

POST-MIDTERM

Title XI Crimes Against Chastity

Chapter 1 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 he to be married, even if the marriage be subsequently declared void.

Adultery shall be punished by *prision correccional* in its medium and maxim 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.

Elements ♥

1. The woman is married
2. The woman has sexual intercourse with a man not her husband
3. The man must know her to be married

Offenders:

1. The married woman
2. Her paramour

What is the gist of the crime?

- The danger of introducing spurious heirs into the family
- A man may be charged with the maintenance of a family not his own

Element 1 – Woman is legally married

- The offended party must be married to the offender at the time of the criminal case
 - “Even if the marriage be subsequently declared void” – There is adultery even if the marriage of the guilty woman with the offended husband is subsequently declared void.

- This is because the marriage is valid until it is declared null and void by final judgment.

Element 2 – Sexual intercourse

- This may be proven by