortgagee, it is a civil obligation.[4]

The object of the penal provisions of the Chattel Mortgage Law is not merely to protect the mortgagee in particular cases in which criminal actions are instituted, and to secure the payment of the mortgage indebtedness in such cases (although they may, and should have, that effect in many instances), but also to give the necessary sanction to the provision of the statute in the interest of the public at large, so that in all cases wherein loans are made and secured under the terms of the statute, the mortgage creditors may be protected against loss or inconvenience resulting from the wrongful removal or sale of the property mortgaged.[5]

2. Any mortgagor who shall sell or pledge personal property already pledged, or any part thereof, under the terms of the Chattel Mortgage Law, without the consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds of the province where such property is located.[6]

Act No. 1508 does not expressly repeal Article 537 of the old Penal Code (now Art. 316, pars. 1 and 2). Neither does it impliedly repeal the same, because both laws are not incompatible,

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[3] U. S. vs. Rimon, 23 Phil. 13.
[4] U. S. vs. Razon, 37 Phil. 856.
[5] U. S. vs. Kilayko, 32 Phil. 619.
[6] Similar to the provisions of Section 10 of Act 1508 of the Philippine Commission.

nor do they exclude each other—they define distinct offenses, penalize different acts, and can be applied independently.

Article 537 of the old Code punishes him who sells a thing as free when it fact it is subject to an encumbrance; whereas Act No. 1508 punishes him who sells a mortgaged chattel, without the consent in writing of the mortgagee. An act may constitute the crime defined in Article 537 of the old code without being a violation of Act No. 1508 and, conversely, an act may constitute a violation of Act No. 1508 without falling within the provisions of Article 537 of said Code.

To constitute the crime punished in Article 537 of the old Code, it is sufficient that the thing mortgaged be sold as free, even though the vendor may have obtained the consent of the mortgagee in writing, as it is sufficient, in order to constitute a violation of Act No. 1508, that the sale be made by the vendor without obtaining the consent in writing of the purchaser that the thing sold is mortgaged. Act No. 1508 protects the mortgagee, while Article 537 of the old Code protects the purchaser in good faith.[7]

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[7] People vs. Alvarez, 45 Phil. 472.

CHAPTER EIGHT

ARSON AND OTHER CRIMES INVOLVING DESTRUCTION

Art. 320. DESTRUCTIVE ARSON.—The penalty of reclusión temporal **in its maximum period to** reclusión perpetua **shall be imposed upon any person who shall burn:**

1. Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordnance storehouse, archives, or general museum of the Government;

2. Any passenger train or motor vehicle in motion or vessel out of port;

3. In an inhabited place, any storehouse or factory of inflammable or explosive materials;

4. Any theater, church, cockpit, or other building where meetings are held, when occupied by a numerous assemblage.[1]

Reclusión temporal in its maximum period to **reclusión perpetua:**

Minimum: From 17 years, 4 months and 1 day to 18 years and 8 months;

Medium: From 18 years, 8 months and 1 day to 20 years;

Maximum: Reclusión perpetua.

The crime of arson is an offense against both property and persons. Re **prima facie** evidence of arson, see R. A. No. 1481.

ESSENTIAL ELEMENTS OF DESTRUCTIVE ARSON.—As can be seen from the context of the foregoing Article, the property destroyed must be one of the classes described in paragraphs 1, 2, 3 and 4 thereof. It is to be observed, however, that according to par. 4, when the property burned is any theater, church, cockpit, or other building where meetings are held, knowledge by the defendant that there were persons in the building at the time of the fire is necessary to make the arson a destructive one.[2]

SEVERE PUNISHMENT FOR DESTRUCTIVE ARSON; ITS

[1] Similar to Art. 548 of the old Penal Code.
[2] U. S. vs. Lariosa, 15 Phil. 208.

GROUND.—The authors of the Spanish Code upon which the present provisions are based, in imposing penalties of exceptional severity in certain cases of arson, clearly had in mind: **first,** the extreme danger to which human lives may be exposed by the malicious burning of dwelling houses and the like; **second,** the danger to property resulting from widespread conflagration; **third,** the fact that it is extremely difficult to adopt precautions against the commission of the crime, and to discover the perpetrators after its commission.

Formerly, where these elements marked the commission of the crime, the single penalty prescribed by law was that of death, but this severity was finally relaxed and, while exceptionally severe penalties are still imposed in such cases, the authors of the Penal Code appear to have endeavored to fix these penalties according to the degree of danger to life and property, resulting from the commission of the crime. To this end, the severest penalties are prescribed for the malicious burning of buildings in which large numbers of persons are assembled.[3]

Three defendants maliciously and voluntarily set fire to and destroyed a house, knowing that it was occupied at the time. This constituted the crime of arson penalized by this Article.[4]

The burning of a church edifice, when it appears that it was unoccupied, or at least, when there was no showing that the offender had any knowledge or belief that any person was within the building at the time when he set it on fire, does not fall under this Article, but under par. (a) of subsection 2 of Art. 321 of this Code.[5]

TOTAL DESTRUCTION OF PROPERTY, NOT NECESSARY FOR THE CRIME TO BE CONSUMMATED.—When a building is set on fire, it is not necessary that it should be entirely consumed in order to constitute the consummated crime, nor is the crime affected by the prompt extinction of the fire. Nor can such an offense be classified as frustrated arson because of the intervention of strangers who extinguished the fire; nor because the incendiary foresaw that the fire would be put out by many people passing through the district at such an hour; nor by the greater or less possibility of the destruction of the whole house or only part of it.[6]

Art. 321. OTHER FORMS OF ARSON.—When the arson consists in the burning of other property and under

[3] U. S. vs. Butardo et al., 11 Phil. 60.
[4] U. S. vs. Castor, 38 Phil. 693.
[5] U. S. vs. Lariosa, 15 Phil. 208.
[6] U. S. vs. Go Foo Suy et al., 25 Phil. 187.

the circumstances given hereunder, the offender shall be punished:

1. By reclusión temporal **to** reclusión perpetua, **if the offender shall set fire to any building, farmhouse, warehouse, hut, shelter, or vessel in port, knowing it to be occupied at the time by one or more persons.**[7]

Reclusión temporal to reclusión perpetua:
Minimum: From 12 years and 1 day to 16 years;
Medium: From 16 years and 1 day to 20 years;
Maximum: Reclusión perpetua.

Less harsh, but still a very severe penalty, is prescribed by this Article, for the reason that the setting of fire to a dwelling house or building more or less permanently occupied exposes human life to great danger.

Furthermore, in this kind of arson, the enormity of the offense is not measured by the value of the property that may be destroyed but rather by the human lives exposed to destruction.[8]

The fact that a person, after having set fire to some rags and jute sacks soaked in kerosene oil, placed them near the partition of the **entresol** of an inhabited house, should not be qualified as the crime of consummated arson, inasmuch as **no part** of the house had begun to burn, although fire would have started in the said partition had it not been extinguished on time. Under such circumstances, the presumed author of the punishable act performed all the steps conducive to the burning of the said house, but notwithstanding these acts, he did not accomplish the criminal act which he had intended to consummate, by reason of causes independent of his will, and for this reason, it follows that the crime committed was that of frustrated arson penalized under this Article.[9]

But when a house was practically burned, although the fire was afterwards extinguished, the crime of arson was consummated, for, once the fire had been started, the consummation of the crime of arson does not depend upon the extent of the damage caused.[10]

When by reason of or on the occasion of arson some persons perish in the house set on fire, that is, a homicide is committed, the maximum penalty or **reclusión perpetua** is to be imposed.[11]

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[7] Similar to Art. 549 of the old Penal Code.
[8] U. S. vs. Zabala, 6 Phil. 431; U. S. vs. Butardo, 11 Phil. 60.
[9] U. S. vs. Valdez, 39 Phil. 240.
[10] People vs. Hernandez, 54 Phil. 122.
[11] U. S. vs. Burns, 41 Phil. 418.

2. By reclusión temporal:

(a) If the building burned is a public building and the value of the damage caused exceeds 6,000 pesos;

(b) If an inhabited house or any other building in which people are accustomed to meet is set on fire, and the culprit did not know that such house or building was occupied at the time, or if he shall set fire to a moving freight train or motor vehicle, and the value of the damage caused exceeds 6,000 pesos.[12]

Reclusión temporal:

Minimum: From 12 years and 1 day to 14 years and 8 months;

Medium: From 14 years, 8 months and 1 day to 17 years and 4 months;

Maximum: From 17 years, 4 months and 1 day to 20 years.

ESSENTIAL REQUISITES OF THE OFFENSE.—Three requisites are present in this offense: **first,** that the building set on fire be a public building other than those described in paragraphs 1 and 3 of Art. 320, or an inhabited house or other edifice wherein people are accustomed to meet together (as a club-house, restaurant, etc.); **second,** should the edifice set on fire be one of the types described in par. 4, that the offender be ignorant as to whether or not there was any person in the building when same was set on fire; **third,** that the damage caused by the fire be in excess of 6,000 pesos.

CASES OF ARSON UNDER THIS PARAGRAPH.—And any one desiring to burn the houses in a barrio, without knowing whether there are people in them or not, sets fire to one known to be vacant at the time, which results in destroying the rest, commits the crime of arson, defined and penalized in Art. 321, par. 2, of this Code.[13]

He who sets fire to an inhabited house, not knowing whether or not there is a person inside, does so consciously at the risk that his act may cause damage not only to the property but also to any person who may be found in the house so burned. Such an act would presuppose at least a disposition on the part of the author thereof to extend the damage to the persons therein, and this gives rise to the severity of the penalty fixed in this Article.[14]

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[12] Same as Art. 550 of the old Penal Code.
[13] People vs. Silvestre & Atienza, 56 Phil. 353.
[14] U. S. vs. Evangelista, 39 Phil. 825.

A church edifice is not any of the buildings or structures described in this Article.[15]

This Article is applicable to the burning of an edifice intended for a public school, although there may be no proof that said edifice had already been inaugurated for the purpose. What makes a building public is not its inauguration, but the fact of the state or some of its dependencies having the title thereto.[16]

The penalty of **reclusión temporal** provided by this Article is not unconstitutional as being excessive, unusual and cruel, taking into account the gravity of the crime which causes devastation, terror and alarm.[17]

Knowledge on the part of the accused that the building set on fire is occupied, is an essential element of the form of arson defined in Art. 321 of this Code, and the information must contain allegations to the effect that the accused had such knowledge at the time of the commission of the crime in order to sustain a conviction under that Article.[18]

3. By prisión mayor:

(a) If the value of the damage caused in the cases mentioned in the next preceding subdivision does not exceed 6,000 pesos;

(b) If a building not used as a dwelling or place of assembly, located in a populated place, is set on fire, and the damage caused exceeds 6,000 pesos;

(c) If a farm, sugar mill, cane mill, central, mill, bamboo groves or any similar plantation is set on fire, and the damage caused exceeds 6,000 pesos.[19]

Prisión mayor:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

The malicious burning of a church when the damage caused does not exceed 6,250 pesetas (now ₱6,000) falls under the provisions of this Article.[20]

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[15] U. S. vs. Lariosa, 15 Phil. 208.
[16] People vs. Constantino, 46 Phil. 745.
[17] People vs. Constantino, **supra.**
[18] People vs. Macalma, 44 Phil. 170.
[19] Same as Art. 551 of the old Penal Code.
[20] U. S. vs. Lariosa, 15 Phil. 208.

4. By prisión correccional **in its maximum period to** prisión mayor **in its medium period, when the damage caused exceeds 6,000 pesos and the following are set on fire:**

(a) A building used as a dwelling located in an uninhabited place; or

(b) Grain fields, pasture lands, forests, or plantings.[21]

Prisión correccional in its maximum period to **prisión mayor** in its medium period:

Minimum: From 4 years, 2 months and 1 day to 6 years;
Medium: From 6 years and 1 day to 8 years;
Maximum: From 8 years and 1 day to 10 years.

Paragraph (a) of this subsection refers to an edifice or house devoted to dwelling purposes but not actually inhabited at the time it is set on fire, because otherwise the case would fall under the provisions of Art. 321, subsection 2, par. (b).

5. By prisión correccional **in its medium period to** prisión mayor **in its minimum period, when the damage caused is over 200 pesos but does not exceed 1,000 pesos, and any of the property referred to in paragraphs** (a) **and** (b) **of the next preceding subdivision is set on fire; but when the value of such property does not exceed 200 pesos, the penalty next lower in degree than that prescribed in this subdivision shall be imposed when the property burned is a building used as a dwelling in an uninhabited place, and the penalty of** arresto menor **and a fine ranging from fifty to one hundred per centum of the damage caused shall be imposed, when the property burned consist of grain fields, pasture lands, forests or plantations.**[22]

Prisión correccional in its medium period to **prisión mayor** in its minimum period:

Minimum: From 2 years, 4 months and 1 day to 4 years and 2 months;

[21] Similar to Art. 553 of the old Penal Code.
[22] This paragraph is a merger of Arts. 554 and 555 of the old Penal Code.

Medium: From 4 years, 2 months and 1 day to 6 years;
Maximum: From 6 years and 1 day to 8 years.

The penalty next lower in degree than the above is **arresto mayor** in its medium period to **prisión correccional** in its minimum period:

Minimum: From 2 months and 1 day to 4 months;
Medium: From 4 months and 1 day to 6 months;
Maximum: From 6 months and 1 day to 2 years and 4 months.

Arresto menor:
Minimum: From 1 to 10 days;
Medium: From 11 to 20 days;
Maximum: From 21 to 30 days.

A person who sets fire to the partition screen of a house which had previously been separated and placed a certain distance from it, without any malicious intent to burn any other part thereof, cannot be punished under this paragraph of the Penal Code, even though, due to the wind, the entire house is burned. His act merely constitutes arson by imprudence.[23]

6. The penalty of prisión correccional **in its medium and maximum periods, if the damage caused in the cases mentioned in paragraphs** (b) **and** (c) **of subdivision 3 of this article does not exceed 6,000 pesos but is over 200.**

Prisión correccional in its medium and maximum periods:
Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;
Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;
Maximum: From 4 years, 9 months and 11 days to 6 years.

7. The penalty of prisión correccional **in its minimum and medium periods, if the damage caused in the cases mentioned in paragraphs** (b) **and** (c) **of subdivision 2 of this article does not exceed 200 pesos.**

[23] U. S. vs. Jarrila, 1 Phil. 53.

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days.

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

Art. 322. CASES OF ARSON NOT INCLUDED IN THE PRECEDING ARTICLES.—Cases of arson not included in the next preceding articles shall be punished:

1. By arresto mayor **in its medium and maximum periods, when the damage caused does not exceed 50 pesos;**

2. By arresto mayor **in its maximum period to** prisión correccional **in its minimum period, when the damage caused is over 50 pesos but does not exceed 200;**

3. By prisión correccional **in its minimum and medium periods, if the damage caused is over 200 pesos but does not exceed 1,000; and**

4. By prisión correccional **in its medium and maximum periods, if it is over 1,000 pesos.**[24]

1. **Arresto mayor** in its medium and maximum periods:

Minimum: From 2 months and 1 day to 3 months and 10 days;

Medium: From 3 months and 11 days to 4 months and 20 days;

Maximum: From 4 months and 21 days to 6 months.

2. **Arresto mayor** in its maximum period to **prisión correccional** in its minimum period:

Minimum: From 4 months and 1 day to 1 year;

Medium: From 1 year and 1 day to 1 year and 8 months;

Maximum: From 1 year, 8 months and 1 day to 2 years and 4 months.

3. **Prisión correccional** in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

[24] This article is similar to Art. 557 of the old Penal Code.

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

4. **Prisión correccional** in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

Although the complaint does not allege the value of the house burned, nor that the same was inhabited, and there is no evidence in the records showing such facts, the act is just the same punished under par. 1 of this Article.[25]

The malicious burning of a **banca** which is the property of another constitutes the offense of arson, as defined by this Article.[26]

When the perpetrator of arson committed upon an inhabited house in a populated place knew positively that there was no person inside the building at the time he set fire to it, the provisions applicable are those of this Article. In other words, this Article is supplementary to the preceding Articles.[27]

Art. 323. ARSON OF PROPERTY OF SMALL VALUE.—The arson of any uninhabited hut, storehouse, barn, shed, or any other property the value of which does not exceed 25 pesos, committed at a time or under circumstances which clearly exclude all danger of the fire spreading, shall not be punished by the penalties respectively prescribed in this chapter, but in accordance with the damage caused and under the provisions of the following chapter.[28]

There are three requisites in the offense described in this Article, namely:

1. That the property burned be an inhabited hut, storehouse, shed, barn, etc.

2. That the value of the damage shall not exceed ₱25, and

[25] People vs. Bersabal, 48 Phil. 439.
[26] U. S. vs. Miranda, 2 Phil. 606.
[27] U. S. vs. Evangelista, 39 Phil. 825.
[28] Similar to the provisions of Art. 558 of the old Penal Code.

3. That the act be committed under circumstances which clearly exclude all danger of the fire spreading.

Art. 324. CRIMES INVOLVING DESTRUCTION.—Any person who shall cause destruction by means of explosion, discharge of electric current, inundation, sinking or stranding of a vessel, intentional damaging of the engine of said vessel, taking up the rails from a railway track, maliciously changing railway signals for the safety of moving trains, destroying telegraph wires and telegraph posts, or those of any other system, and, in general, by using any other agency or means of destruction as effective as those above enumerated, shall be punished by reclusión temporal **if the commission has endangered the safety of any person; otherwise, the penalty of** prisión mayor **shall be imposed.**[29]

Reclusión temporal:

Minimum: From 12 years and 1 day to 14 years and 8 months;

Medium: From 14 years, 8 months and 1 day to 17 years and 4 months;

Maximum: From 17 years, 4 months and 1 day to 20 years.

Prisión mayor:

Minimum: From 6 years and 1 day to 8 years;

Medium: From 8 years and 1 day to 10 years;

Maximum: From 10 years and 1 day to 12 years.

The causing of an explosion in a building by means of a high-power firecracker (**petardo**) containing dynamite, was considered by the Supreme Court of Spain as a crime involving destruction to which this Article refers.[30]

Art. 325. BURNING ONE'S OWN PROPERTY AS A MEANS TO COMMIT ARSON.—Any person guilty of arson or causing great destruction of property belonging to another shall suffer the penalties prescribed in this chapter, even though he shall have set fire to or

[29] Similar to the provisions of Art. 559 of the old Penal Code.
[30] Dec. Sup. Ct. of Spain, Nov. 27, 1879; Viada, 3 Cod. Pen., 609.

destroyed his own property for the purpose of committing the crime.[31]

The destruction of one's own property, as a general rule, does not constitute any offense, for the reason that the owner of a thing has not only the right to use and enjoy the same but also to abuse it (**jus abutendi**), provided the exercise or enjoyment of such right does not prejudice the rights of others. However, for this reason, whenever a person, in destroying or burning his own property, does it under circumstances which necessarily produce damage to another's property, he violates this Article.[32]

Art. 326. SETTING FIRE TO PROPERTY EXCLUSIVELY OWNED BY THE OFFENDER.—If the property burned shall be the exclusive property of the offender, he shall be punished by arresto mayor **in its maximum period to** prisión correccional **in its minimum period, if the arson shall have been committed for the purpose of defrauding or causing damage to another, or if, though such purpose be lacking, said damage or prejudice shall actually have been caused, or if the thing burned shall have been a building in an inhabited place.**[33]

Arresto mayor in its maximum period to **prisión correccional** in its minimum period:

Minimum: From 4 months and 1 day to 1 year;

Medium: From 1 year and 1 day to 1 year and 8 months;

Maximum: From 1 year, 8 months and 1 day to 2 years and 4 months.

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[31] Similar to Art. 560 of the old Penal Code.
[32] Viada, 3 Cod. Pen. 613.
[33] Same as the provisions of Art. 561 of the old Penal Code.

CHAPTER NINE

MALICIOUS MISCHIEF

Art. 327. WHO ARE LIABLE FOR MALICIOUS MISCHIEF.—Any person who shall deliberately cause to the property of another any damage not falling within the terms of the next preceding chapter shall be guilty of malicious mischief.[1]

NATURE OF MALICIOUS MISCHIEF.—Under the heading of malicious mischief are to be found those offenses against property which are solely inspired or actuated by feelings of hate, resentment, or revenge.

It is to be noted that this Article does not refer to mischief resulting from a crime, i. e., the damages caused by a robber in breaking a window, etc., for the reason that such damages are mere incidents of the crime of robbery, and as such may only give rise to civil liability.

The mischiefs to which this chapter refers are those voluntarily and deliberately done for the sole purpose of destroying another's property, for the sake of merely damaging it.

Malicious mischief cannot be committed through negligence, since **negligence** and **deliberateness** are essentially incompatible.[2]

ILLUSTRATION.—The crime of damage to property is not determined solely by the mere act of inflicting injury upon the property of another person, but it must be shown that the act had for its object the injury of the property merely for the sake of damaging it. Without this circumstance the essential element of the crime is lacking, and the criminal intention of the culprit cannot be established.[3]

Art. 328. SPECIAL CASES OF MALICIOUS MISCHIEF.—Any person who shall cause damage to obstruct the performance of public functions, or using any poisonous or corrosive substance; or spreading any infection or contagion among cattle; or who causes damage to the property of the National Museum or

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[1] Similar to the provisions of Art. 562 of the old Penal Code.
[2] Quimzon vs. J. P. of Bacolor, G. R. No. L-6641, July 28, 1955.
[3] U. S. vs. Gerale, 4 Phil. 218

National Library, or to any archive or registry, waterworks, road, promenade, or any other thing used in common by the public, shall be punished:

1. By prisión correccional in its minimum and medium periods, if the value of the damage caused exceeds 1,000 pesos;

2. By arresto mayor, if such value does not exceed the above-mentioned amount but is over 200 pesos; and

3. By arresto menor, if such value does not exceed 200 pesos.[4]

1. **Prisión correccional** in its minimum and medium periods: See Art. 321, subsec. 7.
2. **Arresto mayor:** See Art. 319.
3. **Arresto menor:** See Art. 318.

DAMAGE TO OBSTRUCT THE PERFORMANCE OF PUBLIC FUNCTION:—The mischief mentioned in this clause is to be distinguished from sedition under Article 139 of this Code by the circumstance of a public or tumultuous uprising. This element is not present in the offense here described.

USING A POISONOUS OR CORROSIVE SUBSTANCE.—An example is the pouring of a poisonous or corrosive substance into a watering place for the purpose of causing death and destruction of cattle or horses.

SPREADING ANY INFECTION OR CONTAGION AMONG CATTLE.—This offense is committed either by deliberately mixing or mingling with cattle an animal which is affected with disease, or delivering or driving the cattle to unhealthy places, etc.

DAMAGE TO THE PROPERTY OF THE NATIONAL MUSEUM OR NATIONAL LIBRARY.—Damage or destruction caused in a Government archive seriously affects the public interest. This is the reason for including the present paragraph as one of the circumstances qualifying the crime of malicious mischief.

DAMAGE TO ANY WATER WORKS, ROAD, PROMENADE, ETC.—Wanton and malicious destruction of trees planted and owned by the State on both sides of a public highway constitutes the crime of malicious mischief under this paragraph.[5]

[4] Similar to the provisions of Arts. 563 and 564 of the old Penal Code.
[5] Dec. Sup. Ct. of Spain, Jan. 30, 1891; Hidalgo, II Cod. Pen., 917-918.

Art. 329. OTHER MISCHIEFS.—The mischiefs not included in the next preceding article shall be punished:

1. By arresto mayor in its medium and maximum periods, if the value of the damage caused exceeds 1,000 pesos;

2 By arresto mayor in its minimum and medium periods, if such value is over 200 pesos but does not exceed 1,000; and

3. By arresto menor or fine of not less than the value of the damage caused and not more than 200 pesos, if the amount involved does not exceed 200 pesos or cannot be estimated.[6]

1. **Arresto mayor** in its medium and maximum periods:

Minimum: From 2 months and 1 day to 3 months and 10 days;
Medium: From 3 months and 11 days to 4 months and 20 days;
Maximum: From 4 months and 21 days to 6 months.

2. **Arresto mayor** in its minimum and medium periods:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 3 months;
Maximum: From 3 months and 1 day to 4 months.

3. **Arresto menor:**
Minimum: From 1 day to 10 days;
Medium: From 11 days to 20 days;
Maximum: From 21 days to 30 days.

This Article refers to ordinary or simple mischief, that is, to those mischiefs which are not attended by any of the qualifying circumstances mentioned in the next preceding Articles.

Under this Article, the crime committed by a person who destroys the records of a criminal case for the purpose of affording immunity to the persons involved therein, is malicious mischief and not estafa.[7]

In a Philippine case,[8] it was likewise held that one who tears and destroys a certain page of Registry of Birth of a municipality

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[6] Similar to the provisions of Arts. 565 and 566 of the old Penal Code and Art. 260 of the proposed Correctional Code of 1916, as amended by Act 3999.
[7] Dec. Sup. Ct. of Spain, Oct. 26, 1889; Hidalgo, II Cod. Pen. 918-919.
[8] People vs. Kabatiñgan et al., G. R. No. 24057.

for the purpose of wiping out evidence pertaining to the birth of a certain person constitutes the crime of malicious mischief punished by Art. 565 of the old Code, equivalent to the last paragraph of the present Article.

Art. 330. DAMAGES AND OBSTRUCTION TO MEANS OF COMMUNICATION.—The penalty of prisión correccional **in its medium and maximum periods shall be imposed upon any person who shall damage any railway, telegraph or telephone lines.**

If the damage shall result in any derailment of cars, collision or other accident, the penalty of prisión mayor **shall be imposed, without prejudice to the criminal liability of the offender for the other consequences of his criminal act.**

For the purpose of the provisions of this article, the electric wires, traction cables, signal system and other things pertaining to railways, shall be deemed to constitute an integral part of a railway system.[9]

Prisión correccional in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

Prisión mayor: See Art. 324.

Decisions of the Supreme Court of Spain of Oct. 3, 1903, and of June 18, 1904, held that Art. 572 of the old Penal Code of Spain, which is equivalent to the present Article, applies to persons who cut telephone wires, and in its decisions of June 22, 1906, and of December 26, 1906, held that it also applies to those who cut wires for the transmission of electric light and power.

Art. 331. DESTROYING OR DAMAGING STATUES, PUBLIC MONUMENTS OR PAINTINGS.—Any person who shall destroy or damage statues or any other useful or ornamental public monument, shall suffer the

[9] Similar to the provisions of Art. 262 of the old Penal Code and Art. 125 of the proposed Correctional Code of 1916.

penalty of arresto mayor **in its medium period to** prisión correccional **in its minimum period.**

Any person who shall destroy or damage any useful ornamental painting of a public nature shall suffer the penalty of arresto menor **or a fine not exceeding 200 pesos, or both such fine and imprisonment, in the discretion of the court.**[10]

Arresto mayor in its medium period to **prisión correccional** in its minimum period:

Minimum: From 2 months and 1 day to 4 months;

Medium: From 4 months and 1 day to 6 months;

Maximum: From 6 months and 1 day to 2 years and 4 months.

Arresto menor: See Art. 329.

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[10] Similar to the provisions of Art. 263 of the old Penal Code.

CHAPTER TEN

EXEMPTION FROM CRIMINAL LIABILITY IN CRIMES AGAINST PROPERTY

Art. 332. PERSONS EXEMPT FROM CRIMINAL LIABILITY.—No criminal, but only civil liability, shall result from the commission of the crime of theft, swindling or malicious mischief committed or caused mutually by the following persons:

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;

2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and

3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

The exemption established by this article shall not be applicable to strangers participating in the commission of the crime.[1]

GROUND OR REASON FOR THE EXEMPTION.—The exemption established by this Article in favor of the persons designated therein is founded, among other things, upon the theory of co-ownership of the property or the subject-matter of the offense, existing or supposed to be existing between persons mentioned in this Article.

LIMITATION OF THE EXEMPTION.—It should be borne in mind, however, that the exemption established in this Article is **limited** to offenses specifically named therein, i. e., **theft, swindling** and **malicious mischief.**

Robbery is not, therefore, included in this exemption.[2] Neither is any other crime or offense perpetrated as a necessary means to commit any of the offenses mentioned in this Article; for example if A, the son of B, for the purpose of committing **estafa**

[1] Identical to Art. 567 of the old Penal Code.
[2] Decs. Sup. Ct. of Spain, December 28, 1871, and June 23, 1890.

against the latter, falsifies a document, although A may be exempt from **estafa**, he will be criminally liable for falsification.[3]

It should also be borne in mind that the exemption established by this Article is not extended to strangers who participate either as co-principals, accomplices or accessories with the persons herein designated.

On the other hand, the following persons are included within the exemption and protection provided for in this Article; step-father with regards to property belonging to his stepson, natural or adopted children with regards to property belonging to their natural or adopted parents,[4] and a concubine with regards to property belonging to her paramour.[5]

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[3] Viada, 3 Cod. Pen. 624; Hidalgo, II Cod. Pen. 920.
[4] Viada, 3 Cod. Pen. 625.
[5] Dec. Sup. Ct. of Spain, April 19, 1890; Hidalgo, II Cod. Pen. 657.

TITLE ELEVEN

Crimes Against Chastity

CHAPTER ONE

ADULTERY AND CONCUBINAGE

Art. 333. WHO ARE GUILTY OF ADULTERY.—Adultery is committed by any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by prisión correccional **in its medium and maximum periods.**

If the person guilty of adultery committed this offense while being abandoned without justification by the offended spouse, the penalty next lower in degree than that provided in the next preceding paragraph shall be imposed.[1]

Prisión correccional in its medium and maximum periods: See Art. 330.

The penalty for adultery in case of unjustified desertion of the aggrieved party is **arresto mayor** in its maximum period to **prisión correccional** in its minimum period:

Minimum: From 4 months and 1 day to 1 year;

Medium: From 1 year and 1 day to 1 year and 8 months;

Maximum: From 1 year, 8 months and 1 day to 2 years and 4 months.

SPECIAL MITIGATING CIRCUMSTANCE.—The last paragraph of this Article is an entirely new provision, calling for special mitigation. Obviously an unjustified desertion by the complainant in an adultery case is a circumstance which borders on a complete exemption on the part of the offenders.

SUBSEQUENT ANNULMENT OF MARRIAGE, NOT A DEFENSE IN ADULTERY.—Under this Article, the infidelity of

[1] Similar to the provisions of Art. 433 of the old Penal Code.

a married woman to her marital vows, even though it should be made to appear that she is entitled to have her marriage declared null and void, is declared to be adulterous, unless and until she actually secures a formal judicial declaration annulling the marriage.[2]

Groizard, in his commentary upon similar provisions contained in Art. 488 of the Spanish Penal Code of 1870, says:

"At no times does the bond of matrimony contain a defect which by itself is sufficient to dissolve the union. The marriage must be declared null in order that the bond may be served. Until it is so declared by competent authority in a final judgment that the marriage contract is set aside, the offense to the vows taken and the attack on the family exist—adultery contains the essential conditions required for its punishment. This abundantly satisfies the reason, and furthermore is expressly set out in our statute."

CASES OF ADULTERY.—A man who lies with a married woman, when ignorant of the fact that his paramour is a married woman, does not of course commit the crime of adultery.[3]

But if the offender continues his relation with his paramour, after having been informed of the fact that she is a married woman, then he commits the crime of adultery.[4]

Proof of the commission of the crime of adultery, like proof of the commission of most other crimes, may safely be rested on circumstantial evidence when that evidence is such that it leaves no room for reasonable doubt.

Thus, the unexplained presence of a man at a late hour of the night, alone in a room with another man's wife, she being in bed, and absent from her husband's home without his consent, and as far as she knew without his knowledge, has been deemed sufficient to constitute adultery.[5]

The fact that several love letters signed by the paramour have been found in the possession of a married woman together with the further circumstance that the married woman and her lover have been seen several times in a trysting place (**casa de cita**) is sufficient evidence to warrant conviction for the crime of adultery.[6]

In a case of adultery, it is the duty of the prosecution to establish the alleged marriage of the complaining witness with one of the defendants beyond a reasonable doubt. Nothing short of

[2] U. S. vs. Mata, 18 Phil. 490; Viada, 3 Cod. Pen. 106.
[3] Viada, 3 Cod. Pen. 106.
[4] U. S. vs. Topiño, 35 Phil. 901.
[5] U. S. vs. Legazpi et al., 14 Phil. 40-41.
[6] Dec. Sup. of Spain, June 23, 1874; Viada, 3 Cod. Pen. 108.

the best available evidence should be accepted as satisfactory proof of the marriage.[7]

This does not mean that the proof of marriage must always be documentary. Parol evidence of marriage may be admitted. Whether the oral testimony is sufficient or not must depend upon each particular case. The declaration of the offended person and in addition that of others who have personal knowledge of the marriage, is competent proof to show marriage. A man and a woman who are living in marital relations, under the same roof, are presumed to be legitimate spouses, united by virtue of a legal marriage contract, and this presumption can only be rebutted by sufficient evidence.[8]

Before the law there cannot be an accomplice in the crime of adultery,[9] although in fact there can be such an accomplice.

Art. 334. CONCUBINAGE. — Any husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by prisión correccional **in its minimum and medium periods.**

The concubine shall suffer the penalty of destierro.[10]

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

Destierro:

Minimum: From 6 months and 1 day to 2 years and 4 months;

Medium: From 2 years, 4 months and 1 day to 4 years and 2 months;

Maximum: From 4 years, 2 months and 1 day to 6 years.

WAYS OF COMMITTING CONCUBINAGE.—There are three ways of committing concubinage under the provisions of this Article, namely:

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[7] U. S. vs. Nebrida et al., 32 Phil. 160.
[8] U. S. vs. Memoracion et al., 34 Phil. 633; U S. vs. Villafuerte et al., 4 Phil. 476.
[9] Dec. Sup. Ct. of Spain, June 3, 1874; Viada, 3 Cod Pen. 107.
[10] Similar to the provisions of Art. 434 of the old Code.

1. When a married man keeps a mistress in his conjugal dwelling, regardless of the fact of whether or not scandalous circumstances intervene;

2. When a married man indulges in sexual intercourse with a woman other than his wife under scandalous circumstances; or

3. When a married man cohabits with a woman other than his wife anywhere and under any circumstances.

ESSENTIAL REQUISITES OF THE OFFENSE.—Under the first case, it is enough that a married man should have kept a mistress in the conjugal dwelling. Scandalous circumstances are not necessary. It is only when the mistress is kept elsewhere that scandalous circumstances become an element of the crime.[11]

Under the second case, the essential requisite of the offense is scandalous circumstances. No exact definition is given as to what constitutes scandal as that word is used in this Article. The fact, however, that a married woman several times visited the house of his alleged paramour, rode with her in a carriage, went with her to a theater, and did other analogous things has been held to be insufficient to constitute public scandal.[12]

Under the third case, mere sexual intercourse is not enough to constitute the offense. It is necessary that the offender should have **cohabited** with his co-accused. The verb **lie** is synonymous with the verb **carnal intercourse** and **carnal knowledge**, while to **cohabit** is something more than to lie. The word cohabit implies the existence of a relation of **quoad thorum et mutuan habitationem**, that is to say, the living of the lovers under the same roof.[13] The term "cohabit" means to dwell together in the manner of husband and wife, for some period of time, as distinguished from occasional, transient interviews for unlawful intercourse.[14]

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[11] U. S. vs. Macabebbag et al., 31 Phil. 257.
[12] U. S. vs. Campos Rueda et al., 35 Phil. 51; U. S. vs. Casipong et al., 20 Phil. 178; Decs. Sup. Ct. of Spain, June 16, 1888, and Feb. 25, 1896.
[13] People vs. Pitoc et al., 43 Phil. 758.
[14] Ocampo vs. People, 40 O. G. 526.

CHAPTER TWO

RAPE AND ACTS OF LASCIVIOUSNESS

Art. 335. WHEN AND HOW RAPE IS COMMITTED.—Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusión temporal.[1]

Reclusión temporal:

Minimum: From 12 years and 1 day to 14 years and 8 months;

Medium: From 14 years, 8 months and 1 day to 17 years and 4 months;

Maximum: From 17 years, 4 months and 1 day to 20 years.

NATURE OF THE CRIME OF RAPE.—Rape is an attack both upon chastity and liberty. For this reason it is punished with great severity.

DIFFERENT WAYS OF COMMITTING THE OFFENSE.—It may be committed against or without the consent of the victim. It is perpetrated **against** the consent of the victim when the offender, through force or intimidation (par. 1 of this Article), lies with the former. It may be committed **without** the consent of the victim when the offender lies with her while she is deprived of reason or is unconscious, whatever may be the cause of such condition (par. 2). Finally, it may also be committed **against and without** the consent of the victim, as when the offender lies with a girl under 12 years of age.

But, a sexual intercourse done in mutual gratification between the accused and his sister-in-law who has scarcely arrived at the age of puberty, despicable and odious as it is, be-

[1] Identical to Art. 438 of the old Penal Code.

cause the act constitutes a serious offense against good morals, nevertheless is not punishable by law. It is not rape.[2]

DEGREE OF VIOLENCE OR FORCE NECESSARY IN RAPE.—In order that rape may exist it is not necessary that the offender should have employed force of such character that it could not be resisted, but it will be sufficient if he has employed the force necessary to accomplish the purpose which he had in view.[3] Education, age, and experience or knowledge of the victim are elements which should be taken into account in determining the degree of force or intimidation.[4]

When force is an element of the crime of rape, it need not be irresistible; "it need but be present, and so long as it brings about the desired result, any consideration of whether it was more or less irresistible, is beside the point."[5]

WHEN RAPE IS CONSUMMATED.—For a consummated rape to exist, it is not necessary that there be a complete penetration or destruction of the hymen.[6] Any penetration whether leading to the hymen or not is sufficient to constitute the crime; for as Lord Meadowbank said in a case in Scotland, "scientific and anatomical distinctions as to where the vagina commences are worthless in a case of rape; it is enough if the woman's body is entered; and it is not necessary to show to what extent penetration of the parts has taken place; whether it has gone past the hymen, into what is anatomically called the hymen, or even so far as to touch the hymen."[7]

In **People vs. Rivera**, 147 Mich. 643, the Court says: "The law may now indeed be considered as settled that while the rupturing of the hymen is not indispensable to a conviction, there must be proof of some degree of entrance of the male organ 'within the labia of the pudentum.' "[8]

CO-PRINCIPAL IN RAPE.—One who prepared the way for the perpetration of the crime of rape, caught and held the victim, a girl 12 years old, conducted her by force and violence to a secluded spot among trees whence he called his confederate, the person chiefly interested in the perpetration of the crime, with whom he must have had an agreement beforehand, delivered her

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[2] People vs. Delfinado, 61 Phil. 894.
[3] Dec. Sup. Ct. of Spain, May 14, 1878; Viada, 3 Cod. Pen. 122-123; U. S. vs. Villarosa, 4 Phil. 434.
[4] U. S. vs. Reynaldo, 39 Phil. 751.
[5] Dec. Sup. Court of Spain, May 14, 1878; Viada, 3 Cod. Pen. 224; People vs. Momo, 56 Phil. 86; People vs. Dayo, 51 Phil. 102.
[6] People vs. Hernandez, G. R. No. 23916.
[7] Steward on Legal Medicine, 137; People vs. Eriña, 50 Phil. 998; People vs. Lomibao, 55 Phil. 620.
[8] People vs. Hernandez, **supra**; People vs. Oscar, XXIV Of. Gaz. 2318.

to the said confederate upon his arrival at the place where the girl was detained, and then went away from the scene of the crime so that such person might freely consummate the rape, is responsible as principal by cooperation.[9]

When the 4 accused conspired together to rape their victim, each one is responsible not only for the rape committed personally by him, but also for that committed by others; hence, each is guilty of four crimes of rape.[10]

COMPLEX CRIME OF RAPE WITH PHYSICAL INJURIES, OR HOMICIDE.—Is there such a thing as complex crime of rape with physical injuries if the latter are caused in the genital part of the victim? Or should the physical injuries be considered as inherent in the violence which characterizes the crime of rape? The Supreme Court of Spain has decided the latter question in the negative, holding that whenever the victim sustained physical injuries in the genital part as a result of violent coition the crime committed is not a complex one of rape with physical injuries.[11]

On the other hand, our Supreme Court took a different view, holding that when as a result of the rape committed in the person of a woman the victim sustains some physical injuries either on her sexual organ or other part of her body, the offender must be responsible for the complex crime of rape **with physical injuries**, and the penalty to be imposed will be that fixed for rape in its maximum degree, according to the provisions of Art. 48 of this Code.[12]

And when the offended party died of peritonitis which was the result of the venereal disease with which she was infected by the defendant through sexual intercourse he had with her against her will, **held** that such facts constitute the complex crime of rape with homicide.[13]

OTHER CASES OF RAPE.—He who lies with a woman, while the latter is in a state of unconsciousness or drowsiness, is guilty of rape.[14]

The fact that the offended person had been a person of an unchaste character constitutes no defense of the charge of rape, provided it is proved that the illicit relations complained of were committed with force and violence. The defendant in a

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[9] U. S. vs. Javier et al., 31 Phil. 235.
[10] People vs. Villa et al., 81 Phil. 193.
[11] Dec. Sup. Ct. of Spain, March 23, 1885, published in Off. Gaz., Oct. 14, 1885.
[12] See Dec. Sup. Ct. of Spain, March 23, 1885; Viada, 3 Cod. Pen. 121; U. S. vs. Cruz, 14 Phil. 774; U. S. vs. Andaya, 34 Phil. 690; People vs. Aplado, 53 Phil. 325.
[13] People vs. Acosta, 60 Phil. 158.
[14] Viada, 3 Cod. Pen. 121-122.

criminal action for rape is guilty of the crime if force and violence were used, regardless of the good or bad character of the offended person.[15]

The act of having carnal knowledge with a female minor under 12 years of age, even if done with her consent, is rape under Art. 335 (3), although the offended party is a prostitute.[16]

The legal existence of the crime of rape includes the presumption of the existence of its essential elements, such as that of force or violence toward the injured party, it being necessary, however, that the circumstances be proved beyond doubt. The tacit consent or hesitation shown by the alleged injured person serves perhaps to qualify the consummated offense as the crime of seduction (**estupro**) and not as that of rape (**violación**). The existence of the latter is never to be presumed but should be proved by clear and conclusive evidence; otherwise there would be reason to suspect that the act was committed with consent.[17]

Art. 336. ACTS OF LASCIVIOUSNESS.—Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prisión correccional.[18]

Prisión correccional:

Minimum: From 6 months and 1 day to 2 years and 4 months:

Medium: From 2 years, 4 months and 1 day to 4 years and 2 months;

Maximum: From 4 years, 2 months and 1 day to 6 years.

DISTINCTION BETWEEN ACTS OF LASCIVIOUSNESS AND ATTEMPTED RAPE.—The offense described in this Article is to be distinguished from attempted or frustrated rape by the very **nature** and **object** of the act performed by the offender. Whenever the act performed by the culprit is characterized by lewdness or lasciviousness, the crime committed is abuse of chastity described in this Article; it will be attempted or frustrated rape, if the acts performed by the offender clearly indicate that his purpose was to lie with the offended person.

Furthermore, the offense against chastity under this Article

[15] People vs. Blance, 45 Phil. 113.
[16] People vs. Perez, 37 O. G. 1762.
[17] U. S. vs. De Dios, 8 Phil. 279.
[18] Similar to Art. 439 of the old Penal Code.

may be committed on the person of either sex, while attempted or frustrated rape is committed always upon a woman.

ACTS CONSTITUTING THE OFFENSE.—Just what constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover.[19]

Thus, the act of a person who compels a woman to take off her clothes and dance before him and others, is an offense against chastity, because lasciviousness was necessarily a part of the motive.[20]

Or the act of a person who embraced a woman, caught her breast and at the same time kissed her against her will.[21]

The act of an offender who, after throwing a girl seven years old upon the floor, placed his private parts upon hers and remained in that position for some moments, is likewise a crime against chastity or **abusos deshonestos.**[22]

To sustain, however, a charge of **abusos deshonestos** something more must appear than that, with or without her consent, an ardent lover kissed and embraced for a moment the young woman with whom he was in love.[23]

[19] U. S. vs. Gomez, 30 Phil. 22.
[20] U. S. vs. Bailoses, 2 Phil. 49.
[21] U. S. vs. Basilio, 9 Phil. 16.
[22] U. S. vs. Tan Teng, 23 Phil. 145.
[23] U. S. vs. Gomez, 30 Phil. 22.

CHAPTER THREE

SEDUCTION, CORRUPTION OF MINORS AND WHITE SLAVE TRADE

Art. 337. QUALIFIED SEDUCTION.—The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by prisión correccional **in its minimum and medium periods.**

The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.

Under the provisions of this chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.[1]

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

SEDUCTION DEFINED.—Seduction may be defined as the unlawful sexual intercourse with an unmarried young lady or widow of good reputation,[2] who is over twelve but under eighteen years of age.

KINDS OF SEDUCTION. — Art. 337 of this Code refers to two kinds of seduction, viz: (1) seduction of a **virgin** over 12

[1] Similar to the provisions of Art. 433 of the old Penal Code, as amended by Section 2 of Act 2298 of the Philippine Legislature.

[2] See Art. 338 of this Code.

years and under 18 years of age by certain persons specially related to her, such as a person in authority, a priest, servant, domestic, guardian, teacher, etc.; and (2) seduction of a **sister** or **descendant**, by her brother or ascendant, regardless of the circumstance of whether the victim is a virgin or not, or under or over 18 years of age.

ESSENTIAL ELEMENTS OF THE CRIME.—As regards the offender, he must be either a person specially connected with the woman or not. A person specially connected with her may be either her relative or not. Such relative must be an ascendant or a brother. Persons having no relationship with her must occupy a certain position favorable to the commission of the crime such as persons in public authority, priests, servants, domestic, guardians, teachers, etc.

MEANING OF THE TERM "DOMESTIC."—The term "domestic" as used in Art. 337 of this Code is not restricted to household servants. It includes all those persons residing with a family and who are members of the same household, regardless of the fact that their residence may be only temporary or that they may be paying for their board and lodging. The case of such a person is easily distinguishable from that of a stranger paying for his board and lodging at an inn or hotel, who is not tendered or expected to receive those confidential and sentimental manifestations of intimacy exchanged between members of the same household.[3]

Likewise, a person who, taking advantage of the occasion when a virgin under 18 stops at his house for some time as his guest because of an attack of illness, succeeds in having carnal knowledge of his guest is guilty of qualified seduction under the first paragraph of this Article.[4]

A seduction committed by a stepfather on the person of his stepdaughter is a qualified seduction under the first paragraph of this Article.[5]

The term "teacher" as used in this Article (337) includes not only an educational or academical teacher but also teachers in trades, and thus the teacher who lies with a pupil who works in the field may be found guilty of qualified seduction.[6]

Art. 338. SIMPLE SEDUCTION.—The seduction of a woman who is single or a widow of good reputation,

[3] U. S. vs. Ariante, 9 Phil. 595; U. S. vs. Santiago, 26 Phil. 184.
[4] People vs. Dizon, G. R. No. 18780, decided Nov. 18, 1922.
[5] Dec. Sup. Ct. of Spain, April 30, 1884; Viada, 3 Cod. Pen. 137.
[6] Dec. Sup. Ct. of Spain, December 15, 1883; Viada, 3 Cod. Pen. 136-137; People vs. Cariaso, 50 Phil. 884.

over twelve but under eighteen years of age, committed by means of deceit, shall be punished by arresto mayor.[7]

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months.

ESSENTIAL REQUISITES OF THE OFFENSE.—Under this Article the offended party must be an unmarried woman over 12 and under 18 years of age and of good reputation. The element of **deceit** is indispensable in this offense.

ACTS CONSTITUTING DECEIT.—What constitutes deceit within the meaning of this Article?

An unredeemed promise of marriage constitutes deceit within the meaning of this Article.[8]

A promise of marriage, in order to constitute that deceit which leads to the consummation of the crime of seduction, requires no solemnity whatever nor any other formality than that of making it in such form and manner that it may reasonably be believed in by the injured party, considering the facts of the case, the persistence and repetition of the offer and other similar circumstances which give the offer the appearance of sincerity.[9]

To constitute seduction, however, there must in all cases be some sufficient promise or inducement, and the woman must yield because of the promise or other inducement. If she consents merely from carnal lust, and the intercourse is from mutual desire, there is no seduction. Deceit is the element of this crime; so that where the deceit alleged is a promise of marriage, it must appear that the woman was induced to yield her body to the seducer "by means of such promise, and that she surrendered her virtue in reliance upon its fulfillment."[10]

The crime punished in par. 1 of Art. 337 of this Code is essentially distinct from the one referred to in this Article, the difference being that in the latter kind of seduction deceit is necessary, while in the former case it would not be punished were it not for the character of the person who commits the offense, and on account of his superior power or abuse of confidence.[11]

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[7] Identical to the third paragraph of Article 443 of the old Penal Code.
[8] Decs. Sup. Ct. of Spain, Oct. 28, 1872; Dec. 2, 1873; Oct. 7, 1874; Viada, 3 Cod. Pen., 134-135.
[9] Dec. Sup. Ct. of Spain, Oct. 2, 1888; Hidalgo, 11 Cod. Pen., 320-321; U. S vs. Limcangco, 9 Phil. 77. See also Dec. Sup. Ct. of Spain, December 28, 1906; Viada, 5 Sup. 325-326.
[10] U. S. vs. Sarmiento, 27 Phil. 121. See also People vs. Iman, 62 Phil. 92.
[11] U. S. vs. Arlante, 9 Phil. 595.

Art. 339. ACTS OF LASCIVIOUSNESS WITH THE CONSENT OF THE OFFENDED PARTY.—The penalty of arresto mayor **shall be imposed to punish any other acts of lasciviousness committed by the same persons and the same circumstances as those provided in articles 337 and 338.**[12]

Arresto mayor: See Art. 338.

Under this Article any **unchaste abuse** (in the sense these words are used in Art. 336) made by a person in authority, priest, house servant, domestic, guardian, teacher, etc., upon a virgin over 12 and under 18 years, or upon his sister, regardless of the age of the latter, or upon any unmarried woman of good reputation under deceitful circumstances, would constitute an offense. Such would be the case, for instance, of a male teacher who would touch the breast of a female pupil under 18 years of age even with the consent of the latter, etc.

Art. 340. CORRUPTION OF MINORS.—Any person who shall habitually or with abuse of authority or confidence, promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another, shall be punished by prisión correccional **in its minimum and medium periods, and if the culprit be a public officer, he shall also suffer the penalty of temporary absolute disqualification.**[13]

Prisión correccional in its minimum and medium periods: See Art. 337.

DIFFERENT WAYS OF COMMITTING THE OFFENSE.—The act punished in this Article may be committed in two different ways: (a) by **habitually** promoting or facilitating the prostitution or corruption of minors of either sex, or (b) whenever the offender, in promoting and facilitating the prostitution and corruption of the minor, avails himself of his authority over the minor, or acts with abuse of confidence.

ESSENTIAL REQUISITES OF THE OFFENSE.—As will be seen, in the first case **habituality** is an essential requisite of the offense, while in the second, abuse of authority or confidence is necessary.

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[12] Similar to the 4th paragraph of Art. 443 of the old Penal Code.
[13] Similar to the provisions of Art. 444 of the old Penal Code.

ACTS CONSTITUTING CORRUPTION OF MINOR.—The practice of promoting or facilitating prostitution is the first and most general condition which the penal law requires in order to establish the commission of the crime provided for and penalized in this Article of the Penal Code. The execution of a single act of facilitating the prostitution of a minor by placing her at another's disposal for immoral purposes does not legally constitute the said crime, unless it be done with abuse of confidence or authority, in either of which cases the execution of a single act alone is sufficient to make its perpetrator liable under this Article.[14]

To constitute this offense it is not necessary that the unchaste acts shall have been done. What the law penalizes is the act of a pimp who facilitates the corruption and not the performance of unchaste acts upon the person of the minor.

Two important things are to be taken into consideration, however, in this kind of offense: **first**, that the victim be over 12 but under 18 years of age, and **second**, that she be of good reputation, that is, not a prostitute or corrupted person.

The fact that the party who promotes the prostitution of a minor is the person in charge of a house of prostitution is sufficient proof of habituality within the meaning of this Article.[15] And the fact that the victim is the servant of the party who promotes or facilitates the prostitution of the former is sufficient to show the existence of **abuse of confidence** within the meaning of this Article.[16]

Art. 341. WHITE SLAVE TRADE.—The penalty of prisión correccional **in its medium and maximum periods shall be imposed upon any person who, in any manner, or under any pretext, shall engage in the business or shall profit by prostitution or shall enlist the services of women for the purpose of prostitution.**[17]

Prisión correccional in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

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[14] U. S. vs. Javier, 20 Phil. 337.
[15] Dec. Sup. Ct. of Spain, December 17, 1883.
[16] Dec. Sup. Ct. of Spain, December 17, 1883; Viada 3 Cod. Pen., 142.
[17] Identical to Art. 282 of the proposed Correctional Code of 1916.

The original Spanish text of this Article uses the word **trata inmoral**, which is equivalent to commercialized prostitution.

It is to be noted that the present Article does not punish the act of engaging oneself in prostitution, for such an act is already penalized by Art. 202 par. 5, but rather the exploitation of the business of prostitution. In other words, the present Article punishes pimps or procurers and owners or persons in charge of houses of prostitution.[18]

The offense is similar to corruption of minors. In the white slave trade, however, the age of the victim is of no consequence, unlike in the corruption of minors.

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[18] See People vs. Nuevas, 76 Phil. 277.

CHAPTER FOUR

ABDUCTION

Art. 342. FORCIBLE ABDUCTION.—The abduction of any woman against her will and with lewd designs shall be punished by reclusion temporal.

The same penalty shall be imposed in every case, if the female abducted be under twelve years of age.[1]

Reclusión temporal:

Minimum: From 12 years and 1 day to 14 years and 8 months;

Medium: From 14 years, 8 months and 1 day to 17 years and 4 months;

Maximum: From 17 years, 4 months and 1 day to 20 years.

ESSENTIAL ELEMENTS OF THE OFFENSE.—Three elements are present in the abduction described under the first paragraph of this Article: (a) that the victim be a woman, regardless of whether she is a widow, married, or a virgin; (b) that the abduction or taking away must be done through violence or against the will of the offended party; and (c) that the abduction must be for lewd or unchaste designs, because in the absence of lewd designs the crime committed might be illegal detention or coercion, etc.[2]

WHEN VIOLENCE OR LEWD DESIGN IS NOT NECESSARY.—When the abduction is perpetrated on the person of a **girl under 12 years of age,** violence or force is not necessary according to the provisions of the second paragraph, for the reason that the law presumes a girl under 12 as having no will of her own, and, as such, is incapable of giving her consent to this kind of act. Neither is lewd design essential.

Where the evidence is conclusive that the abduction was accomplished and completed with force and violence, any evidence tending to show that the girl may thereafter have acquiesced in her abduction is not a defense.[3]

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[1] Identical to Art. 445 of the old Penal Code.

[2] U. S. vs. Caido et al., 4 Phil. 217; U. S. Banila et al., 19 Phil. 130; U. S. vs. Borromeo, 23 Phil. 279; U. S. vs. De Vivar, 29 Phil. 451; U. S. vs. Ramirez, 39 Phil. 738; People vs. Crisostomo, 46 Phil. 775. But see People vs. Rabadan, 53 Phil. 694.

[3] People vs. Bustos, 54 Phil. 887.

LEWD DESIGNS; WHEN PRESENT.—In a criminal action for abduction in order to demonstrate the presence of lewd designs, actual illicit carnal relations with the person abducted need not be shown. The intent to seduce the girl is sufficient. The evil purpose need not be established by positive evidence, but may be inferred from acts or conduct proved.[4]

For cases of attempted abduction, see **U. S. vs. Narvasa et al.**, 8 Phil. 410; **U. S. vs. De la Cruz**, 8 Phil. 176.

For cases of forcible abduction, see **U. S. vs. Vivar**, 29 Phil. 451; **U. S. vs. Banila**, 19 Phil. 130.

Where the injured party is abducted and held by the defendant, without unchaste designs on his part but for the purpose of lending her to intercourse with others, the crime committed is that of corruption of minors, defined by Art. 340 of this Code.[5]

The fact that the defendant made an attempt against the chastity of the injured party justifies the presumption that when he attempted to abduct her the next morning he had unchaste designs on her.[6]

The following facts were considered by the Supreme Court as sufficient to constitute the crime of forcible abduction defined under this Article of the Penal Code: Rufino Ramirez was, prior to October 13, 1916, an unsuccessful lover of a young lady named Regina Tolentino. In view of his disappointment, Ramirez sought the aid of Victoriano Corpus and Placido de Ocampo for the purpose of abducting the girl. On October 13, 1916, the three defendants hired an automobile, it then being nightfall, and proceeded toward the district of Santa Mesa, city of Manila, stopping at the Rotonda. Regina Tolentino, accompanied by a male companion, Francisco Malabunga, and a female companion, Marcelina Tolentino, while walking on Calle Santa Mesa, was suddenly grasped by Placido de Ocampo. Marcelina Tolentino and Regina Tolentino, amidst screams, struggled against Placido de Ocampo but without success. Regina was forcibly taken to the automobile where Rufino Ramirez waited for her. Victoriano Corpus, during this occurrence, held Francisco Malabunga. To prevent Regina Tolentino from screaming any further, De Ocampo and Ramirez placed a handkerchief over her mouth. While in the automobile Regina fainted. Thus senseless, the girl was taken by the accused in the automobile to a place near the cemetery of Balicbalic. Upon reaching this place, the chauffeur, because of his suspicions, deiberately ran the automobie into the mud, telling the accused

[4] U. S. vs. Ramirez, 39 Phil. 738; U. S. vs. Meneses, 14 Phil. 151; People vs. Bustos, 54 Phil. 887.
[5] U. S. vs. Tagle, 1 Phil. 626.
[6] U. S. vs. Luna, 4 Phil. 269. See also U. S. vs. De la Cruz et al., 8 Phil. 176.

that the automobile could not go any further. The two defendants thereupon, together with Rufino Ramirez, left the car and took Regina to the rice paddies. The girl who had just come to her senses, renewed her screaming. The neighboring people responded promptly to the outcries for help, and the accused, upon seeing that many people were coming to the aid of the girl, field.[7]

Art. 343. CONSENTED ABDUCTION.—The abduction of a virgin over twelve and under eighteen years of age, carried out with her consent and with lewd designs, shall be punished by the penalty of prisión correccional **in its minimum and medium periods.**[8]

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

ELEMENTS OF CONSENTED ABDUCTION.—This is the second kind of abduction, commonly known as abduction with consent.

The following are the elements of the offense: (a) taking away of the victim from the parental house; (b) virginity of the victim; (c) minority of the same, that is, that she be over 12 but under 18 years of age; and (d) lewd designs.

WHAT CONSTITUTES REMOVAL.—The removal of a virgin over 12 and under 18 years of age from her legal domicile or from the place where she is staying, with the intention of concealing her residence and of placing her in one way or another, **with some character of permanence,** where the authority and right of vigilance that pertains to the guardians of her person cannot be freely and easily exercised, is however, an essential requisite for the crime of abduction, as provided for in this Article of the Penal Code.[9] Thus, where a man takes a female servant over 12 and below 18 years of age in an automobile with her consent and with the intention of bringing her back after riding for a couple of hours, the act does not constitute the crime of abduction with consent, for it does not show any intention on

[7] U. S. vs. Ramirez, 39 Phil. 738.
[8] Identical to Art. 446 of the old Penal Code.
[9] U. S. vs. Garcia, 30 Phil. 74.

the part of the defendant to take her away from any authority of her master and substitute himself in lieu of the latter at least for a short time.[10]

The taking of a girl under 18 years of age from a girl's college, conducted and controlled by sisters of charity, by wiles and persuasion and for a lewd purpose is also abduction under this Article.[11]

For the crime of abduction with consent to exist, it is not necessary that the victim be personally removed from the house of her parents or guardian. It is sufficient that she leaves it and be withdrawn from their control and vigilance, yielding to the cajolery and promises of her seducer, because the law does not punish the violence done to the person abducted when it is presumed that she gave her consent, but the disgrace to her family and the alarm caused therein by the disappearance of one of its members who, by her age and sex, is susceptible to cajolery and deceit.[12] The place where the abduction is committed is immaterial, for the law takes no account of it.[13] Thus, a certain R did not personally remove his victim A, a virgin of 17 years of age, from the house of her parents, but he did induce her to leave it, and did, in spite of his being married, maintained amorous relations for six months, prior to the date of abduction, gaining her consent during all that time and seducing her; and after the girl by agreement with him had left the parental roof on the day mentioned and was withdrawn from her parent's control and vigilance, he took her away with him and carnally enjoyed her during the time that he had her in his company. **Held:** that such facts constituted the crime of abduction with consent.[14]

CIRCUMSTANCES WHICH NEGATIVE LEWD DESIGNS.—There is no abduction in the case of a young man in complying with the request of his sweetheart, being at an advanced stage of pregnancy, who takes her to a maternity ward, for the reason that the lewd designs are lacking in this case.[15]

Neither is there abduction in the case of a girl who leaves the parental house and goes to the house of her lover without any solicitation or cajolery from the latter, even though there be sexual intercourse in said house.[16]

EFFECT OF SUBSEQUENT VOLUNTARY SUBMISSION

[10] People vs. De la Cruz, 48 Phil. 533.
[11] U. S. vs. Casten, 34 Phil. 808.
[12] Dec. Sup. Ct. of Spain, November 30, 1875.
[13] Decs. Sup. Ct. of Spain, October 29, 1875 and March 31, 1896.
[14] U. S. vs. Reyes, 28 Phil. 353.
[15] Dec. Sup. Ct. of Spain, Nov. 16, 1874; Viada, 3 Cod. Pen., 145-146.
[16] Dec. Sup. Ct. of Spain, Feb. 25, 1887; Viada, 3 Cod. Pen., 147-148. See U. S vs. Javate, 4 Phil 465.

OF THE VICTIM.—Even though some compulsion is present at the beginning of an abduction, if the offended party later voluntarily follows her abductor and consents to be taken by him from one place to another, the crime committed should be classified as abduction with consent of the offended party.[17]

PREGNANCY; WHEN NOT INCONSISTENT WITH VIRGINITY.—The fact that the abductor succeeded in having carnal knowledge of the abducted girl some time prior to the taking away of the girl is not a defense or a bar to prosecution, because the interruption of continuity between this act and that of the abduction was not sufficient to negative the object and purpose of the crime, and because, furthermore, the virginity to which Article 343 of the Penal Code refers is not to be understood in so material a sense as to exclude the idea of the abduction of a virtuous woman of good reputation.[18]

VIRGINITY; WHEN PRESUMED.—Under the system of proof established by the Code of Civil Procedure (Sec. 334, par. 1), a presumption **de jure** of a woman's virginity arises whenever it is shown that she is unmarried, and continues until overthrown by proof to the contrary.[19]

Medical authorities are by no means agreed that a woman is not a virgin merely because the hymen is not present. It is claimed by some authorities, upon the basis of clinical observations, that the hymen is not always present even in state of undoubted virginity; that sometimes it is torn away in childhood due to various causes.[20]

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[17] U. S. vs. Yumul, 34 Phil. 169.
[18] U. S. vs. Casten, **supra**; U. S. vs. Asuncion, 31 Phil. 614.
[19] U. S. vs. Alvarez, 1 Phil. 351.
[20] People vs. Torres et al., 62 Phil. 942.

CHAPTER FIVE

PROVISIONS RELATIVE TO THE PRECEDING CHAPTERS OF TITLE SEVEN

Art. 344. PROSECUTION OF THE CRIMES OF ADULTERY, CONCUBINAGE, SEDUCTION, ABDUCTION, RAPE AND ACTS OF LASCIVIOUSNESS.—The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.[1]

WHEN SEPARATE TRIAL MAY BE AUTHORIZED.—Under the provisions of this Article, a complaint for adultery must be presented against both of the offenders, and by the offended party. Separate trial, however, may be had under the following circumstances: (a) when either of the parties requests it; (b) when the Government is satisfied that the man did not know that the woman was married; (c) when one of the parties dies before the time of the trial; and (d) when, for example, one of the parties had fled from the jurisdiction of the court and has not been arrested.[2]

EFFECT OF CONSENT OR PARDON BY THE AGGRIEVED PARTY.—Under the provisions of Section 2 of Act 1773 of the Philippine Commission, pardon, condonation, or remission of the penalty by the aggrieved party, or his parents or guardian, did not extinguish the criminal liability of the offender. The effect of said Section 2 of Act 1773 was to repeal by implication the second paragraph of Art. 434 of the old Penal Code, in so far as said paragraph provides that consent and pardon by the offended party will extinguish the criminal liability of the offender.[3]

With the incorporation of the second paragraph of this

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[1] Similar to the provisions of the first paragraph of Art. 434 of the old Penal Code.

[2] U. S. vs. Gallegos, 37 Phil. 289; U. S. vs. Topiño et al., 35 Phil. 901. See *also U. S. vs. Feliciano, 36 Phil. 753.*

[3] See People vs. Cornejo et al., 60 Phil. 785.

Article, however, the consent or pardon given by the offended party will again constitute a bar to the prosecution for adultery.

The expression "if he shall have consented" in Article 344 of the Revised Penal Code, which bars the "offended" husband from instituting a prosecution, has no reference to any consent or agreement prior to the commission of the offense but relates to an express or implied acquiescence **subsequent** to the offense. This consent or acquiescence need not be express but may be inferred from the conduct of the long continued inaction of the husband after learning of the offense. The husband who is truly "offended," within the meaning of the statute, will not sit passively by and allow his name and the honor of his family to be flagrantly sullied by the notorious adultery of his wife. Apart from that, the fact that he abandoned and deserted his wife and child, in spite of all her efforts to maintain their home intact, shows a callous indifference to every moral duty imposed upon him as her husband and the father of their child. In this case, the very thing happened which he might have foreseen and probably did foresee when he abandoned his wife and deceived her into believing that she was free when she signed the said agreement a year and a half before the offense was committed. His consent to the offense before it was committed was void but his tolerance of and acquiescence in the offense after it was committed demonstrates that it is a hypocritical pretense for him now to appear in court as the "offended party" and is a bar to his right to prosecute his wife.[4]

REASONS WHY CONSENT OF AGGRIEVED PARTY IS A BAR TO CRIMINAL PROSECUTION.—Very apt in this connection are the following paragraphs in Groizard's commentaries on similar provisions in the Codigo Penal in Spain:

"A su vez, transigir un marido con su deshonor, consentir el adulterio y luego ir a los tribunales querellándose de la mujer y de su cómplice, es ser dos veces indigno: la primera, al conocer y no vindicar la ofensa recibida, y la segunda, haciéndola pública con daño de toda la familia, después de haber demostrado que personalmente la afectaba en poco.

"A las limitaciones de que acabamos de hablar, nosotros añadiríamos otra que encontramos establecida en algunos códigos que en las concordancias figuran. Fijaríamos un plazo, más o menos largo para la presentación de la querella, pasado el cual, negaríamos al marido el derecho de producirla. El

[4] People vs. Guinucud and Tagayun, 58 Phil. 621. This decision was overruled in People vs. Schnechenburger, et al., 73 Phil. 413, holding that prior consent is as effective as subsequent consent to bar the offended party from prosecuting the offense.

marido que tiene conocimiento de la violación de la fé conyugal y deja pasar cuatro o seis meses sin acudir a los tribunales demandando reparación de las injurias debe suponerse que tácitamente las ha perdonado. Espacio ha tenido suficiente, cuando la herida chorreaba sangre, para ejercer el derecho que la ley lo daba; si no lo hizo en un término prudencial, no es justo que indefinidamente tenga a la mujer bajo la amenaza de un castigo vergonzoso que cohiba perpetuamente su espíritu, impidiendo su arrepentimiento y dificultando la conciliación conyugal, y con ella la paz de la familia."[5]

INDIVISIBILITY OF ACTION; ITS EXCEPTION. — The second paragraph of Art. 344 of the Revised Penal Code, reading: "The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders" means that the pardon afforded the offenders must come **before** the institution of the criminal prosecution, and means further that **both** the offenders must be pardoned by the offended party if the said pardon is to be effective. In a certain case, as these circumstances do not concur, the motion for dismissal predicated on an affidavit of the husband pardoning his guilty spouse for her infidelity is denied.[6]

The offended party's pardon of the offender in a seduction case after the criminal action has been instituted constitutes no bar to said action according to paragraph 3, Article 344 of the Revised Penal Code.[7]

DEATH OF ONE OF THE OFFENDERS BEFORE FILING OF THE COMPLAINT; IS IT A BAR TO CRIMINAL PROSECUTION?—In this jurisdiction, may an action for adultery be started against the male paramour alone if it appears that prior to the commencement of the action the female died? This question is not yet settled by our Courts nor by the Supreme Court of Spain. A decision of the Supreme Court of France, however, held that the death of the female under such circumstance constitutes a complete bar for the commencement of the action against the surviving adulterer. We may say, however, after a careful examination of the provisions of Article 344, 2nd paragraph, that the indivisibility of action provided for in such Article is only true if and **when** both, the guilty parties, are alive. For this reason, the Supreme Court of the Philippines in the case of United States vs. Topiño, 35 Phil. 901 and United States vs. Gallego,

[5] Groizard, 5 Cod. Pen. 48.
[6] People vs. Infante, 57 Phil. 138.
[7] People vs. Miranda, 57 Phil. 274.

37 Phil. 289, held that notwithstanding the provisions of the second paragraph of Article 344, a separate trial for adultery can be held, among other reasons, "when one of the parties dies before the time of the trial."

ADULTERY AND CONCUBINAGE, DISTINGUISHED FROM BIGAMY.—The first, an offense against chastity and may be prosecuted only at the instance of the offended party; the second is an offense against civil status which may be prosecuted at the instance of the state.[8]

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents,[9] grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.[10]

MINORITY OF THE VICTIM, NOT A LEGAL DISQUALIFICATION TO PROSECUTE THE OFFENDER.—Minority of the offended parties in the crimes mentioned in this paragraph does not disqualify them from prosecuting such crimes as it does in all other crimes defined by the Penal Code, by the Acts of the Philippine Commission, and by those of the Philippine Legislature. The complaint of the aggrieved party for the crime of seduction filed in the form prescribed in Section 4 of General Orders No. 58 is sufficient, valid, and lawful, and the court or judge over the person of the accused and the subject-matter of the criminal action, although the aggrieved party is under age and said complaint be presented personally by her without the aid or intervention of her parents, grandparents, or guardian, unless she is incapable or incompetent to do so upon other legal grounds, restrictive of her juridical personality and civil capacity to appear at the hearing.[11]

When, in a prosecution for adultery upon a complaint by the husband, the justice of the peace after a preliminary investigation dismisses the complaint for lack of reasonable cause to sustain the charges, the case is definitely terminated and can only be reopened upon a new complaint by the offended party. After such dismissal by the justice of the peace, the fiscal has no authority

[8] People vs. Schneckenburger, et al., 73 Phil. 413.
[9] People vs. Imus, 64 Phil. 419.
[10] Similar to the provisions of Art. 448 and Section 1 of Act 1773 of the Philippine Legislature.
[11] U. S. vs. Bautista, 40 Phil. 735.

to file a new complaint upon his own responsibility and to institute a new prosecution in the Court of First Instance. The filing of such complaint or information gives the court no jurisdiction over either the parties or the subject-matter of the action.[12]

In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the coprincipals, accomplices and accessories after the fact of the above-mentioned crimes.[13]

The subsequent marriage of the abductor to the offended party is a bar to the criminal prosecution against him and his codefendants, under the provisions of this paragraph.[14]

But a deceitful marriage, a device by an accused having the sole purpose of dodging the application of the Penal Code, is devoid of legal effects and will not extinguish the criminal liability of the offender.[15]

Art. 345. CIVIL LIABILITY OF PERSONS GUILTY OF CRIMES AGAINST CHASTITY.—Persons guilty of rape, seduction or abduction, shall also be sentenced:

1. To indemnify the offended woman.[16]

As will be seen, the law is silent on the amount of indemnity to which an unmarried woman or a widow who is the victim of rape, seduction, or abduction is entitled to receive. Such indemnity is, therefore, to be determined by the court, taking as a basis of the judgment, the means and fortune of the offender, the nature and extent of the injury done, and the social condition of the offended party.

This indemnity, in the majority of cases, has been fixed by our courts at a figure ranging from ₱500 to ₱1,000.

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[12] Quiatan et al. vs. Carruncho, 21 Phil. 399.
[13] Based on the provisions of Section 2 of Act 1773 of the Philippine Commission.
[14] U. S. vs. Poquis, 14 Phil. 261; People vs. Tisbe et al., 48 Phil. 1.
[15] People vs. Santiago, 51 Phil. 68.
[16] Similar to the provisions of Art. 449 of the old Penal Code.

Pecuniary indemnity may be awarded in a case of rape, even though the person injured is a married woman.[17]

The indemnity to be awarded the injured party is absolute and not subject to the condition that it would be paid in case there should be an offspring.[18]

In case of non-payment of the indemnity under this paragraph, because of insolvency, the offender is bound to suffer subsidiary imprisonment.[19]

2. To acknowledge the offspring, unless the law should prevent him from so doing.[20]

This paragraph refers to that kind of offspring known as **natural child** in the Civil Code, that is, a child whose parents at the time of the child's conception were in a position to contract a lawful marriage.

In U. S. vs. Yambao, 4 Phil. 204, for rape, the injured party was a married woman. **Held:** That the defendant could not be condemned to recognize the offspring, not only because the character of its origin prevents that, but on account of the parental authority which might thus be conferred upon the party committing the rape, and further, because of the inherent parental right in favor of the father in **constanti matrimonio.** If this legal right should be violated, the family right would be disturbed and the acknowledgment on the part of the offender would cause its consequent disturbance in the family as a result of the crime committed by the man who would thus introduce into the family a spurious offspring.

3. In every case to support the offspring.[21]

Whatever may be the status of the offspring, therefore, resulting from the criminal action of the offender, he is bound to support the same.

The provision of this section does not apply to a case in which the person injured is a married woman.[22]

The adulterer and the concubine in the case provided for in articles 333 and 334 may also be sentenced,

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[17] U. S. vs. Yambao, 4 Phil. 204.
[18] People vs. Licerio, 61 Phil. 361.
[19] Viada, 3 Cod. Pen. 159.
[20] Similar to the provisions of par. 2 of Art. 449 of the old Penal Code.
[21] Identical to par. 3 of Art. 449 of the old Penal Code.
[22] U. S. vs. Yambao, 4 Phil. 204.

in the same proceeding or in a separate civil proceeding, to indemnify for damages caused to the offended spouse.

The old Penal Code contained no provisions for indemnity in case of adultery in a criminal action. There was no law to permit the allowance of civil damages such as indemnity as a part of the criminal procedure in cases of adultery. Act 1773 provided for a civil action for damages in cases of adultery, but the civil action had to be presented separately and independently.[23] With the incorporation of this paragraph, however, an adulterer may be sentenced for damages in the same proceedings or in a separate civil action.

Art. 346. LIABILITY OF ASCENDANTS, GUARDIANS, TEACHERS, OR OTHER PERSONS ENTRUSTED WITH THE CUSTODY OF THE OFFENDED PARTY. —The ascendants, guardians, curators, teachers and any person who, by abuse of authority or confidential relationship, shall cooperate as accomplices in the perpetration of the crime embraced in chapters second, third and fourth of this title, shall be punished as principals.

Teachers or other persons in any other capacity entrusted with the education and guidance of youth, shall also suffer the penalty of temporary special disqualification in its maximum period to perpetual special disqualification.

Any person falling within the terms of this article, and any other person guilty of corruption of minors for the benefit of another, shall be punished by special disqualification from filling the office of guardian.[24]

The provisions of the first paragraph of this Article refer not only to rape, abduction, and seduction but also to **abusos deshonestos**, public scandal, and corruption of minors.

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[23] U. S. vs. Noriega et al., 31 Phil. 310.
[24] Similar to the provisions of Arts. 450 and 451 of the old Penal Code.

TITLE TWELVE

Crimes Against the Civil Status of Persons

CHAPTER ONE

SIMULATION OF BIRTHS AND USURPATION OF CIVIL STATUS

Art. 347. SIMULATION OF BIRTHS, SUBSTITUTION OF ONE CHILD FOR ANOTHER AND CONCEALMENT OR ABANDONMENT OF A LEGITIMATE CHILD.—The simulation of births and the substitution of one child for another shall be punished by prisión mayor **and a fine of not exceeding 1,000 pesos.**

The same penalties shall be imposed upon any person who shall conceal or abandon any legitimate child with intent to cause such child to lose its civil status.[1]

Prisión mayor:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

MEANING OF THE ORIGINAL SPANISH TEXT OF THIS ARTICLE.—The original Spanish text of this Article reads as follows:

"Art. 347. **Suposición de partos, sustitución de un niño por otro y ocultación o exposición de hijo legítimo.**— Seran castigadas con las penas de prisión mayor y multa que no exceda de 1,000 pesos la suposición de partos y la sustitución de un niño por otro.

"Las mismas penas se impondrán al que ocultare o expusiere un hijo legítimo con ánimo de hacerle perder su estado civil.

"El facultativo o funcionario público que, abusando de su profesión o cargo, cooperare a la ejecución de alguno de los delitos expresados en los dos párrafos anteriores

[1] Similar to the provisions of Art. 468 of the old Penal Code.

incurrira en las penas del mismo y, además, en la inhabilitación temporal especial."

As will be seen, the word "expusiere" used in the second paragraph of this Article has been translated into English for "shall conceal or abandon."

The verb "exponer" is given various meanings in the Spanish language. Among others, according to the **Diccionario** of the Spanish language by the "Real Academia Española," 12th edition, "arriesgar, aventurar, poner una cosa en contingencia de perderse" (to risk, to venture, to put a thing in danger of being lost); and also "dejar a un niño recien nacido a la puerta de una iglesia o casa o en otro paraje público, por no tener con que criarlo sus padres o porque no sepa quienes son" (to leave a newly born baby at the door of a church, or a house or other public place, the parents not having means to support it, or the parents being unknown).

Having in mind the qualifying phrase which provides that the offense is committed when the child is exposed "con ánimo de hacerle perder su estado civil" (with intent to expose it to lose its civil status), the word must be held to have been used by the authors of the Code in the sense of to "abandon," in some such manner as is indicated in the last of the above cited meanings given the word in the "Diccionario"; that being the clear, definite and well understood signification of the word when used by the Spanish authors of the Code with relation to infants or children, as it manifestly is in this Article.

It is worthy of observation, furthermore, that the transitive verb "expusiere" (shall expose) is joined in grammatical construction with the verb "ocultare" (shall conceal) and, like it, has for its sole object the word "child" (hijo), and sound principles of grammatical construction forbid the attempt to import into one of these verbs a meaning from the common qualifying phrase which it is manifestly impossible to give to the other.

The practice of abandoning newly born infants and very young children at the door of hospitals, churches and other religious institutions was formerly so well known in Spain that, as will be seen from the definition above cited from the dictionary of the "Real Academia," it gave rise to the use of the verb "exponer" (to expose) in a peculiar and special sense with reference to this practice, when the grammatical object of the verb is an infant or small child. We are well satisfied that it is in this sense that the word is used in the article of the Code under consideration, and that in this connection it may and

should be construed in both Spanish and English by its substantial equivalent to "abandon."[2]

Thus Groizard[3] says: "That concealment which is caused by abandoning a new-born child in a place where it cannot be easily assisted, intending that it should perish and save the honor of the mother, is a crime against life. The concealment of a child and the abandonment thereof in a place where it may not be in danger may be a crime against the safety of persons. Only that which has for its purpose the deprivation of the new-born child's civil status is what constitutes the present crime. In order that it may be so, it is necessary therefore that the acts committed by the guilty party plainly show his intent. The fact that one abandons, in the midst of a lonely forest, an unfortunate child that needs all kinds of assistance during the first moments of coming into the world cannot be admitted as intent to destroy its civil status, but as an attempt against its life. On the contrary, he who places at the door of a charitable person a new-born child, which is in condition to stand the first inclemencies of the weather, is supposed to do it in order that it may be taken up and protected, and therefore the legal presumption must be that he does not act with any other purpose than to cause the loss of any trace as to the filiation of the child."

ESSENTIAL ELEMENT OF THE OFFENSE.—And finally, Viada[4] says: "The same penalty is imposed upon any one who **conceals** or **exposes** a legitimate child with the intention of making him lose his civil status. It must be remembered that by the word **child** must be understood a fully developed and living being, as the child born not capable of living has no status, nor can he transmit any rights whatever. It is, therefore, an essential condition of this crime, that the child who has been exposed or concealed shall have been born **alive**, and therefore, the clandestine burial of a child who was born dead is not included within the provisions of the last paragraph of this Article, although it may be included within the provisions of Article 349 of this Code. It must be noted, furthermore, that the concealment or abandonment must be of a **legitimate** child and done **with the intention of making him lose his civil status**, that is, his inherent rights as a legitimate child; and therefore, were he **illegitimate**, or, were the intentions of the one who concealed or exposed the child different, the act may constitute a crime against the civil status of the child."

ILLUSTRATIONS.—Therefore, a woman who, for the pur-

[2] U. S. vs. Capillo et al., 30 Phil. 349.
[3] Groizard, 460.
[4] 3 Viada, 270.

pose of avoiding work and sacrifice, abandons her newly born child at the door of a certain house cannot be convicted for the offense described under the second paragraph of this Article; this act constitutes at most a violation of Article 277 of this Code.[5]

Neither does a person who delivers to another a newly born baby for money consideration commit the crime described in the 2nd paragraph of this Article, in view of the absence of one of the important elements of the offense, that is, the aim or intent of the offender to cause the abandoned child to lose its civil status.[6]

And finally, in a case of simulation of birth, the woman who simulates birth and the one who furnishes the child are both responsible as principals.[7]

Any physician or surgeon or public officer who, in violation of the duties of his profession or office, shall cooperate in the execution of any of the crimes mentioned in the two next preceding paragraphs, shall suffer the penalties therein prescribed and also the penalty of temporary special disqualification.[8]

The persons referred to in this Article are doctors, officers and employees of the Government in charge of recording civil status, etc.

Art. 348. USURPATION OF CIVIL STATUS. — The penalty of prisión mayor **shall be imposed upon any person who shall usurp the civil status of another, should he do so for the purpose of defrauding the offended party or his heirs; otherwise, the penalty of** prisión correccional **in its medium and maximum periods shall be imposed.[9]**

Prisión mayor:
Minimum: From 6 years and 1 day to 8 years;
Medium: From 8 years and 1 day to 10 years;
Maximum: From 10 years and 1 day to 12 years.

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[5] Dec. Sup. Ct. of Spain, March 9, 1892; Hidalgo, II Cod. Pen. 489-490.
[6] U. S. vs. Capillo, 30 Phil. 349.
[7] Dec. Sup. Ct. of Spain, March 20, 1880; Viada, 3 Cod. Pen. 270.271.
[8] Similar to the provisions of Art. 469 of the old Penal Code.
[9] Similar to the provisions of Art. 470 of the old Penal Code.

Prisión correccional in its medium and maximum periods: See Art. 341.

This crime is committed when a person represents himself to be another and assumes the filiation, parental and conjugal rights of the same. It is absolutely necessary, however, in order that this crime may exist, to show that the intent of the offender was to enjoy and use the civil rights of the person usurped. Otherwise the case will be considered only as a violation of Art. 178 for assuming or using a fictitious name or as **estafa** under Art. 315 et seq. of this Code.

CHAPTER TWO

ILLEGAL MARRIAGES

Art. 349. BIGAMY.—The penalty of prisión mayor **shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.**[1]

Prisión mayor: See Art. 348.

CAUSES PRODUCING DISSOLUTION OF MARRIAGE.—There are three causes which may produce the legal dissolution of the first marriage: (a) death of one of the contracting parties; (b) judicial decree declaring one spouse presumptively dead; and (c) judicial decree declaring the marriage to be void or null. The first marriage will be presumed to be existing, unless any of the above causes exists.[2]

CASES OF BIGAMY.—One who contracts a second marriage while his first wife is living, except in the event of a **bona fide absence of the first wife for a period of seven years** and whose whereabouts are unknown, or cannot with **due diligence be ascertained**, is guilty of illegal marriage.[3]

But a person who contracted a second marriage in the reasonable and well-founded belief that his first wife was dead, by reason of the many years that have elapsed since he had any news of her whereabouts and the fruitless results of his endeavors to find her or, what amounts to the same thing,—his believing in good faith that his first marriage was dissolved by the death of his first wife, exempts him from committing the offense of bigamy.[4]

One who celebrates canonical and indissoluble marriages with two different spouses is punishable according to Art. 349 of this Code;[5] but a woman who marries a second time under a **bona fide**

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[1] Similar to the provisions of Art. 471 of the old Penal Code.
[2] U. S. vs. Biasbas, 25 Phil. 71; U. S. vs. San Jose, 14 Phil. 713.
[3] U. S. vs. Biasbas, **supra**; U. S. vs. San Luis, 10 Phil. 163; U. S. vs. De Vera, 28 Phil. 105.
[4] U. S. vs. Enriquez, 32 Phil. 202.
[5] U. S. vs. Isla, 1 Phil. 328.

belief that her former spouse is dead, is not guilty of bigamy but may be punished for criminal negligence under Art. 365 of this Code if she does not exercise a high degree of diligence in ascertaining the death of her former spouse.[6]

PROBLEM.—"M married for the first time in 1936. In 1941, during the subsistence of the first marriage, accused married again. In 1943, his wife by his first marriage died. In 1949 he contracted another marriage, for which he was then prosecuted and convicted by the Lower Court. On appeal, accused contended that his second marriage was void and non existent since it was contracted while his first marriage was subsisting, his third marriage cannot be the basis of a prosecution for bigamy because it took place after the death of his first wife. The Supreme Court acquitted the accused on the ground that his marriage was subsisting at the time the accused contracted his 1949 marriage.[7]

DIVORCE AMONG MOHAMMEDANS, NOT A LEGAL DEFENSE IN BIGAMY.—A Mohammedan who has been married in accordance with Mohammedan rites, and marries again after she has obtained an alleged divorce from her first husband, commits the crime of bigamy under the provisions of this Article, regardless of the circumstance of whether or not there has been in fact a divorce granted in her favor under the Mohammedan customs. It is because in this jurisdiction the grounds for divorce are only two: adultery on the part of the wife and concubinage on the part of the husband.[8] And a divorce cannot be had except in that court upon which the state had conferred jurisdiction, and then only for those causes and with those formalities which the state has by statute prescribed.[9] It is conceded in all jurisdictions that public policy, good morals and the interests of society require that marriage relation should be surrounded with every safeguard and its severance allowed only in the manner prescribed and for causes specified by law. And the parties can waive nothing essential to the validity of the proceedings.[10]

ACCOMPLICES IN THE CRIME OF BIGAMY.—A person, whether man or woman, who **knowingly** consents and agrees to be married to another who is already bound in lawful wedlock, is guilty as an accomplice in the crime of bigamy.

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[6] U. S. vs. De los Reyes, 1 Phil. 375.
[7] G R. No. L-5877, Sept. 28, 1954.
[8] Francisco vs. Tayao, 5 Phil. 42.
[9] 19 Corpus Juris, 19.
[10] People vs. Bitlu, 58 Phil. 817.

The witness to a bigamous marriage ceremony who vouches or asserts that the parties have no legal impediment, when in fact and in truth the witness knows that one of the contracting parties is already married to another, is also an accomplice in the crime of bigamy.[11]

A witness, however, who is a mere **testigo presencial,** or attesting witness, to the act of a bigamous marriage ceremony, and does not vouch nor assert anything as to the personal condition of the contracting parties, is not a principal nor accomplice, nor accessory in the crime of bigamy.[12]

The crime of illegal marriage is committed even though the bigamous party does not have any sexual intercourse with the victim in the bigamous marriage.[13]

The certificate issued by the Municipal Secretary or the Justice of the Peace in the City of Manila prescribed by section 7 of Gen. Orders No. 68 for the registration of marriage is not the only evidence to establish a marriage. In case such registration is omitted and the certificate cannot, therefore, be produced, the best proof of the celebration of the marriage should be the entry or record made in the book kept for the purpose by the priest or minister who solemnized it, or the certificate, issued in due form by a competent person of such entry or record, in place of the certificate which the municipal secretary would have issued if the marriage had been recorded in the register under his charge.[14]

It should be understood, however, that a certificate of marriage issued by the church authorities or persons other than justices of the peace, or municipal secretaries, is no longer a public writing, and in order that the same may be admitted as evidence it is necessary that it be authenticated as any other private writing in accordance with the rules of evidence.[15]

Art. 350. MARRIAGE CONTRACTED AGAINST PROVISIONS OF LAWS.—The penalty of prisión correccional **in its medium and maximum periods shall be imposed upon any person who, without being included in the provisions of the next preceding article, shall**

[11] Viada, 3 Cod. Pen. 274.
[12] U. S. vs. Gaoiran, 17 Phil. 404.
[13] U. S. vs. Bernardo, G. R. 13102 (Unpublished).
[14] U. S. vs De Vera, 28 Phil. 105.
[15] U. S. vs. Evangelista, 29 Phil. 215.

contract marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment.

If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation or fraud, he shall be punished by the maximum period of the penalty provided in the next preceding paragraph.

Prisión correccional in its medium and maximum periods:

Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;

Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;

Maximum: From 4 years, 9 months and 11 days to 6 years.

WHAT ARE PROHIBITED MARRIAGES.—Marriages which are absolutely prohibited according to section 28 of Act 3613, commonly known as the Marriage Law, are as follows:

1. Between ascendants and descendants of any degree;

2. Between brothers and sisters, including stepbrothers and stepsisters;

3. Between uncles and nieces, and aunts and nephews, by consanguinity up to the third civil degree;

4. Between stepfathers and stepdaughters and stepmothers and stepsons;

5. Between the adopting father or mother and the adopted; between the latter and the surviving spouses of the former; and between the former and the surviving spouses of the latter;

6. Between the legitimate children of the adopter and the adopted; and

7. Between those who have been condemned as authors, or as the author and accomplice, of the death of the spouse of either of them.

ESSENTIAL REQUISITES FOR MARRIAGE.—The following are the essential requisites for marriage according to said Act 3613:

(a) Legal capacity, and consent of the contracting parties;

(b) The legal consent may be given by any male of sixteen years or upwards, and by any female of fourteen years or upwards.[16]

Under the provisions of section 9 of the same Act, if the male contracting party is under twenty years of age, or the female contracting party is under eighteen years of age, the legal consent of the parents or guardian is necessary.

ILLUSTRATIONS.—Any young man under twenty years of age or young woman under eighteen years who knowingly contracts marriage without the necessary parental consent is guilty of the offense punished by this Article.

But a young man who marries without the parental authority or consent in the honest belief that she has attained the age required by law is not criminally liable. Neither is it criminal negligence for the husband to rely upon his wife's statement of her age nor for the wife to rely upon her father.[17]

Art. 351. PREMATURE MARRIAGES.—Any widow who shall marry within three hundred and one days from the date of the death of her husband, or before having delivered if she shall have been pregnant at the time of his death, shall be punished by arresto mayor **and fine not exceeding 500 pesos.**

The same penalties shall be imposed upon any woman whose marriage shall have been annulled or dissolved, if she shall marry before her delivery or before the expiration of the period of three hundred and one days after the legal separation.[18]

Arresto mayor:

Minimum: From 1 month and 1 day to 2 months;

Medium: From 2 months and 1 day to 4 months;

Maximum: From 4 months and 1 day to 6 months.

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[16] Sections 1 and 2, Act 3613.
[17] U. S. vs. Peñalosa, 1 Phil. 109; U. S. vs. San Juan, 25 Phil. 513.
[18] Similar to the provisions of Art. 476 of the old Penal Code.

The purpose of the penal sanction established in this Article is to prevent doubtful paternity, and therefore a marriage contracted in violation of its provisions is punishable. The fact that General Orders No. 68[19] does not make a marriage illegal and void if contracted within the period prohibited by Art. 476 of the old Penal Code (equivalent to this Article) does not mean that this Article has been repealed, for the reason that the sanction of the Penal Code does not declare such a marriage contracted by a widow either void or voidable, but that notwithstanding its validity, a widow who does contract marriage is criminally liable as committing an act in violation of the law.[20]

If the average duration of the pregnancy of a woman is nine months and some days, a tardy birth is not an impossibility or an unusual event, neither is it impossible or unusual to have a delayed or retarded conception, one of the inexplicable mysteries of nature, since the opinions of physicians upon the matter are conflicting; for this reason, the present Article imposes punishment upon a widow who marries before three hundred and one days have elapsed from the death of her husband, a prohibition which is in accordance with other legal provisions, and which is intended to prevent confusion in connection with filiation and paternity, inasmuch as the widow might have conceived and become pregnant by her late husband. So the law, when fixing the said three hundred and one days, admits the possibility that a woman may be in pregnancy for more than nine months, and that the birth of a child taking place nine months after it was conceived is not an impossibility.[21]

Art. 352. PERFORMANCE OF ILLEGAL MARRIAGE CEREMONY.—Priests or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any illegal marriage ceremony shall be punished in accordance with the provisions of the Marriage Law.[22]

The offense of "celebrating a marriage prohibited by law," as defined and penalized in this Article of the Penal Code, can

[19] Now Act 3613 of the Philippine Legislature, section 2.
[20] People vs. Rosal, 49 Phil. 509.
[21] U. S. vs. Dulay, 10 Phil. 302.
[22] Similar to the provisions of Art. 479 of the old Penal Code.

only be committed by a Justice of the Supreme Court, or any judge of the inferior courts, a justice of the peace, or priest or minister of the gospel of any denomination.[23]

A minister of the gospel who, having no knowledge of the age of the parties, and after having made in good faith the investigation required by the Marriage Law, authorizes a marriage by and between parties who happen to be under age, without the consent of their parents, is not guilty of a violation of this Article although it turns out that in fact he erred.[24]

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[23] U. S. vs. Mina, 6 Phil. 78.
[24] U. S. vs. San Juan, 25 Phil. 513.

TITLE THIRTEEN

Crimes Against Honor

CHAPTER ONE

LIBEL

SECTION ONE

Definition, forms and punishment of this crime

Art. 353. DEFINITION OF LIBEL.—A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.[1]

ERRONEOUS TRANSLATION OF THE SPANISH TEXT OF THE ARTICLE.—Another mistake is committed in the translation of the original Spanish text of this Article into English. The Spanish text uses the term **difamación** which is translated in this Article as **libel.** The term **difamación** was used in the Spanish text in its broad sense so as to include both libel and slander, that is to say, written and oral defamations.

Under the old law, if defamation was made orally, the offense committed was either calumny or insult;[2] if in writing, the offense committed was libel.[3]

SCOPE OF DEFAMATION.—The present Code includes under the term **defamation** all kinds of attacks against honor and reputation, thereby eliminating once and for all the idle distinction between calumny, insults, and libel.

WHAT CONSTITUTES DEFAMATION.—As will be seen from the definition of the crime of **difamación** given in this Article, the imputation of a crime or of a vice or defect must be made **publicly** and **maliciously to constitute an offense.**

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[1] Similar to the provisions of Art. 266 of the proposed Correctional Code of 1916.
[2] Arts. 452 and 456 of the old Penal Code.
[3] Section 1, Act 277.

WHAT CONSTITUTES PUBLICATION.—The delivery of a libelous article to a typesetter in the employ of a publisher is a sufficient publication.[4]

The dictation of a libelous article to a stenographer and the copying by him on a typewriter machine is likewise a sufficient publication of libelous matter.[5]

As far as oral defamation is concerned there would be a sufficient publication if the offender uttered the defamatory words before persons other than the aggrieved party himself.

Art. 354. REQUIREMENT OF PUBLICITY.—Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases.[6]

MALICE IN GENERAL.—In connection with the publication of defamatory matter, in the absence of proof to the contrary, malice is always presumed. The burden of proving justifiable motives is upon the person responsible for the publication of the libel.[7] So, if a party proves in an action for libel that a certain publication was injurious, it would be unnecessary for him to prove in addition that said publication was made with malice.[8]

KINDS OF MALICE.—In libel or written defamation there are two kinds of malice: malice in law, and malice in fact or express malice. The term **malice** in the law of defamation may be used to denote merely the absence of lawful excuse, that is, implied malice in law.[9]

Malice in law, or legal malice, is a presumption of law and dispenses with the proof of malice, when words which raise such presumption are shown to have been uttered. This form of malice is not necessarily inconsistent with an honest or even laudable purpose and does not imply ill-will, hatred, or purpose to injure.[10]

Malice in fact presupposes, not only absence of lawful excuse, but also hatred, ill-will, deliberate purpose to injure, or wanton disregard of the civil rights of others. There is no malice in law when justifiable motives exist, and in the absence of malice in fact there is no libel under the law. But if there is malice in

[4] U. S. vs. Crame, 10 Phil. 135.
[5] Gambrill vs. Schooley, 93 Md., 48, 52, L. R. A. 87.
[6] Similar to the provisions of Sections 3 and 4 of the Libel Law.
[7] U. S. vs. Prautch, 10 Phil. 562.
[8] U. S. vs. Bustos, 13 Phil. 690.
[9] 36 C. J., 1215.
[10] 17 R. C. L., 422.

fact justifiable motives cannot exist. The law will not allow one person to injure another by an injurious publication, under the cloak of "good ends" or "justifiable motives," when as a matter of fact the publication has been made with malicious intent. When malice in fact is shown to exist, the publisher cannot be relieved from liability by pretense of "good motives."[11]

Actual or express malice of an alleged libelous publication may be inferred from the style and tone of the publication.[12]

EXAMPLES OF MALICE.—The fact that the offender published a libelous article with a real and sincere desire to benefit the public, and that he was not actuated by any feeling of hatred or ill-will, is not alone a sufficient defense. In other words, **absence of actual malice,** when truth of alleged facts in the libelous article is not proved, is not a complete defense.[13] The rule, however, was somewhat relaxed in the subsequent decision in the case of U. S. vs. Perfecto, 42 Phil. 113, wherein it was held that malice shall not be inferred from the mere publication of a judicial proceeding containing an untruthful statement of facts.

It is not necessary, to render an act malicious, that the party be actuated by a feeling of hatred or ill-will toward the individual, or that he entertains and pursues any general bad purpose or design. On the contrary, he may be actuated by a general good purpose, and have a real and sincere desire to bring about a reformation of matters; but if in pursuing that design he wilfully inflicts a wrong on others which is not warranted by law, such act is malicious. A man may, by his example and by his conduct, be doing great injury to society; he may in fact be guilty of the most ruinous crimes, and that well known to an individual; that individual may be actuated by the most pure and single-hearted desire to rid society of a mischievous character, and entertain the firmest conviction that he would be doing great good by it; and yet it is very certain that in contemplation of law any attempt upon his life, his liberty, his person or property, made in the accomplishment of such a purpose, would be unlawful, and therefore malicious. This is founded upon a principle essential to the very existence of a government of laws and of civil liberty, that no man can be punished except by the operation of law, and after a trial according to the forms of law, with such aids and shields as the law affords him; that individual cannot take the execution of the law into their own hands; and that it is the duty of every good citizen, if he knows of any offense against society,

[11] U. S. vs. Bustos, 13 Phil. 690.
[12] U. S. vs. Sedano, 14 Phil. 338.
[13] U. S. vs. Dick, 30 Phil. 76.

not to assail the offender, but to bring the matter before proper tribunals for inquiry, trial and punishment.[14]

When malice in fact is shown to exist, the publisher can not be relieved from liability by pretense of "justifiable motives." The defense of truth of the "injurious publication"[15] and its character as a privileged communication,[16] which means nothing more than the truth in one instance and the occasion of making it in the other, together with proof of justifiable motives, rebuts **prima facie** the inference of malice in law, and throws upon the plaintiff or the state the **onus** of proving malice in fact. The publication of a malicious defamation, whether it be true or not, is clearly an offense under the Libel Law.[17]

GOOD INTENTIONS AND JUSTIFIABLE MOTIVES. — Truth, good motives, and justifiable ends must all be proved for a complete defense to exist in a libel case. An attempt to prove the truth of a libel and a failure to do so is practically a repetition and republication of the libel, and will serve to aggravate the criminal liability of the offender.[18]

Goodness of intention is not always sufficient to justify the publication of an injurious allegation of fact. The question of a justifiable motive is one which must be decided by taking into consideration not only the intention but all the circumstances connected with the particular case.[19]

OTHER SUPPOSED CAUSES OF JUSTIFICATION; RETRACTION.—A certain newspaper, upon being sued for libel, published the following short article: "The **Bulletin** does not know who the attorney for the plaintiff was. No names are mentioned in the article to give any clue as to who the attorney is. The **Bulletin** received its information in good faith from reliable sources, and there was no intention to reflect upon the integrity of any individual except some of those who have since been arrested for implication in the case." It was **held**: That this was not a retraction. A retraction, in order to operate as an effective check upon the propagation of a defamatory publication, must contain an admission of the falsity of the libelous publication. The above article lacks in candor and generosity and shows, if any, but little of the desire to repair a wrong which should inspire a retraction.[20]

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[14] Com. vs. Snelling, 15 Pick, Mass., 337; Com. vs. Bonner, 9 Met., Mass., 410; Newell, **Slander and Libel**, 2nd ed., 390.
[15] Art. 354, par. 3.
[16] Ibid., Subdivisions 1 and 2.
[17] U. S. vs. Bustos, 13 Phil. 690; U. S. vs. Contreras, 28 Phil. 513.
[18] U. S. vs Ocampo, 18 Phil. 1.
[19] U. S. vs. Prautch, 10 Phil. 562.
[20] Sotelo Matti vs. Bulletin Publishing Co., 37 Phil. 562.

INVITATION TO AGGRIEVED PARTY TO ANSWER LIBEL. —The fact that the manager of the paper in which a libelous article was published had requested the defendant to answer another article published sometime before in the same paper, is no justification for the publication of a libelous article.[21]

PUBLICATION OF A LIBEL BY THE PLAINTIFF.—Publication of a libel by the plaintiff is no legal justification for the publication of another libel by the defendant.[22]

BURDEN OF PROOF.—When matter otherwise libelous is published because of a justifiable motive, and not with malicious intent, the burden of proof of such justification is upon the accused.[23]

The defense of the truth of defamatory charges imposes upon the defendants in a libel case the burden of proving all the charges in the defamatory publication by positive direct evidence, upon which a direct finding may be made by the Court. A plea of justification of a libel charging more than one offense is not made out by proof of part of the charges. Defendant must also show that he was actuated by good motives and that the publication was made for justifiable ends.[24]

1. A private communication made by any person to another in the performance of any legal, moral or social duty;[25] and

REASON OR BASIS FOR THE DOCTRINE OF PRIVILEGED COMMUNICATION.—The doctrine of privileged communications rests upon public policy, "which looks to the free and unfettered administration of justice, though as an incidental result it may in some instances afford an immunity to the evil-disposed and malignant slanderer."[26]

REQUISITES OF PRIVILEGED COMMUNICATION.—Section 9 of the Libel Law provides that such communication must be made with the sole purpose of protecting the interests (a) of the one making it, and (b) of the one to whom it is made. Such communication must be made to persons who have power to furnish such protection. Otherwise such communication would be idle and that provision of the law meaningless. If it appears

[21] Causin vs. Ricamora, 5 Phil. 31.
[22] Pellicena vs. Gonzales, 6 Phil. 50.
[23] U. S. vs. Ortiz, 8 Phil. 752.
[24] U. S. vs. Sotto, 38 Phil. 666.
[25] Similar to the provisions of Section 9 of Act 277.
[26] Abbot vs. National Bank of Commerce, 175 U. S. 409-411.

that the communication was made maliciously or to persons who could not furnish the protection, then the mere pretext cannot furnish protection under the law nor furnish an occasion for a privileged communication.[27]

The present Code, however, appears to be more liberal in that, unlike the old Libel Law (Sec. 9), it no longer requires that the privileged communication be made with the **sole** purpose of protecting the interest of either the sender or the person to whom the communication is addressed. It is sufficient, for the purpose of the paragraph commented upon, that the communication should have been made in the performance of any legal, moral, or social duty.

QUALIFIED PRIVILEGE; ITS MEANING.—Qualified privilege is a **prima facie** privilege which may be lost by proof of malice. "A communication made **bona fide** upon any subject-matter in which the party communicating has an interest or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contains incriminatory matter which without this privilege would be slanderous and actionable.[28]

WHAT CONSTITUTES PRIVILEGED COMMUNICATION. —But a communication made in good faith upon any subject, in which the party making the communication has an interest or concerning which he has a duty, is privileged if made to a person having a corresponding interest or duty, although it contains incriminatory or derogatory matter which without the privilege would be libelous. This theory is based not upon the assumption that the individual enjoys the **absolute right** to publish untruthful and derogatory charge on privileged occasions, but that he must at times yield to the superior necessity of subjecting to investigation the conduct of persons charged with wrongdoing.[29]

Commissioners appointed to consider claims against estates of deceased persons have a right to hear evidences and decide upon the validity of the claims presented. They constitute a tribunal, and any statement made in a communication to said commissioners, in opposition to the allowance of a claim, is privileged, even though such opposition may incidentally reflect upon the honor and credit of the person presenting the claim.[30]

Complaints preferred by private citizens against any misconduct on the part of public officials are **qualifiedly privileged.**

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[27] U. S. vs. Bustos, 13 Phil. 690.
[28] Harrison vs. Bush, 5 El nd B, 344; U. S. vs. Bustos, 37 Phil. 731.
[29] U. S. vs. Cañete, 38 Phil. 253.
[30] Zurbito vs. Bayot, 20 Phil. 219.

So such complaints, even though not wholly substantiated at the investigation, will not be libelous, unless it be shown that they were made maliciously and without any grounds for believing them to be true. Complaints of this nature should be addressed solely to some official having jurisdiction to inquire into the charges, or power to redress the grievance, or some duty to perform, or interest in connection therewith.[31]

Even when the statements are found to be false, if there is a probable cause for belief in their truthfulness and the charge is made in good faith, the mantle of privilege may still cover the mistakes of the individual. Personal injury is not necessary. The privilege is not defeated by the mere fact that the communication is made in intemperate terms. Finally, if a party applies to the wrong person through some natural and honest mistake as to the respective functions of various officials, such an unintentional error would not take the case out of the privilege. A privileged communication should not be subjected to microscopic examination to discover the grounds of malice or falsity, for it would defeat the protection which the law throws over privileged communications.[32]

Thus, a petition prepared and signed at an assembly of numerous citizens including affidavits by five individuals, charging a justice of the peace with malfeasance in office and asking for his removal, was presented through certain lawyers to the Executive Secretary. The Executive Secretary referred the papers to the Judge of First Instance who, after investigation, rcommended to the Governor General that the Justice of the Peace be removed from office, Later on, upon the justice of the peace filing a motion for new trial, the judge of first instance ordered the suppression of the charges and acquitted the Justice of the Peace of the same. Criminal action for libel was then begun against the petitioners (now defendants), charging that portions of the petition presented to the Executive Secretary were libelous. **Held**, that the communication, under the circumstances above stated, was privileged.[33]

Publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech. The constitutional guaranty cannot be abolished by the mere failure of the Legislature to give it express recognition in the statute concerning libels.[34]

Ecclesiastical tribunals are empowered to try members of

[31] U. S. vs. Galeza, 31 Phil. 365.
[32] U. S. vs. Bustos, 37 Phil. 731; U. S. vs. Cañete, 38 Phil. 253.
[33] U. S. vs. Bustos, **supra.**
[34] U. S. vs. Cañete, **supra.**

the church who offend against the established cannons of conduct, and upon conviction to administer proper punishment by way of rebuke, censure, suspension, expulsion, or excommunication, and their decisions in such matters are conclusive upon civil tribunals. Furthermore, it is the right and duty of members of churches to report to ecclesiastical authorities any fact coming to their knowledge concerning any priest, pastor, or member of such church which might require disciplinary action by such authorities. Statements made in good faith and without malice to the church authorities for the purpose of invoking their action in such cases are privileged.[35]

A communication addressed by a public officer to his superior officers in the line of duty is privileged even though its contents are largely based upon rumors which are definite or uncertain, so long as no positive evidence of malice on the part of the party making the report or communication is established.[36]

2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report of speech delivered in said proceedings or of any other act performed by public officers in the exercise of their functions.[37]

NATURE AND SCOPE OF THE PRESS PRIVILEGE.—Although newspapers are in a privileged class, and the freedom of the press is recognized by all the courts, this does not give any paper the legal right to publish an article which is libelous, **per se**, about any person.[38] For this reason, the publication by a newspaper of an incorrect statement of the contents of a complaint filed in court is not privileged under this paragraph.[39]

The privilege of "fair criticism" in no event affords exemption for false defamatory statements of fact, in the absence of good faith and probable cause for belief in the truth of such statements.[40]

The constitutional guarantees of the liberty of the press do not secure immunity to the person responsible for the publication of libelous matter in a newspaper, the guaranteed right con-

[35] U. S. vs. Cañete, **supra.**
[36] Gilmer vs. Hilliard, 43 Phil. 180.
[37] Based on the provisions of Section 7 of Act 277 of the Philippine Legislature.
[38] Phee vs. La Vanguardia, 45 Phil. 211.
[39] Macleod vs. Philippine Publishing Co., 12 Phil. 427.
[40] U. S. vs. Sedano, 14 Phil. 338.

sisting merely of a right to print what one chooses, without any previous license, subject thereafter to be held responsible therefor.[41]

As to whether defamatory statements of fact touching the qualifications and character of a candidate for public office are privileged when made in good faith and with probable cause, **quaere.**[42]

Comments and criticism of the public acts of public men and of the mental, moral, and physical fitness of candidates for elective offices, when made in good faith and not actuated by actual or express malice, are privileged. But such comments, if defamatory in nature, constitute criminal libel.[43]

The privilege of fair comment and criticism of the public acts of public men, and of the mental, moral, and physical fitness of candidates for elective office, affords no exemption for false defamatory statements of fact, in the absence of good faith and probable cause for belief in the truth of such statements. So the publication of the following concerning a candidate to the office of Municipal President is libelous: "That it is publicly known that said F. V. (the candidate) is immoral and that in many cases he devotes himself to the prosecution of unjust suits, for the purpose of exploiting the peaceful inhabitants of this municipality. * * *."[44]

The editor and proprietor of a Chinese paper published an article containing a vicious attack upon the good name of the Chinese Vice-Consul. The purpose of the editor was probably laudable, but he failed to establish the truth of the charges, or to justify publication. **Held:** Libelous.[45]

Newspaper articles, criticising a justice of the peace, accused him of discrimination in the treatment of attorneys having business in his court based upon racial distinction; referred to the degrading weakness of the justice; doubted his integrity; and charged him with shielding certain persons from prosecution and with having prostituted his office in order to retain the position. These comments were induced by reason of the justice of the peace deciding a question of law in accordance with a motion of an attorney for whom the defendant entertained personal hatred and which prevented him from carrying out his purpose of taking photographs of the proceedings in a pending case. **Held:** Libelous.[46]

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[41] U. S. vs. Sedano, **supra.**
[42] U. S. vs. Sedano, **supra.**
[43] U. S. vs. Sedano, **supra.**
[44] Villavicencio vs. Nonato, 29 Phil. 328.
[45] U. S. vs. Liongsin, 39 Phil. 457.
[46] U. S. vs. Montalvo, 29 Phil. 595.

A certain daily newspaper published an article which was an account of a successful raid made by a police officer upon a gambling den and the arrest of several suspected gamblers. The article also said that a certain lady (the complainant) was among the persons arrested and that her name was stricken out from the information. It turned out that the complainant was neither caught, arrested nor prosecuted; hence, she instituted action for libel. The Supreme Court held that there was no libel in this case, because the editor or reporter of a newspaper is not liable to prosecution for a fair and true report of a judicial proceeding except upon proof of malice in making such report **which shall not be inferred** from the mere fact of publication.[47]

JUDICIAL DOCUMENTS; WHEN PRIVILEGED.—An answer to a complaint filed in Court, there having been no action by the Court thereon, is not a judicial proceeding within this paragraph. And if such answer contains libelous matter, its publication is not privileged so as to exempt a newspaper from prosecution under the Libel Act.[48]

CRITICISM AND DEFAMATION DISTINGUISHED.—Criticism differs from defamation in the following particulars:

Criticism deals only with such things as shall invite public attention or call for public comment. It does not follow a public man into his private life nor pry into his domestic concerns.

It never attacks the individual, but only his works. Such work may be either the policy of a government, the action of a member of a legislative body, a public entertainment, a book published, or a picture exhibited. In every case the attack is on a man's acts, or on some thing, and not upon the man himself. A true critic never indulges in personalities, but confines himself to the merits of the subject-matter.

It never imputes or insinuates dishonorable motives unless justice absolutely requires it, and then only on the clearest proofs.

The critic never takes advantage of the occasion to gratify private malice or to attain any other object beyond the fair discussion of matters of public interest, and the judicious guidance of the public taste. He carefully examines the matter, and then honestly and fearlessly states his true opinion of it.[49]

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[47] U. S. vs. Perfecto, 43 Phil. 113.

[48] Barretto vs. Philippine Publishing Co., 30 Phil. 88; Choa Tek Hee vs. Philippine Publishing Co., 34 Phil. 447.

[49] Odgers on **Libel and Slander**, 5th ed., 195; Gott vs. Pulsifer, 122 Mass., 235, 23 Am. Rep., 322; Dowling vs. Livingston, 108 Mich., 321, 62 Am. St. Rep., 702, 32 L. R. A., 104. Newell, **Slander and Libel**, 3rd ed. 690-691.

Art. 355. LIBEL BY MEANS OF WRITINGS OR SIMILAR MEANS.—A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prisión correccional **in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action, which may be brought by the offended party.**[50]

Prisión correccional in its minimum and medium periods:

Minimum: From 6 months and 1 day to 1 year, 8 months and 20 days;

Medium: From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days;

Maximum: From 2 years, 11 months and 11 days to 4 years and 2 months.

EXAMPLES OF LIBELOUS ARTICLES OR WRITINGS.—The publication of an article which accuses an officer of the Army of the United States with misconduct in office and the prostitution of his judicial functions as reviewing officer of the proceedings of a general court-martial is a libel.[51]

A printed statement in a newspaper that the plaintiff had been charged with the unlawful appropriation of money and with making false entries in the books of a certain company constitutes a libel.[52]

To say of another that he has the qualities of a vulture, eagle, vampire, or "bird of prey," and to insinuate that he is a corrupt tyrant, who never loses an opportunity to hurt people, etc., is libelous **per se** and would give rise to criminal as well as civil action for libel.[53] Likewise, to say that the administration of a provincial governor was one of cowardice, that when confronted by men more powerful than himself he displayed the nature of a weakling and fawner; that his official acts were the product of a villainous falsity, and that he carried out his promises in the same manner as Judas, is libelous **per se.** Men may argue but may not traduce; may falsely charge that policies are bad, but they cannot falsely charge that men are bad.[54]

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[50] The offense described in this article is, properly speaking the crime of libel defined in Section 1 of the old Libel Law.
[51] U. S. vs. Crozier, 5 Phil. 621.
[52] Macleod vs. Philippine Publishing Co., 10 Phil. 866.
[53] Worcester vs. Ocampo, 22 Phil. 513.
[54] U. S. vs. Contreras, 23 Phil. 513.

To say of a practising attorney that the acquittal of a person whom said attorney had prosecuted is a victory over error and falsity, over the "**mendacity and bad faith of certain miserable creatures who have used their profession to deceive the unwary public and encompass its ruin,**" is libelous **per se.**[55]

Praise undeserved is slander in disguise.[56] So, if after the publication of a libelous article the defendant publishes another wherein the qualifications of the plaintiff are hyperbolized, followed by comment on the perverted tendencies of discredit members of the profession in which plaintiff was engaged, such article is libelous.[57]

The publication of a resolution passed by a municipal council which runs as follows: "That it is publicly well-known in this municipality that the conduct of the said F. V. is immoral; that in many cases the said F. V. devotes himself in this municipality to the prosecution of unjust suits, for the purpose of exploiting the peaceful inhabitants of this municipality" being, as it was, actuated by express malice, is libelous.[58]

To charge the manager of a firm with foisting or aiding to foist a fraud upon the public in offering for sale an apparatus alleged to have curative powers, when no attempt is made to prove that said apparatus was in fact a swindle, is libelous **per se.**[59]

Defamatory remarks, directed at a class or group of persons in general language only, are not actionable by individuals composing the class or group unless the statements are sweeping; and it is very probable that even then no action would lie where the body is composed of so large a number of persons that common sense would tell those to whom the publication was made that there was room for persons connected with the body to pursue an upright and law-abiding course, and that it would be unreasonable and absurd to condemn all because of the actions of a part. So a newspaper article which described a Chinese society whose aim was to induce a boycott by Chinese of Japanese goods so long as the Japanese Government continued a policy deemed inimical to the integrity of the Republic of China, as having offered ten thousand pesos in a secret meeting for the life of the Chinese Consul-General, was held to be absolutely impersonal on its face, so as not to entitle the members, president, and treasurer of the society alluded to, to bring action against the author and publisher of the article.[60]

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[55] Jimenez vs. Reyes, 27 Phil. 52.
[56] Pope, **Epistle of Horace.**
[57] Jimenez vs. Reyes, **supra.**
[58] Villavicencio vs. Nonato, 29 Phil. 328.
[59] U. S. vs. Dick, 30 Phil. 76.
[60] Uy Tioco et al. vs. Yang Shu Wen et al., 32 Phil. 624.

The following was the headline of a newspaper: "Charge ₱193,000 was spent in Administering ₱200,000 * * *." The body of the information further stated that immediately upon coming into the administrationship of the property, the defendant had disposed of the salable estate at a ruinous loss in order to convert into actual cash all property which could be realized upon, etc. **Held:** To be libelous **per se**, it appearing that the publication took place before the taking of any judicial action on the complaint.[61]

The following publication concerning a Judge was held libelous **per se**. "* * * This P (meaning the judge) was removed for misconduct shortly after his appointment as judge 10 or 12 years ago. He has even now (and has always been the same) about as much judicial ability as a tomcat. For years he has held the title of being an excellent friend of the Constabulary, good to the Army, and a convictor. Just the other day an excellent American judge spontaneously remarked: Kelly, that man P is a mad man; he is the wildest thing in these Islands * * *. P, corrupt or crazy—whichever you desire—issued this long abusive decision. * * *."[62]

A written charge of unchastity or immorality brought against a married woman is libelous **per se**.[63]

A publication which imputes to a party complicity in the perpetration of the crime of arson is libelous and actionable **per se**.[64]

A certain weekly periodical published the following article: "These poor Manila dailies will swallow anything. By the **Empress** there arrived here **a couple of comedians**, a man by the name of Thompson and a woman by the name of Harper. **They claimed** that they were war correspondents bound for Vladivostok from whence they would journey to see the war from the Russian front. **The couple said** that they had several thrilling experiences and the male member of **comedy team** told the reporter how he had cleverly foiled the Germans and that there was now a price on his head. **The couple** said that they represent **Leslie's** and an eastern newspaper syndicate. We think that they are **a couple of bunko artists** and their **tale sounds fishy.** For example, what are they doing coming to Manila from Japan if they are so anxious to get to Vladivostok? Why did they not leave the **Empress** at Japan and take one of the Jap steamers to Vladivostok? They travel away from Vladivostok and still claim that Vladivostok

[61] Choa Tek Hee vs. Philippine Publishing Co., 34 Phil. 447.
[62] U. S. vs. Kelly, 35 Phil. 419.
[63] U. S. vs. Griño, 36 Phil. 738.
[64] Sotelo Matti vs. Bulletin Publishing Co., 37 Phil. 562.

is where they want to go. **Lies, pure and simple.** We have read **Leslie's** for years and have never seen anything from the battle front or any place signed by any such pair. **Our idea is that they are a couple of affinities out for a good time."** Held: Libelous **per se.**[65]

For a libel to exist, it is not necessary that something wrong be imputed to the offended party in express terms. It is enough that words calculated to induce suspicion be employed. Ironical and metaphorical language is the favored vehicle for slander. The test of libelous meanings is not the analysis of a sentence into component phrases with the meticulous care of the grammarian or stylist, but the import conveyed by the entirety of the language to the ordinary reader.[66]

PROOF OF WRITTEN DEFAMATION.—In a libel case the plaintiff may call at the trial his friends or others acquainted with the circumstances, to state that, in reading the libel, they at once concluded it was aimed at the plaintiff. It is not necessary that all the world should understand the libel. It is sufficient if those who know the plaintiff can make out that he is the person meant.[67]

One's reputation is the sum or composite of the impressions spontaneously made by him from time to time, and in one way or another, upon his neighbors and acquaintances * * *. This issue in a libel case concerns not only the sense of the publication, but, in a measure, its effect upon a reader acquainted with the person referred to.[68]

A libel may be published in parts, no part being a complete libel in itself, but all of the parts taken together constitute a libelous publication. And the prosecuting attorney may join together in one indictment such different publications as are necessary to complete the phraseology, to avoid ambiguity or to identify the persons referred to in one publication, or to show the character of the acts charged. This is so even though each separate publication refers to the same subject-matter.[69]

ACTION FOR WRITTEN DEFAMATION BY AND AGAINST A LEGAL ENTITY.—To constitute a libel (written defamation) against the legal entity, it is essential that the language used be directed against a particular group of persons, or family, definite and small enough for individual members to be recognized, for the

[65] U. S. vs. O'Connell, 37 Phil. 767.
[66] U. S. vs. O'Connell, **supra**
[67] Ogden on Libel and Slander, 567.
[68] 2 Greenleaf on Evidence, 417.
[69] U. S. vs. Sotto, 36 Phil. 389.

gist of the criminal offense is the tendency to stir up riot and disorder, or to provoke a breach of the peace.[70]

On the other hand, may a corporation be criminally prosecuted for libel? The question was answered in the negative in West Coast Life Insurance Co. vs. Hurd, 27 Phil. 401, on the ground that there is no provision in the law relating to practice and procedure in criminal actions whereby a corporation, as such, may be proceeded against criminally and brought into Court.

Art. 356. THREATENING TO PUBLISH AND OFFER TO PREVENT SUCH PUBLICATION FOR A COMPENSATION.—The penalty of arresto mayor **or a fine of from 200 to 2,000 pesos, or both, shall be imposed upon any person who threatens another to publish a libel concerning him or the parents, spouse, child, or other member of the family of the latter, or upon anyone who shall offer to prevent the publication of such libel for a compensation or money consideration.**[71]

Arresto mayor: See Art. 351.

BLACKMAILING, ITS MEANING.—In common parlance, blackmail and extortion are synonymous, although the latter term may have the wider significance. Blackmail in its metaphorical sense may be defined as any unlawful extortion of money by an appeal to fears of the victim, especially extortion of money by threats of accusation or exposure.[72]

WHAT CONSTITUTE A VIOLATION OF ART. 356.—An information which charges that the accused threatened a married lady to publish in a weekly newspaper a libel consisting of certain letters which would expose said lady to public contempt, unless she would agree to pay a certain sum of money, is sufficient to constitute the offense defined and punished by Art. 356 of this Code. Transcription of the alleged libelous letter in the complaint or information is not necessary. From the very nature of this offense it is clearly seen that to require an information to set forth the alleged threatened libel would usually amount to permitting the very thing which the law is trying to avoid, i. e., the

[70] 18 Am. Enc. of Law, 2nd ed., 1121; State vs. Brady, 24 Pac. 948-949; 21 Am. St. Rep. 296; 17 R. C. L., 375-376.
[71] Similar to the provisions of Section 10 of the old Libel Law.
[72] U. S. vs. Egula, 38 Phil. 857.

exposure to the public gaze of matter essentially private in nature.[73]

Art. 357. PROHIBITED PUBLICATION OF ACTS REFERRED TO IN THE COURSE OF OFFICIAL PROCEEDINGS.—The penalty of arresto mayor **or a fine of from 200 to 2,000 pesos, or both, shall be imposed upon any reporter, editor or manager of a newspaper, daily or magazine, who shall publish facts connected with the private life of another and offensive to the honor, virtue and reputation of said person, even though said publication be made in connection with or under the pretext that it is necessary in the narration of any judicial or administrative proceedings wherein such facts have been mentioned.**

Arresto mayor: See Art. 351.

THE SO-CALLED GAG-LAW.—This Article contains an entirely new provision calculated to discourage unnecessary exposure in the daily press of matters affecting the private life of a citizen. With the incorporation of this penal provision, newspaper reports on cases pertaining to adultery, divorce, issues about the legitimacy of children, etc., will necessarily be barred from publication.

Much has been said and written about this Article of the Revised Penal Code governing the publication of facts and informations that concern the private life of an individual.

THE PRESS CRITICISM.—A good portion of the local press, conscious and jealous of its rights and prerogatives, sees in this Article a diminution of said rights and prerogatives. And therefore, giving vent to its feeling of unfairness, shouts its grievances to the four winds and demands the elimination of this Article from the Revised Penal Code.

To my way of seeing things, however, I believe that the press has no cause for alarm for two reasons.

In the first place, the prohibition refers to the publication of facts and informations, which, even without Art. 357 of the new Code, no newspaper with a true, real and good sense of decency would dare publish in its columns.

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[73] U. S. *vs.* Eguia, **supra.**

The Article in question requires two things in order to constitute a violation of the prohibition, to wit: (1) that the article published shall contain facts connected with the **private** life of an individual, and (2) that the same article is **offensive** to the honor, virtue and reputation of said person. An article, therefore, may refer to the **private** life of an individual, but if it is not offensive to his honor, virtue and reputation, it may be published without fear of violating the provisions of Art. 357, Revised Penal Code. The contrary, however, may be true. An article may be **offensive** to the honor, virtue and reputation of a person, but if it does not refer to his **private** life, no crime is committed. For instance, if a news item says that the wife of one John Doe has sued her husband for alimony, it undoubtedly refers to his **private life.** And yet, it cannot be considered as offensive to his honor, virtue and reputation, and therefore does not fall within the prohibition. And again, a news item may contain the testimony of a prosecuting witness regarding the commission of a common crime, such as for example an attempt against the life, property, or liberty of a person. This news item will certainly be offensive to the honor, virtue and reputation of the accused, but it cannot be considered as one connected with his private life, and therefore does not fall within the meaning of the prohibition.

In order that an article or news item may be considered as a violation of the provisions of Art. 357, it must refer to facts in the **private** life of an individual—facts that are intimately related to his family and home. Among these may be mentioned the conjugal troubles and quarrels, **adultery** or **divorce** based on the infidelity of the husband or the wife, and attempts against the honor and virtue of women. In other words, they are certain news that do not at all interest or please the intelligent and educated class of newspaper readers. They only serve to satisfy the malicious curiosity of some idle gossipers who, fortunately for society, do not constitute the majority of the reading public.

In the second place, all the rights and liberties guaranteed by our Constitution, among which are naturally the freedom of speech and freedom of the press, must have their just limitations. Our Libel Law, the constitutionality of which has been sustained here and in the United States, is the best proof that the freedom of the press must not be given absolute and unrestricted meaning.[74]

It cannot be denied that the freedom of the press is the cornerstone of practically all of our present democratic institutions and that its primordial aim is to help in the forming of

[74] 2 Corpus Juris, 952-953.

a strong, vigilant and alert public opinion. Be that as it may, however, it is doubtful, rather impossible for articles and news items containing the facts prohibited by Art. 357 of the Revised Penal Code to help in the dissemination of an intelligent and healthy public opinion.

Moreover, it cannot be said that the Philippines is the only country under American sovereignty that has promulgated a law restricting freedom of the press. Most of the States of the American Union have adopted similar laws and have successfully defended their constitutionality. Among these laws are that of the State of Minnesota prohibiting the publication in any newspaper of the execution or perfection of a crime;[75] that of the State of Montana prohibiting the publication of judicial reports and proceedings manifestly inaccurate and false;[76] that of Connecticut declaring illegal the publication and sale of newspapers dedicated to giving notes and narrations of crimes committed within the state;[77] and those of Kansas and Missouri prohibiting and punishing the publication of articles or news items of scandalous and immoral character.[78]

It is also interesting to note that England and France, the two countries which can rightly be called the cradle of the civil liberty of the individual, have adopted this tendency of restricting the freedom of the press for the good of society, the press and the general welfare.

Art. 358. SLANDER.—Oral defamation shall be punished by arresto mayor **in its maximum period to** prisión correccional **in its minimum period if it is of a serious and insulting nature; otherwise, the penalty shall be** arresto menor **or a fine not exceeding 200 pesos.**

Arresto mayor in its maximum period to **prisión correccional** in its minimum period:

Minimum: From 4 months and 1 day to 1 year;

Medium: From 1 year and 1 day to 1 year and 8 months;

Maximum: From 1 year, 8 months and 1 day to 2 years and 4 months.

Arresto menor: See Art. 266, par. 1.

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[75] State vs. Pioneer Press Co., 100 Minn. 173.
[76] State vs. Fauls, 17 Mont. 140, 42 P 285.
[77] State vs. McKee, 73 Conn. 18.
[78] In re Banks, 56 Kan., 242, 42 P 693; State vs. Van Wye, 136 Mo. 227, 37 S. W. 938.

EXAMPLES OF SLANDER.—As already stated, formerly, calumny and insult constituted oral defamation or slander penalized by the present Article.

To say of a person that he has collected a subscription in a province amounting to more than ₱4,500 with which to organize the Independent Party, that out of that sum he spent for shoes, two bottles of gin, carromata hire, etc., ₱16 and that the check book and the cash book remained, but the contents of the latter had disappeared, is not sufficient to constitute calumny (now defamation). Merely saying that the contents of the cash book had disappeared does not necessarily mean that they disappeared by means of a criminal or punishable act. For it may be that the disappearance of said funds was the actual result of the total expenditure thereof, for the purpose for which they were intended, in which case no crime has been really committed.[79]

The imputation of vice or lack of morality, the consequence of which may greatly damage the fame, credit, or interest of the offended party, constitutes defamation according to this Article. Thus a woman, who hurled at another an expression to the effect that the latter's house was one of ill fame, is guilty of defamation because the defendant thereby prejudiced the name, reputation, and credit of the offended party as she attributed lack of morality in the habit of the latter.[80]

Art. 359. SLANDER BY DEED.—The penalty of arresto mayor **in its maximum period to** prisión correccional **in its minimum period or a fine ranging from 200 to 1,000 pesos shall be imposed upon any person who shall perform any act not included and punished in this title, which shall cast dishonor, discredit or contempt upon another person. If said act is not of a serious nature, the penalty shall be** arresto menor **or a fine not exceeding 200 pesos.**

Arresto mayor in its maximum period to **prisión correccional** in its minimum period: See Art. 358.

Arresto menor: See Art. 266, par. 1.

A person who cuts the hair of a woman (not in a fashionable style, of course) commits the crime of insult or slander by deed,

[79] U. S. vs. Reyes Carrillo, 13 Phil. 479.
[80] Dec. Sup. Ct. of Spain, February 4, 1878; U. S. vs. Tolosa, 37 Phil. 166.

because by such an action the offender brings his victim into contempt.[81]

The act of spitting on the face of another in the presence of several persons is another example of slander by deed.[82]

So is also the act of slapping another on the face in the presence of many persons.[83]

SECTION TWO

General Provisions

Art. 360. PERSONS RESPONSIBLE.—Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.[84]

EFFECT OF UNSUCCESSFUL ATTEMPT TO PROVE THE TRUTH.—An attempt to prove the truth of a libel and failure to do so is practically a repetition and republication of the libel, and justifies the imposition of a penalty higher than that imposed for the original libel.[85]

A higher or more severe penalty is likewise justified in case the defendant is actuated by express malice. It would be greatly deplorable if the impression were to be created that libels may be published without fear of personal inconvenience by anyone able and willing to pay a moderate fine for the privilege. Exemplariness is one of the effects which may properly be expected in the infliction of a penalty.[86]

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.[87]

Under the old law,[88] however, the proprietor of a book, or

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[81] Dec. Sup. Ct. of Spain, April 13, 1896.
[82] Dec. Sup. Ct. of Spain, June 7, 1901.
[83] Dec. Sup. Ct. of Spain, March 20, 1880. See People vs. Nosce, 60 Phil. 895; People vs. Roque, 40 O. G 1710.
[84] Similar to Section 2 of Act 277 of the Philippine Commission.
[85] U. S. vs. Ocampo et al., 18 Phil. 1.
[86] U. S. vs. Sotto, 38 Phil. 666.
[87] Based on the provisions of Section 6, Act 277 of the Philippine Commission.
[88] Section 6, Act 277 of the Philippine Commission.

of a serial publication, was also chargeable with the publication of any words written therein.

Under the provisions of this paragraph, a printer may be criminally liable for the crime of libel. It is because the Spanish text of the first two paragraphs of this Article read as follows:

"**Personas responsables.**—Es responsable de una difamación por escrito u otros medios análogos el que publicare o exhibiere o la hiciere publicar o exhibir.

"El autor o editor de un libro o folleto, o el director o editor de un diario, revista o publicación por entregas, será responsable de las difamaciones contenidas en los mismos en igual extensión que su autor."

One meaning of the Spanish verb "publicar" is: "imprimir o dar a luz cualquier libro, cualquier obra dirigida al público, para que todo el mundo pueda leerla." It is clear therefore that Article 360 includes not only the author or person who causes the libelous matter to be published, but also the person who prints or publishes it.[89]

The criminal and civil action for damages in cases of written defamation as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense: Provided, however, **That where the libel is published, circulated, displayed, or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the court of first instance thereof:** Provided, further, **That the civil action shall be filed in the same court where the criminal action is filed and vice versa:** Provided, furthermore, **That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts:** And provided, finally, **That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions to which, have been filed in court at the time of the effectivity of this law.**[90]

[89] People vs. Topacio and Santiago, 59 Phil. 374.
[90] As amended by R. A. No. 1289.

REMEDIES AVAILABLE TO THE AGGRIEVED PARTY.—Under the provisions of section 11 of the old Libel Law (Act 277) the offended party was entitled to recover in civil action, not only actual pecuniary damage sustained by him but also damage for injury to his feelings and reputation, and in addition such punitive damages as the Court might think would provide a just punishment to the libeler and an example to others.

The present Code, however, is silent in regard to the kind and nature of the damage recoverable in a civil action for libel. This being the case, the inference is that only actual or pecuniary damage may be recovered in a civil action on a written defamation.

CIVIL AND CRIMINAL ACTIONS: SEPARATE AND INDEPENDENT REMEDIES.—A judgment in a criminal prosecution for libel, constitutes no bar to a civil action based upon the same acts or transactions. This is because, among other reasons, in a criminal prosecution for libel, the State must prove its case by evidence which shows the guilt of the defendant beyond a reasonable doubt, while in a civil action it is sufficient for the plaintiff to sustain his case by a preponderance of evidence.[91]

WHAT CONSTITUTES GENERAL DAMAGES.—General damages are such as the law will presume to be the natural or probable consequence of the defendant's conduct. They arise by inferences of law, and need not, therefore, be proved by evidence. Such damages may be recovered where the immediate tendency of the words is to impair the plaintiff's reputation, although no actual pecuniary loss has in fact resulted. Such general damages will only be presumed where the words are actionable **per se**. If any special damage has also been suffered, it would be set out in the pleadings, but should the plaintiff fail in proving it at the trial, he may still recover general damages.[92]

A publication of a defamatory nature in a newspaper, without naming or accurately describing the person to whom the reprobated acts are attributed, will not give rise to a civil action for damages at the instance of a person claiming to be the injured party, unless it appears that the description of the person referred to in the defamatory publication was sufficiently clear that at least one third person would have understood that the description referred to him. It is not sufficient that the plaintiff in the action should have recognized himself as the person intended in the libel.[93]

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[91] Ocampo vs. Jenkins, 14 Phil. 681; Worcester vs. Ocampo, 22 Phil. 42.
[92] See Newell, **Libel & Slander**, P. 948, 3rd. ed.
[93] Kunkle vs. Cablenews-American and Lyons, 42 Phil. 757.

DAMAGES TO BUSINESS, WHEN ALLOWED.—Damages to the business of a professional man cannot be allowed unless both the volume of his business and its value for a reasonable time before and after the alleged libel are satisfactorily shown.[94]

No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de oficio shall be brought except at the instance of and upon complaint expressly filed by the offended party.[95]

Crimes which cannot be prosecuted **de oficio**, according to the provisions of section 1 of Act 1773, are adultery, seduction, and insult.

Under the provisions of this paragraph, a complaint for defamation which consists in the imputation of the crimes above mentioned cannot be prosecuted except upon complaint of the aggrieved party.

But a libel attributing a defect or vice, real or imaginary tending to cause dishonor or contempt of a person may be prosecuted **de oficio**; it does not come under the last paragraph of Art. 360 of the Revised Penal Code.[96]

Art. 361. PROOF OF THE TRUTH.—In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and for justifiable ends, the defendant shall be acquitted.[97]

HISTORY OF THE JUSTIFYING CIRCUMSTANCES OF LIBEL.—At the public session conducted by the Philippine Commission on October 25, 1901, for the discussion of the bill entitled, "An Act Defining the Law of Libel, etc.," the exempting circumstances of libel were made the topic of an interesting debate. Commissioner Ide sponsored the idea that the burden of proof should be upon the defendant, not only to prove the truth of the matter so charged, but also to prove that it was published

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[94] Jimenez vs. Reyes, 27 Phil. 52. See also Sotelo Matti vs. Bulletin Publishing Co., 37 Phil. 562.
[95] Based on the provisions of Section 2 of Act 1773 of the Philippine Commission.
[96] People vs. Santos et al., 52 O. G. 203, Jan. 1956.
[97] Same as Section 4 of Act 277 of the Philippine Commission. See U. S. vs. Bustos, 13 Phil. 697.

with **good motives and for justifiable ends,** stating that this was the interpretation of the Supreme Court of Massachusetts in regard to the law of that State. Judge Lamme, one of the attendants at the public hearing, objected to this provision, stating that he believed an editor or reporter should be given greater latitude in the criticism of public officials than this law would make possible. He was of the opinion than an editor should be held to much stricter accountability where he publishes anything with reference to a private citizen than when discussing the acts of a public official, stating in this connection that he believed if the life of a government official would not bear investigating he was not fit to occupy a public office. Admitting this to be true, Commissioner Ide pointed out to the speaker that it was not right that public officers should be open to malicious personal attacks not inspired by good motives. Commissioner Ide called the speaker's attention in this connection to the following extract from Wharton on Criminal Law, Sec. 1645:

"There are few men, no matter how valuable their services might ultimately be to society, who might not have been ruined if at the turning point of their lives they had been visited by the publication of youthful wrongs done by them. Hence he who maliciously exposes the past life of an intended victim with the intention of crushing him by bringing to public notice some act of shame long past, though it may be long repented of and condoned, may deserve a severer punishment than anyone who invents a false charge, easily disproved. Even should the truth, under the statute, he admissible, yet unless on public grounds it ought to have been published it is no defense."

Judge Lamme stated that he did not believe any man had a right to be an applicant for a public position or to hold such position if his life was so filled with moral turpitude that if the people know it, it would disqualify him from accepting. He believed if there was anything in the character of a man tending to disqualify him the people had a right to know it. If he was accused unjustly and the party was innocent there was always legal redress. Commissioner Ide admitted it to be true that when a man was of the character described by the speaker, the public had a right to know it, but called attention to the fact that in a case where under the guise of the public good a person sought to wreak his personal revenge, the aspect was quite different. He stated that every public official, if he did his duty, was almost certain to make enemies who in too many cases tried to revenge themselves by personal flings at the officer in question, the only result being to hurt or wound the feelings of the officer or his family and to obstruct him in the performance

of his duty. The speaker being asked by Commissioner Ide if he thought this procedure should be permitted, admitted that it should not, but stated that the point he wished to make was that the Americans in the Philippines were away off ten thousand miles from the base of their responsibility, and that the libel laws should be more liberal here than in the United States. Attacks upon individuals should be severely punished, of course, but it was a duty which the Commission owed to themselves, to the government, and to the American people, that the opportunities for investigation should be thrown wide open to the public officials. Commissioner Ide's views were accepted by the Commission, and so the theory that not only truth of the charges made should be proved, but likewise good motives and justifiable ends, in a libel case, were for the first time consecrated.

Both under the ancient civil law and the ancient common law truth was no defense in a criminal prosecution for libel. This proposition was defended by the old maxim, "the greater the truth the greater the libel." Beginning with Lord Campbell's Act[98] in England, truth in criminal actions for libel was allowed in many jurisdictions as a justification, provided the publication was also made with good motives and for justifiable ends. To this class belongs the Philippines.[99]

Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their official duties.

Under the provisions of Art. 460 of the old Penal Code, a person prosecuted for **insulting** another was not allowed to present evidence as to the truth of the imputations, unless the same had been made against government employees with respect to facts relating to the discharge of their official duties, in which cases, the defendant should be acquitted if he proved the truth of the imputation made by him.

The word "insulting" was used advisedly in the Article above quoted, to distinguish it from the words "libeling" or "calumnying." In a case of calumny which consists of the imputation of a crime giving ground to prosecution by the Government upon its own motion, proof of the truth of the imputations

[98] 6 and 7 Vict., Chap. 96.
[99] U. S. vs. Perfecto, 43 Phil. 225.

made was, as is now, under the provisions of this Article, a complete exemption. In cases of insult, however, which consist in the imputation of crimes which do not give ground to prosecution by the Government on its own motion (**procedimiento de ofifio**), proof of the truth was not a defense at all. The offender in the crime of insult imputes the perpetration of such offense so private and intimate in their nature that the Government cannot prosecute them **de oficio.** For instance, adultery and seduction. In other words the imputation made in the crime of insult refers to and affects the private life of the aggrieved party. Society has no interest in knowing the private affairs of its members. For this reason, proof of the truth in cases of insult is not a defense, except when the offended party is a public official, and the imputation has some connection with the performance of his duties.

Under the provisions of the paragraph commented upon, proof of the truth will be admitted and would exonerate a person accused of defamation for having made an imputation of a crime which the Government can not prosecute **de oficio.** In other words, if A, for one reason or another, utters in the presence of several persons a statement to the effect that Mrs. So and So is maintaining an illicit relation with Mr. So and So, in case Mrs. So and So prosecutes A for defamation for having made such utterances, A would be allowed to prove the truth of his statement.

The barrier established by the present paragraph for excluding the proof of the truth as a defense in a prosecution for defamation is limited to such defamation as consists of an imputation of an act or omission not constituting a crime. For instance, if A stated that B is a drunkard or is suffering from contagious diseases, etc., in case of prosecution against A, he will not be allowed to prove that the aggrieved party was really a drunkard or suffering from some communicable diseases.

In such cases if the defendant proves the truth of the imputation made by him, he shall be acquitted.

The exemption referred to in this paragraph is established in favor of persons making imputations against government employees with respect to facts having connection with the performance of their official duties. If A, for instance, stated in the presence of several persons that B, a government official, is in the habit of drinking during office hours and that he is always in a boisterous condition, in case B prosecutes A for calumny, the latter will be acquitted if he proves that B was really a drunkard.

Both public interest and the good of the service demand that a drunkard be barred from the service.

Art. 362. LIBELOUS REMARKS. — Libelous remarks or comments connected with the matter privileged under the provisions of article 354, if made with malice, shall not exempt the author thereof nor the editor or managing editor of a newspaper from criminal liability.[100]

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[100] Based on the provisions of Section 9 of Act 277 of the Philippine Commission, which requires as a condition **sine qua non** for the existence of the privilege that the libelous communication should have been made in good faith.

CHAPTER TWO

INCRIMINATORY MACHINATIONS

Art. 363. INCRIMINATING INNOCENT PERSON. —Any person who, by any act not constituting perjury, shall directly incriminate or impute to an innocent person the commission of a crime, shall be punished by arresto mayor.[1]

Arresto mayor:
Minimum: From 1 month and 1 day to 2 months;
Medium: From 2 months and 1 day to 4 months;
Maximum: From 4 months and 1 day to 6 months.

DISTINCTION BETWEEN INCRIMINATORY MACHINATION AND DEFAMATION.—The offense described in this Article may be distinguished from defamation in that the offender in the former does not avail himself of spoken or written words in besmirching the honor or reputation of the victim, as would be the case in defamation. The offender in this case usually resorts to some crafty method, the ultimate result of which is to place the offended party in a bad light.

The offense described in this Article may be distinguished from defamation not only in the form the defamation is made but in the purpose as well. In defamation, the imputation made by the offender must be public and malicious, and, besides, must be calculated to cause the dishonor, discredit, or contempt of the aggrieved party, while in the offense described in the present Article, such requisites are not necessary.

For instance, a person who plants evidence in the house of his victim (placing tin of opium without the knowledge of the victim and reporting afterwards the matter to the police with the aim in view of throwing upon the victim a cause for suspicion) constitutes an example of this new type of delinquency.

FALSE ACCUSATION BEFORE A JUSTICE OF THE PEACE; NOT SIMILAR TO INCRIMINATORY MACHINATIONS. —It has been held by our Supreme Court that the act of falsely

[1] Same as Art. 271 of the proposed Correctional Code of 1916. This is a new type of delinquency unknown in the old Penal Code which was incorporated by the late Del Pan in Article 271 of his proposed Correctional Code of 1916. The incorporation of these provisions in the present Code fills a gap long felt in the community.

and maliciously charging a person in a justice of the peace with a crime of theft, does not constitute a violation of this Article.

Reasoning out its decision the Court said:

"As Article 363 of the Revised Penal Code is new and this is the first case before the court calling for its interpretation, a comparison of the article with Article 326 of the former Penal Code seems expedient in view of the argument of the Government that the former 'is a reproduction of both the crime of false accusation or complaint and the crime of calumny described under said Article 326 and Article 452 of the old Penal Code.'

"In passing it may be stated that if Article 363 of the Revised Penal Code could be construed to include Article 452 of the old Penal Code it would have no application to the case that we are considering because Article 452 of the old Penal Code which is as follows:

> "'Art. 452. Calumny is the false imputation of a crime upon which a prosecution might be instituted by the government of its own motion'

does not refer to false accusations or **denuncias** made before an administrative or judicial officer whose duty it is to investigate or punish such crime.

"Comparing now Article 363 of the Revised Penal Code with Article 326 of the old Penal Code, it will be observed that under Article 326 of the former Penal Code, the gravamen of the offense is the imputation itself when made before an administrative or judicial officer, whereas in Article 363 of the Revised Penal Code the gravamen of the offense is performing an act which 'tends directly' to such an imputation. Article 326 of the old Penal Code punishes false prosecution whereas Article 363 of the Revised Penal Code punishes any act which may tend directly to cause a false prosecution.

"It is a well settled law that where the text of a statute is clear, it is improper to resort to a caption or title to make it obscure. Such secondary sources may be resorted to in order to remove, not to create doubt. (Cf. People vs. Yabut, 58 Phil. 499.) In the present case we think it proper to call attention to the title immediately preceding Article 363 of the Revised Penal Code which is as follows: 'Asechanzas Inculpatorias,' as throwing some light on the classes of acts which tend directly to lead to false prosecutions. The word **asechanza**, as defined in standard dictionaries, means as follows: 'Intriga, lazo, red, zancadilla, tranquila, amaño, engaño, artificio, trama, treta, especie de maquinación urdida, de celada dispuesta contra alguno, bien sea para perderlo enteramente, bien para jugarle (sin hudirlo) algu-

na mala pasada. Engaño o artificio para hacer daño a otro. Usase, por lo común, en el plural, **asechanzas.** Acción y efecto de asechar.' It seems to us a forced extension of the term **asechanza** to bring a formal criminal complaint within the conception of **intriga, engaño, artificio, etc.** It seems the more reasonable and sensible interpretation to limit Article 363 of the Revised Penal Code to acts of 'planting' evidence and the like, which do not in themselves constitute false prosecutions but tend directly to cause false prosecutions.

"It is a well settled rule that statutes should receive sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. (Lau Ow Bew vs. United States, 144 U. S., 47, 59; 36 Law, ed., 340, 344.)

"It is to be noted that Article 326 of the old Penal Code contains the provision that the accuser could be prosecuted only on the order of the court, when the court was convinced upon the trial of the principal cause that there was sufficient basis for a charge of false accusation. Article 363 of the Revised Penal Code contains no such safeguard. If we extended said Article by interpretation to administrative and judicial proceedings, it is apparent that we would open the door to a flood of prosecutions in cases where the defendants were acquitted. There is no reason to believe that the Legislature intended such a result."[2]

Art. 364. INTRIGUING AGAINST HONOR.—The penalty of arresto menor **or fine not exceeding 200 pesos shall be imposed for any intrigue which has for its principal purpose to blemish the honor or reputation of a person.**

Arresto menor:
Minimum: From 1 to 10 days;
Medium: From 11 to 20 days;
Maximum: From 21 to 30 days.

This is another new type of delinquency unknown in the old Code.

It is naturally akin to the crime of defamation in that the aim of the offender is to besmirch the honor or reputation of his victim. It differs, however, from defamation in so far as the means employed are concerned. The means employed by the

[2] People vs. Rivera, 59 Phil. 236, 240-242.

offender in the offense penalized under this Article must consist of some tricky and secret plot, the outcome of which is the tarnishing of the honor or reputation of his victim. It is almost akin to slander by deed, in that the offender does not avail directly of written or spoken words, pictures or caricatures to ridicule his victim but, of some ingenious, crafty and secret plot, producing the same effect.

TITLE FOURTEEN

Quasi Offenses

SOLE CHAPTER

CRIMINAL NEGLIGENCE

Art. 365. IMPRUDENCE AND NEGLIGENCE. — Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of arresto mayor **in its maximum period to** prisión correccional **in its minimum period; if it would have constituted a less grave felony, the penalty of** arresto mayor **in its minimum and medium periods shall be imposed.**

Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of arresto mayor **in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of** arresto mayor **in its minimum period shall be imposed.**[1]

Arresto mayor in its maximum period to **prisión correccional** in its medium period:

Minimum: From 4 months and 1 day to 1 year;

Medium: From 1 year and 1 day to 1 year and 8 months;

Maximum: From 1 year, 8 months and 1 day to 2 years and 4 months.

Arresto mayor in its minimum and medium periods:

Minimum: From 1 month and 1 day to 2 months;

Medium: From 2 months and 1 day to 3 months;

Maximum: From 3 months and 1 day to 4 months.

Arresto mayor in its minimum period:

Minimum: From 1 month and 1 day to 1 month and 10 days;

Medium: From 1 month and 11 days to 1 month and 20 days;

Maximum: From 1 month and 21 days to 2 months.

[1] Based on the provisions of Art. 568 of the old Penal Code.

CULPA OR CRIMINAL NEGLIGENCE.—Between a wrongful act committed with malicious intent which gives rise to a felony or misdemeanor and a wrongful act committed without any intent to do so which entirely exempts the doer from criminal liability, there is a middle way, commonly known as criminal negligence, punishable under this Article of the Penal Code.

The ground for the punishability of criminal acts is the duty of every man not only to act voluntarily against the precepts of law but also to execute his own acts with the fullest measure of precaution as to avoid the possibility of consequences hurtful to others being derived from inoffensive acts. The element of malicious intent or **dolus** is supplied and replaced by carelessness, negligence, and imprudence.

CONCEPT OF CULPA IN THE CLASSICAL AND POSITIVIST SCHOOLS.—The classical school considers criminal imprudence as a voluntary lack of foresight of the injurious consequences of our conduct. Its essential elements, are, therefore: (a) lack of foresight of the consequences of an act, and therefore absence of wilfulness, for nothing is wanted which is not foreseen; and (b) that the consequences of the very acts which were not forestalled could have been foreseen.[2]

The positivist school holds that criminal imprudence is a vice or defect of attention. According to Tosti, criminal imprudence is a defective condition of the intellectual faculties to the doer, on account of which his activities may be dangerous to society. For them (the positivists) the principle of criminal liability, in case of **culpa**, as in the case of **dolus**, is a social defense.[3]

ELEMENTS OF CRIMINAL NEGLIGENCE.—The following are the elements of criminal negligence:

(a) That there is a real prejudice or injury caused.

(b) That such an injury or prejudice be not intentionally done, but simply be the result or incident of another act performed by the doer.

(c) That in performing the act which was the origin or cause of the injury, due care and diligence were not used.

(d) That the act which resulted in the injury or prejudice be lawful **per se**, or at least, not considered as either a felony or light felony by the Penal Code, even though it may sometimes be forbidden by rules and regulations.

The test for determining whether or not a person is negligent in doing an act whereby injury or damage results to the person or

[2] Calon, Derecho Penal, 223.
[3] Id., 225-226.

property of another is this: Would a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course about to be pursued? If so, the law imposes the duty on the doer to refrain from that course or take precaution against its mischievous results, and the failure to do so constitutes **negligence.** Reasonable foresight of harm, followed by the ignoring of the admonition borne of this provision, is the constitutive fact in negligence.[4]

When the execution of the act covered by the article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than 25 pesos.

A fine not exceeding 200 pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony.[5]

In the imposition of these penalties, the courts shall exercise their sound discretion, without regard to the rules prescribed in article 64.[6]

DAMAGES TO PROPERTY THROUGH RECKLESS IMPRUDENCE.—*In case of damage to property through reckless imprudence,* the **minimum** fine imposable is a fine equal to the **value of said damage.**[7]

The provisions contained in this article shall not be applicable:

1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in which case the courts shall impose the penalty next lower in degree than that which should be imposed, in the period which they may deem proper to apply.[8]

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[4] Picart vs. Smith, 37 Phil. 809.
[5] Based on the provisions of Art. 590, par. 4, of the old Penal Code.
[6] As amended by R. A. No. 384.
[7] People vs. Rodriguez, G. R. No. L-6300, April 20, 1954.
[8] Similar to the provisions of paragraphs 3 and 4, Art. 568 of the old Penal Code.

2. When, by imprudence or negligence and with violation of the Automobile Law, the death of a person shall be caused, in which case the defendant shall be punished by prisión correccional **in its medium and maximum periods.**

Prisión correccional in its medium and maximum periods:
Minimum: From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days;
Medium: From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days;
Maximum: From 4 years, 9 months and 11 days to 6 years.

The incorporation of this provision is a belated response of the Legislature to the long-standing clamour for the adoption of some energetic and drastic measure against the ever-increasing army of 20th century murderers, otherwise known as "speed fiends."

Under the provisions of the old Penal Code, par. 1, Art. 568, a homicide caused by reckless driving was punished from 1 year to 2 years and 4 months, while according to this new provision, the same act would be punished with an imprisonment of not less than 2 years, 4 months and 1 day nor more than 6 years imprisonment.

Section 4 of Act No. 2389, commonly known as the Automobile Law, provides that operation of a motor vehicle at a rate of more than 20 miles per hour shall be **prima facie** evidence of the fact that it is operated at an unreasonable and improper speed. Said section, however, recognizes the fact that what would be a reasonable and proper rate of speed under one condition would not be a reasonable and proper speed under other conditions. The law does not attempt to fix what is "a rate of speed greater than is reasonable and proper." What is "a rate of speed greater than is reasonable and proper" is a question to be determined by the facts and circumstances surrounding the particular speed in question. What is a reasonable and proper rate of speed on one day, at a particular time and place, might be very unreasonable and improper at the same place on another day or at another time on the same day, depending altogether upon the particular surroundings and conditions. An attempt to give a specific meaning to the words "reasonable and proper" is trying to count what is not number and to measure what is not space. What is "a reasonable and proper speed for a motor vehicle" must depend

in each case upon the facts and circumstances then existing, having regard for the conditions mentioned in said section 4.[9]

Defining recklessness in connection with the operation of a motor vehicle, the Supreme Court of the Philippine Islands, in the case above cited, said that it "* * * is a lack of heed or concern for consequences; especially, foolishly heedless of danger; headlong; rash; desperate; not caring or noting; neglectful; indifferent. It may be said that recklessness is an indifference whether wrong is done or not; an indifference to the rights of others. Recklessness and wantonness are stronger terms than mere or ordinary negligence. Section 4 of Act No. 2389 prohibits any person from operating a motor vehicle on any highway in the Philippine Islands recklessly, having regard to the particular conditions at the time and place, whether the rate of speed is more or less than 20 miles per hour."

And when a chauffeur who goes at a great speed, sees in the middle of the road, directly in his path, a policeman signaling to him with his hand to stop, and pays no attention to the order nor lessens the speed of his car, but goes straight for said policeman, runs over him, and kills him instantly, he cannot pretend that he did not intend to cause the evil that he did; because even with the limits of human foresight, such an act could not produce any other result than what took place. In other words, the crime committed by the chauffeur under such circumstances is homicide, defined and penalized under Art. 249 of this Code, and not homicide thru reckless imprudence, defined and penalized in the present paragraph.[10]

Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.

Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.

[9] U. S. vs. Aligan, 43 Phil. 644.
[10] People vs. Lojo, 52 Phil. 390.

There are only two kinds of criminal imprudence according to this paragraph of Art. 365; i. e., reckless imprudence and simple imprudence.

RECKLESS IMPRUDENCE OR IMPRUDENCIA TEMERARIA.—Reckless imprudence consists in voluntarily, but without malice, doing or not doing an act from which material injury results on account of lack of foresight, for which the person executing or committing it can have no excuse. This kind of imprudence is characterized by improvidence (lack of foresight), thoughtlessness, unskillfulness, carelessness, imprudence, and failure to use the most ordinary care. Example: Leaving on a table a loaded firearm which was thereafter made use of as a plaything by a child, thereby resulting in the latter's death by the discharge thereof; or the driving of an automobile in the Escolta during the busiest hours of the day at a speed of 15 or 18 miles an hour, utterly disregarding the conditions of traffic, thereby causing the car to run down and kill a pedestrian. The accepted rule seems to be that where immediate personal harm, preventable in the exercise of reasonable care, is threatened upon a human being by reason of the course of conduct pursued by another, and the danger is visible and consciously appreciated by the actor, the failure to use reasonable care to prevent the impending injury constitutes reckless imprudence.[11]

The above rule is absolutely true when the victim is free from any charge of contributory negligence, but not otherwise. For example, a railroad track or crossing is a warning or a signal of danger to those who go upon it; and persons crossing the track are bound to recognize the existing danger, and to make use of their senses of hearing as well as of sight. However, if a person neglects to recognize that fact without any effort to ascertain whether a train is approaching, such an act must be at his own risk; such conduct is in itself an act of negligence. He should look and listen and do everything that a reasonably prudent man would do, before he attempts to cross the track. If he fails to use his senses, he is negligent, and others who have acted legally should not be punished for his lack of care.[12]

Reckless imprudence is punished in the first paragraph of this Article by the penalty of **arresto mayor** in its maximum period to **prisión correccional** in its minimum period, that is, from 4 months and 11 days to 2 years and 4 months if the injury caused is such that, had it been intentional, it would be classified as a grave felony, and from **arresto mayor** in its minimum and medium de-

[11] People vs. Vistan y De la Cruz, 42 Phil. 107; Viada, 3 Cod. Pen. 629.
[12] People vs. Manaquil, 42 Phil. 90.

grees, that is, from 1 month and 1 day to 4 months and 10 days, if it would have constituted a less grave felony.

SIMPLE IMPRUDENCE OR NEGLIGENCE.—Simple imprudence is a mere lack of precaution in those cases where either the threatened harm is not imminent or the danger not openly visible. An example of this class is presented in a case where the driver of a cart, passing along the street at the speed prescribed by the ordinance and leading his cart by a strap attached to the bridle or head of his horse, in a moment of distraction, on turning a corner does not see that there is a child asleep in the gutter on the side of the horse opposite to him, by reason whereof the child is run over by the cart and killed. The act cannot be denominated accidental because if the driver had been paying strict attention to his duty, he would have seen the child; nor can it be called reckless negligence, because he was not able to foresee the extremely unusual occurrence of a child being asleep in that place. Neither was there a violation of an ordinance, because he was driving his vehicle in conformity therewith. Hence, it is only simple imprudence or negligence and should be punished by **arresto mayor** in its medium and maximum periods if the act committed constituted a grave felony, and by **arresto mayor** in its minimum period if it constituted a less grave felony.

A person sentenced to imprisonment and fine under the provisions of Act 3992, commonly known as the Revised Motor Vehicle Law, may be sentenced to suffer the subsidiary imprisonment in accordance with the provisions of Art. 39 of the Revised Penal Code, in spite of the provisions of Act 3992 to the effect that "all other acts or parts of acts contrary to the provisions of this Act" are repealed. The reason is because under the provisions of Art. 10 of the Revised Penal Code, such Code shall be deemed to be supplementary to special penal laws, among them, the Motor Vehicle Law.

Another reason for applying the provision of the Revised Penal Code respecting indemnity and subsidiary imprisonment for the non-payment thereof, is that said provisions were not affected by the approval of the Motor Vehicle Law.

In the case of **United States vs. Velasquez**, 33 Phil. 368, it was contended that Act 1740, under which the accused was convicted, did not authorize an indemnity by way of restoration of the sum misappropriated. The Supreme Court held that Act No. 1740, providing for the punishment of public officers and employees who fail or refuse to account for public funds or property or who make personal use of such funds or property, which expressly repealed Articles 390, 391, and 392 of the Penal

Code in so far as they might be in conflict with said Act, did not affect the general principles embodied in Articles, 119, 120, and 121 of the Penal Code. The right to indemnification in such cases was reaffirmed in **United States vs. Lafuente,** 37 Phil. 671. In the case of **United States vs. Ondaro,** 39 Phil. 70, the accused was found guilty of embezzlement and, in addition to a prison sentence and a fine, was ordered to indemnify the offended party in the sum of ₱34.90, or to suffer subsidiary imprisonment in case of insolvency.[13]

[13] People vs. Moreno, 60 Phil. 712.

TITLE FIFTEEN

Final Provisions

Art. 366. APPLICATION OF LAWS ENACTED PRIOR TO THIS CODE.—Without prejudice to the provisions contained in article 22 of this Code, felonies and misdemeanors, committed prior to the date of effectiveness of this Code, shall be punished in accordance with the Code or Acts in force at the time of their commission.

The intention of the Code Committee was to establish a saving clause to the provisions of Art. 22 regarding the retroactivity of the penal laws in so far as they favor an offender, that is, to except from the provisions of said Art. 22 those "felonies and misdemeanors committed prior to the date of effectiveness of this Code," the understanding being that they "shall be punished in accordance with the Code or Acts in force at the time of their commission." Such a practice of excepting from the general principle of retroactivity of penal laws criminal prosecution already initiated at the time of the enactment of an amendatory penal law is not without precedent. Act 277 of the Philippine Commission, commonly known as the Libel Law, contained a proviso (sec. 13) to the effect that "nothing herein shall operate as a repeal of existing laws in so far as they are applicable to pending actions or existing causes of action, but as to such causes of action or pending actions existing laws shall remain in full force and effect.[1]

To obtain such result Art. 366 was drafted. Through unfortunate choice of words or expression, however, Art. 366 failed to crystallize the intention of the Code Committee. Instead of using the expression "notwithstanding the provisions of Art. 22 of the Revised Penal Code, felonies and misdemeanors committed prior to the date of effectiveness of this Code, shall be punished in accordance with the Code or Acts in force at the time of their commission," the expression "without prejudice to the provisions contained in Article 22" has been used. The present Article as it is, is therefore, nothing but a repetition of the provisions of Art. 22. It serves no useful purpose at all, and it constitutes a

[1] See T. H. Pardo de Tavera vs. Garcia Valdez, 1 Phil. 468.

veritable surplusage. For this reason, the Supreme Court of the Philippines has consistently applied the provisions of the Revised Penal Code not only to existing causes of action, but even to cases finally decided at the time of the enactment of the Revised Penal code.

However, penal laws that relate to mere matters of form or procedure are colorless when examined to ascertain whether or not they favor the accused. They are all designed to secure to the defendant a speedy and impartial trial in accordance with law, without advantage either to the prosecution or to the defense. Changes in procedure introduced by the Revised Penal Code are not to be given retroactive effect in the sense that all proceedings prior to January 1, 1932, which conform to the law in force at that time, must be overturned and new proceedings begun.

And Art. 344, paragraph 2, of the Revised Penal Code which prescribes that all complaints for seduction, abduction, rape and unchaste abuse must be signed by the aggrieved party is of procedural nature and, as such, does not favor nor prejudice a defendant. For such reason, if a person is accused of the crime of rape by virtue of an information signed by the Prosecuting Attorney in accordance with the provisions of Section one of Act 1773, he cannot claim for the dismissal of the case at the trial thereof held sometime after the enactment of the Revised Penal Code (Art. 344, par. 2) which provides that the complaint in cases of rape and other crimes against chastity shall be signed by the aggrieved party.[2]

In the case of a certain Nicolas Lachica convicted as a principal, and Clemente Laceste as an accomplice, in a crime of rape, the former subsequently married the victim, Magdalena de Ocampo. Under the provisions of Sec. 2 of Act 1773 and Art. 448 of the Penal Code then in force, the penal liability of Nicolas Lachica was extinguished by the fact of his subsequent marriage. However, the penal liability of Clemente Laceste was not affected by the marriage of the co-accused and the offended party. Subsequently, the Revised Penal Code came into effect, wherein it is provided (Art. 334) that the penal liability of an accomplice or accessory to that kind of crime is likewise extinguished by the marriage of the principal with the offended party. It was held that Clemente Laceste should be given the retroactive effect of the provisions of Art. 344 of the Revised Penal Code, even though the sentence imposed upon him was already final and executory. In its deliberations, the Supreme Court stated, among other things, the following:

[2] Samilin vs. Court of First Instance of Pangasinan, 57 Phil. 298.

"It may be clearly seen that as far back as the year 1884, when the Penal Code took effect in these Islands until the 31st of December, 1931, the principle underlying our laws granting to the accused in certain case an exception to the general rule that laws shall not be retroactive when the law in question favors the accused, has evidently been carried over into the Revised Penal Code at present in force in the Philippines through Article 22, quoted above. This is an exception to the general rule that all laws are prospective, not retroactive, variously contained in the following maxims: **Lex prospicit, non respicit** (the law looks forward, not backward); **lex de futuro, judex de praeterito** (the law provides for the future, the judge for the past); and adopted in a modified form with a prudent limitation in our Civil Code (Article 3). Conscience and good law justify this exception, which is contained in the well-known aphorism: **Favorabilia sunt amplianda, odiosa restringenda.** As one distinguished author has put it, the exception was inspired by sentiments of humanity, and accepted by science.

"Article 22 of the new Penal Code is applicable to the petitioner who comes within one of the cases specially provided for in Article 344 of the Code; this is a point upon which there neither is, nor can be, any discussion between the parties to this case."[3]

Art. 367. REPEALING CLAUSE. — Except as is provided in the next preceding article, the present Penal Code, the provisional Law for the application of its provisions, and Acts Nos. 277, 292, 480, 518, 519, 899, 1121, 1438, 1523, 1559, 1692, 1754, 1755, 1773, 2030, 2036, 2071, 2142, 2212, 2293, 2298, 2300, 2364, 2549, 2557, 2595, 2609, 2712, 2718, 3104, 3195, 3244, 3298, 3309, 3313, 3397, 3559, and 3586, are hereby repealed.

The provisions of the Acts which are mentioned hereunder are also repealed, namely:

Act 666, sections 6 and 18.

Act 1508, sections 9, 10, 11, and 12.

Act 1524, section 4.

[3] Laceste vs. Santos, 56 Phil. 473.

Act 1533, sections 1, 2 and 6.

Act 1697, sections 3 and 4.

Act 1757, sections 1, 2, 3, 4, 5, 6, 7 (first clause), 11, and 12.

Act 2381, sections 2, 3, 4, 5, 6, 8, and 9.

Act 2711, sections 102, 2670, 2671, and 2672.

Act 3247, sections 1, 2, 3, and 5; and

General Orders No. 58, series of 1900, section 106.

And all laws and parts of laws which are contrary to the provisions of this Code are hereby repealed.

Approved, December 8, 1930.

APPENDIX

GENERAL TABLE OF THE DURATION OF PENALTIES IN ALL THE FORMS AND COMBINATIONS PRESCRIBED IN THE PENAL CODE AND THEIR DIVISION INTO PERIODS

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
1. **Arresto mayor**	From 1 month and 1 day to 6 months	From 1 month and 1 day to 2 months and 20 days	From 2 months and 21 days to 4 months and 10 days	From 4 months and 11 days to 6 months
2. **Arresto mayor** in its minimum period	From 1 month and 1 day to 2 months and 20 days	From 1 month and 1 day to 1 month and 16 days	From 1 month and 17 days to 2 months and 3 days	From 2 months and 4 days to 2 months and 20 days
3. **Arresto mayor** in its medium period	From 2 months and 21 days to 4 months and 10 days	From 2 months and 21 days to 3 months and 7 days	From 3 months and 8 days to 3 months and 24 days	From 3 months and 25 days to 4 months and 20 days
4. **Arresto mayor** in its maximum period	From 4 months and 11 days to 6 months	From 4 months and 11 days to 4 months and 27 days	From 4 months and 28 days to 5 months and 14 days	From 5 months and 15 days to 6 months
5. **Arresto mayor** in its minimum and medium periods	From 1 month and 1 day to 4 months and 10 days	From 1 month and 1 day to 2 months and 3 days	From 2 months and 4 days to 3 months and 6 days	From 3 months and 7 days to 4 months and 10 days
6. **Arresto mayor** in its medium and maximum periods	From 2 months and 21 days to 6 months	From 2 months and 21 days to 3 months and 24 days	From 3 months and 25 days to 4 months and 27 days	From 4 months and 28 days to 6 months
7. **Arresto mayor** to **prisión correccional** in its minimum period	From 1 month and 1 day to 2 years and 4 months	From 1 month and 1 day to 10 months	From 10 months and 1 day to 1 year and 7 months	From 1 year, 7 months and 1 day to 2 years and 4 months

GENERAL TABLE OF THE DURATION OF PENALTIES, ETC. — *Continued*

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
8. **Arresto mayor** to **prisión correccional** in its medium period	From 1 month and 1 day to 4 years and 2 months	From 1 month and 1 day to 1 year, 5 months and 10 days	From 1 year, 5 months and 11 days to 2 years, 9 months and 20 days	From 2 years, 9 months and 21 days to 4 years and 2 months
9. **Arresto mayor** to **prisión correccional** in its maximum period	From 1 month and 1 day to 6 years	From 1 month and 1 day to 2 years and 20 days	From 2 years and 21 days to 4 years and 10 days	From 4 years and 11 days to 6 years
10. **Arresto mayor** in its medium period to **prisión correccional** in its minimum period	From 2 months and 21 days to 2 years and 4 months	From 2 months and 21 days to 11 months and 4 days	From 11 months and 5 days to 1 year, 7 months and 17 days	From 1 year, 7 months and 18 days to 2 years and 4 months
11. **Arresto mayor** in its medium period to **prisión correccional** in its medium period	From 2 months and 21 days to 4 years and 2 months	From 2 months and 21 days to 1 year, 6 months and 14 days	From 1 year, 6 months and 15 days to 2 years, 10 months and 7 days	From 2 years, 10 months and 8 days to 4 years and 2 months
12. **Arresto mayor** in its medium period to **prisión correccional**	From 2 months and 21 days to 6 years	From 2 months and 21 days to 2 years, 1 month and 23 days	From 2 years, 1 month and 24 days to 4 years and 26 days	From 4 years and 27 days to 6 years

GENERAL TABLE OF THE DURATION OF PENALTIES, ETC. — *Continued*

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
13. **Arresto mayor** in its maximum period to **prisión correccional** in its minimum period	From 4 months and 11 days to 2 years and 4 months	From 4 months and 11 days to 1 year and 7 days	From 1 year and 8 days to 1 year, 8 months and 4 days	From 1 year, 8 months and 5 days to 2 years and 4 months
14. **Arresto mayor** in its maximum period to **prisión correccional** in its medium period	From 4 months and 11 days to 4 years and 2 months	From 4 months and 11 days to 1 year, 7 months and 16 days	From 1 year, 7 months and 17 days to 2 years, 10 months and 22 days	From 2 years, 10 months and 23 days to 4 years and 2 months
15. **Arresto mayor** in its maximum period to **prisión correccional** in its maximum period	From 4 months and 11 days to 6 years	From 4 months and 11 days to 2 years, 2 months and 26 days	From 2 years, 2 months and 27 days to 4 years, 1 month and 13 days.	From 4 years, 1 month and 14 days to 6 years
16. **Prisión correccional** and destierro	From 6 months and 1 day to 6 years	From 6 months and 1 day to 2 years and 4 months	From 2 years, 4 months and 1 day to 4 years and 2 months	From 4 years, 2 months and 1 day to 6 years
17. **Prisión correccional** in its minimum period	From 6 months and 1 day to 2 years and 4 months	From 6 months and 1 day to 1 year, 1 month and 10 days	From 1 year, 1 month and 11 days to 1 year, 8 months and 20 days	From 1 year, 8 months and 21 days to 2 years and 4 months
18. **Prisión correccional** in its medium period	From 2 years, 4 months and 1 day to 4 years and 2 months	From 2 years, 4 months and 1 day to 2 years, 11 months and 10 days	From 2 years, 11 months and 11 days to 3 years, 6 months and 20 days	From 3 years, 6 months and 21 days to 4 years and 2 months

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
19. **Prisión correccional** in its maximum period	From 4 years, 2 months and 1 day to 6 years	From 4 years, 2 months and 1 day to 4 years, 9 months and 10 days	From 4 years, 9 months and 11 days to 5 years, 4 months and 20 days	From 5 years, 4 months and 21 days to 6 years
20. **Prisión correccional** in its minimum and medium periods	From 6 months and 1 day to 4 years and 2 months	From 6 months and 1 day to 1 year, 8 months and 20 days	From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days	From 2 years, 11 months and 11 days to 4 years and 2 months
21. **Prisión correccional** in its medium and maximum periods	From 2 years, 4 months and 1 day to 6 years	From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days	From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days	From 4 years, 9 months and 11 days to 6 years
22. **Prisión correccional** to **prisión mayor** in its minimum period	From 6 months and 1 day to 8 years	From 6 months and 1 day to 3 years	From 3 years and 1 day to 5 years and 6 months	From 5 years, 6 months and 1 day to 8 years
23. **Prisión correccional** to **prisión mayor** in its medium period	From 6 months and 1 day to 10 years	From 6 months and 1 day to 3 years and 8 months	From 3 years, 8 months and 1 day to 6 years and 10 months	From 6 years, 10 months and 1 day to 10 years
24. **Prisión correccional** to **prisión mayor** in its maximum period	From 6 months and 1 day to 12 years	From 6 months and 1 day to 4 years and 4 months	From 4 years, 4 months and 1 day to 8 years and 2 months	From 8 years, 2 months and 1 day to 12 years

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
25. **Prisión correccional** in its medium period to **prisión mayor** in its minimum period	From 2 years, 4 months and 1 day to 8 years	From 2 years, 4 months and 1 day to 4 years, 2 months and 20 days	From 4 years, 2 months and 21 days to 6 years, 1 month and 10 days	From 6 years, 1 month and 11 days to 8 years
26. **Prisión correccional** in its medium period to **prisión mayor** in its medium period	From 2 years, 4 months and 1 day to 10 years	From 2 years, 4 months and 1 day to 4 years, 10 months and 20 days	From 4 years, 10 months and 21 days to 7 years, 5 months and 10 days	From 7 years, 5 months and 11 days to 10 years
27. **Prisión correccional** in its medium period to **prisión mayor** in its maximum period	From 2 years, 4 months and 1 day to 12 years	From 2 years, 4 months and 1 day to 5 years, 6 months and 20 days	From 5 years, 6 months and 21 days to 8 years, 9 months and 10 days	From 8 years, 9 months and 11 days to 12 years
28. **Prisión correccional** in its maximum period to **prisión mayor** in its minimum period	From 4 years, 2 months and 1 day to 8 years	From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days	From 5 years, 5 months and 11 days to 6 years, 8 months and 20 days	From 6 years, 8 months and 21 days to 8 years
29. **Prisión correccional** in its maximum period to **prisión mayor** in its medium period	From 4 years, 2 months and 1 day to 10 years	From 4 years, 2 months and 1 day to 6 years, 1 month and 10 days	From 6 years, 1 month and 11 days to 8 years and 20 days	From 8 years, and 21 days to 10 years

GENERAL TABLE OF THE DURATION OF PENALTIES, ETC. — *Continued*

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
30. **Prisión correccional** in its maximum period to **prisión mayor** in its maximum period	From 4 years, 2 months and 1 day to 12 years	From 4 years, 2 months and 1 day to 6 years, 4 months and 10 days	From 6 years, 4 months and 11 days to 9 years, 4 months and 20 days	From 9 years, 4 months and 21 days to 12 years
31. **Prisión mayor**	From 6 years and 1 day to 12 years	From 6 years and 1 day to 8 years	From 8 years and 1 day to 10 years	From 10 years and 1 day to 12 years
32. **Prisión mayor** in its minimum period	From 6 years and 1 day to 8 years	From 6 years and 1 day to 6 years and 8 months	From 6 years, 8 months and 1 day to 7 years and 4 months	From 7 years, 4 months and 1 day to 8 years
33. **Prisión mayor** in its medium period	From 8 years and 1 day to 10 years	From 8 years and 1 day to 8 years and 8 months	From 8 years, 8 months and 1 day to 9 years and 4 months	From 9 years, 4 months and 1 day to 10 years
34. **Prisión mayor** in its maximum period	From 10 years and 1 day to 12 years	From 10 years and 1 day to 10 years and 8 months	From 10 years, 8 months and 1 day to 11 years and 4 months	From 11 years, 4 months and 1 day to 12 years
35. **Prisión mayor** in its minimum and medium periods	From 6 years and 1 day to 10 years	From 6 years and 1 day to 7 years and 4 months	From 7 years, 4 months and 1 day to 8 years and 8 months	From 8 years, 8 months and 1 day to 10 years
36. **Prisión mayor** in its medium and maximum periods	From 8 years and 1 day to 12 years	From 8 years and 1 day to 9 years and 4 months	From 9 years, 4 months and 1 day to 10 years and 8 months	From 10 years, 8 months and 1 day to 12 years

GENERAL TABLE OF THE DURATION OF PENALTIES, ETC. — *Continued*

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
37. **Prisón mayor** to **reclusión temporal** in its minimum period	From 6 years and 1 day to 14 years and 8 months	From 6 years and 1 day to 8 years, 10 months and 20 days	From 8 years, 10 months and 21 days to 11 years, 9 months and 10 days	From 11 years, 9 months and 11 days to 14 years and 8 months
38. **Prisión mayor** to **reclusión temporal** in its medium period	From 6 years and 1 day to 17 years and 4 months	From 6 years and 1 day to 9 years, 9 months and 10 days	From 9 years, 9 months and 11 days to 13 years, 6 months and 20 days	From 13 years, 6 months and 21 days to 17 years and 4 months
39. **Prisión mayor** to **reclusión temporal** in its maximum period	From 6 years and 1 day to 20 years	From 6 years and 1 day to 10 years and 8 months	From 10 years, 8 months and 1 day to 15 years and 4 months	From 15 years, 4 months and 1 day to 20 years
40. **Prisión mayor** in in its medium period to **reclusión temporal** in its minimum period	From 8 years and 1 day to 14 years, and 8 months	From 8 years and 1 day to 10 years, 2 months and 20 days	From 10 years, 2 months and 21 days to 12 years, 5 months and 10 days	From 12 years, 5 months and 11 days to 14 years and 8 months
41. **Prisión mayor** in its medium period to **reclusión temporal** in its medium period	From 8 years and 1 day to 17 years and 4 months	From 8 years and 1 day to 11 years, 1 month and 10 days	From 11 years, 1 month and 11 days to 14 years, 2 months and 20 days	From 14 years, 2 months and 21 days to 17 years and 4 months
42. **Prisión mayor** in its medium period to **reclusión temporal** in its maximum period	From 8 years and 1 day to 20 years	From 8 years and 1 day to 12 years	From 12 years and 1 day to 16 years	From 16 years and 1 day to 20 years

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
43. **Prisión mayor** in its maximum period to **reclusión temporal** in its minimum period	From 10 years and 1 day to 14 years and 8 months	From 10 years and 1 day to 11 years, 6 months and 20 days	From 11 years, 6 months and 21 days to 13 years, 1 month and 10 days	From 13 years, 1 month and 11 days to 14 years and 8 months
44. **Prisión mayor** in its maximum period to **reclusión temporal** in its medium period	From 10 years and 1 day to 17 years and 4 months	From 10 years and 1 day to 12 years, 5 months and 10 days	From 12 years, 5 months and 11 days to 14 years, 10 months and 20 days	From 14 years, 10 months and 21 days to 17 years and 4 months
45. **Prisión mayor** in its maximum period to **reclusión temporal** in its maximum period	From 10 years and 1 day to 20 years	From 10 years and 1 day to 13 years and 4 months	From 13 years, 4 months and 1 day to 16 years and 8 months	From 16 years, 8 months and 1 day to 20 years
46. **Reclusión temporal**	From 12 years and 1 day to 20 years	From 12 years and 1 day to 14 years and 8 months	From 14 years, 8 months and 1 day to 17 years and 4 months	From 17 years, 4 months and 1 day to 20 years
47. **Reclusión temporal** in its minimum period	From 12 years and 1 day to 14 years and 8 months	From 12 years and 1 day to 12 years, 10 months and 20 days	From 12 years, 10 months and 21 days to 13 years, 9 months and 10 days	From 13 years, 9 months and 11 days to 14 years and 8 months

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
48. **Reclusión temporal** in its medium period	From 14 years, 8 months and 1 day to 17 years and 4 months	From 14 years, 8 months and 1 day to 15 years, 6 months and 20 days	From 15 years, 6 months and 21 days to 16 years, 5 months and 10 days	From 16 years, 5 months and 11 days to 17 years and 4 months
49. **Reclusión temporal** in its maximum period	From 17 years, 4 months and 1 day to 20 years	From 17 years, 4 months and 1 day to 18 years, 2 months and 20 days	From 18 years, 2 months and 21 days to 19 years, 1 month and 10 days	From 19 years, 1 month and 11 days to 20 years
50. **Reclusión temporal** in its minimum and medium periods	From 12 years and 1 day to 17 years and 4 months	From 12 years and 1 day to 13 years, 9 months and 10 days	From 13 years, 9 months and 11 days to 15 years, 6 months and 20 days	From 15 years, 6 months and 21 days to 17 years and 4 months
51. **Reclusión temporal** in its medium and maximum periods	From 14 years, 8 months, and 1 day to 20 years	From 14 years, 8 months and 1 day to 16 years, 5 months and 10 days	From 16 years, 5 months and 11 days to 18 years, 2 months and 20 days	From 18 years, 2 months and 21 days to 20 years
52. **Reclusión temporal** to **reclusión perpetua**	From 12 years and 1 day to **reclusión perpetua**	From 12 years and 1 day to 16 years	From 16 years and 1 day to 20 years	**Reclusión perpetua**
53. **Reclusión temporal** to death	From 12 years and 1 day to death	From 12 years and 1 day to 20 years	**Reclusión perpetua**	Death
54. **Reclusión temporal** in its maximum period to death	From 17 years, 4 months and 1 day to death	From 17 years, 4 months and 1 day to 20 years	**Reclusión perpetua**	Death

GENERAL TABLE OF THE DURATION OF PENALTIES, ETC. — *Continued*

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
55. **Reclusión perpetua**	**Reclusión perpetua**	**Reclusión perpetua**	**Reclusión perpetua**	**Reclusión perpetua**
56. **Reclusión perpetua** to death	**Reclusión perpetua** to death	**Reclusión perpetua**	**Reclusión perpetua**	Death
57. **Suspensión**	From 6 months and 1 day to 6 years	From 6 months and 1 day to 2 years and 4 months	From 2 years, 4 months and 1 day to 4 years and 2 months	From 4 years, 2 months and 1 day to 6 years
58. **Suspensión** in its minimum period	From 6 months and 1 day to 2 years and 4 months	From 6 months and 1 day to 1 year, 1 month and 10 days	From 1 year, 1 month and 11 days to 1 year, 8 months and 20 days	From 1 year, 8 months and 21 days to 2 years and 4 months
59. **Suspensión** in its medium period	From 2 years, 4 months and 1 day to 4 years and 2 months	From 2 years, 4 months and 1 day to 2 years, 11 months and 10 days	From 2 years, 11 months and 11 days to 3 years, 6 months and 20 days	From 3 years, 6 months and 21 days to 4 years and 2 months
60. **Suspension** in its maximum period	From 4 years, 2 months and 1 day to 6 years	From 4 years, 2 months and 1 day to 4 years, 9 months and 10 days	From 4 years, 9 months and 11 days to 5 years, 4 months and 20 days	From 5 years, 4 months and 21 days to 6 years
61. **Suspensión** in its minimum and medium periods	From 6 months and 1 day to 4 years and 2 months	From 6 months and 1 day to 1 year, 8 months and 20 days	From 1 year, 8 months and 21 days to 2 years, 11 months and 10 days	From 2 years, 11 months and 11 days to 4 years and 2 months

GENERAL TABLE OF THE DURATION OF PENALTIES, ETC. — *Continued*

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
62. **Suspensión** in its medium and maximum periods	From 2 years, 4 months and 1 day to 6 years	From 2 years, 4 months and 1 day to 3 years, 6 months and 20 days	From 3 years, 6 months and 21 days to 4 years, 9 months and 10 days	From 4 years 9 months and 11 days to 6 years
63. **Suspension** to temporary disqualification in its minimum period	From 6 months and 1 day to 8 years	From 6 months and 1 day to 3 years	From 3 years and 1 day to 5 years and 6 months	From 5 years, 6 months and 1 day to 8 years
64. **Suspensión** to temporary disqualification in its medium period	From 6 months and 1 day to 10 years	From 6 months and 1 day to 3 years and 8 months	From 3 years, 8 months and 1 day to 6 years and 10 months	From 6 years, 10 months and 1 day to 10 years
65. **Suspensión** to temporary disqualification in its maximum period	From 6 months and 1 day to 12 years	From 6 months and 1 day to 4 years and 4 months	From 4 years, 4 months and 1 day to 8 years and 2 months	From 8 years, 2 months and 1 day to 12 years
66. **Suspensión** in its medium period to temporary disqualification in its minimum period	From 2 years, 4 months and 1 day to 8 years	From 2 years, 4 months and 1 day to 4 years, 2 months and 20 days	From 4 years, 2 months and 21 days to 6 years, 1 month and 10 days	From 6 years, 1 month and 11 days to 8 years
67. **Suspensión** in its medium period to temporary disqualification in its medium period	From 2 years, 4 months and 1 day to 10 years	From 2 years, 4 months and 1 day to 4 years, 10 months and 20 days	From 4 years, 10 months and 21 days to 7 years, 5 months and 10 days	From 7 years, 5 months and 11 days to 10 years

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
68. **Suspensión** in its medium period to temporary disqualification in its maximum period	From 2 years, 4 months and 1 day to 12 years	From 2 years, 4 months and 1 day to 5 years, 6 months and 20 days	From 5 years, 6 months and 21 days to 8 years, 9 months and 10 days	From 8 years, 9 months and 11 days to 12 years
69. **Suspensión** in its maximum period to temporary disqualification in its minimum period	From 4 years, 2 months and 1 day to 8 years	From 4 years, 2 months and 1 day to 5 years, 5 months and 10 days	From 5 years, 5 months and 11 days to 6 years, 8 months and 20 days	From 6 years, 8 months and 21 days to 8 years
70. **Suspensión** in its maximum period to temporary disqualification in its medium period	From 4 years, 2 months and 1 day to 10 years	From 4 years, 2 months and 1 day to 6 years, 1 month and 10 days	From 6 years, 1 month and 11 days to 8 years, and 20 days	From 8 years and 21 days to 10 years
71. **Suspensión** in its maximum period to temporary disqualification in its maximum period	From 4 years, 2 months and 1 day to 12 years	From 4 years, 2 months and 1 day to 6 years, 9 months and 10 days	From 6 years, 9 months and 11 days to 9 years, 4 months and 20 days	From 9 years, 4 months and 21 days to 12 years
72. *Temporary disqualification*	From 6 years and 1 day to 12 years	From 6 years and 1 day to 8 years	From 8 years and 1 day to 10 years	From 10 years and 1 day to 12 years

GENERAL TABLE OF THE DURATION OF PENALTIES, ETC. — *Continued*

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
73. Temporary disqualification in its minimum period	From 6 years and 1 day to 8 years	From 6 years and 1 day to 6 years and 8 months	From 6 years, 8 months and 1 day to 7 years and 4 months	From 7 years, 4 months and 1 day to 8 years
74. Temporary disqualification in its medium period	From 8 years and 1 day to 10 years	From 8 years and 1 day to 8 years and 8 months	From 8 years, 8 months and 1 day to 9 years and 4 months	From 9 years, 4 months and 1 day to 10 years
75. Temporary disqualification in its medium period	From 10 years and 1 day to 12 years	From 10 years and 1 day to 10 years and 8 months	From 10 years, 8 months and 1 day to 11 years and 4 months	From 11 years, 4 months and 1 day to 12 years
76. Temporary disqualification in its minimum and medium periods	From 6 years and 1 day to 10 years	From 6 years and 1 day to 7 years and 4 months	From 7 years, 4 months and 1 day to 8 years and 8 months	From 8 years, 8 months and 1 day to 10 years
77. Temporary disqualification in its medium and maximum periods	From 8 years and 1 day to 12 years	From 8 years and 1 day to 9 years and 4 months	From 9 years, 4 months and 1 day to 10 years and 8 months	From 10 years, 8 months and 1 day to 12 years
78. Temporary disqualification to perpetual disqualification	From 6 years and 1 day to perpetual disqualification	From 6 years and 1 day to 9 years	From 9 years and 1 day to 12 years	Perpetual disqualification

GENERAL TABLE OF THE DURATION OF PENALTIES, ETC. — *Continued*

PENALTIES	TIME INCLUDED IN THE ENTIRE PENALTY	TIME INCLUDED IN ITS MINIMUM PERIOD	TIME INCLUDED IN ITS MEDIUM PERIOD	TIME INCLUDED IN ITS MAXIMUM PERIOD
79. Temporary disqualification in its medium period to perpetual disqualification	From 8 years and 1 day to perpetual disqualification	From 8 years and 1 day to 10 years	From 10 years and 1 day to 12 years	Perpetual disqualification
80. Temporary disqualification in its maximum period to perpetual disqualification	From 10 years and 1 day to perpetual disqualification	From 10 years and 1 day to 11 years	From 11 years and 1 day to 12 years	Perpetual disqualification
81. Perpetual disqualification	Perpetual disqualification	Perpetual disqualification	Perpetual disqualification	Perpetual disqualification

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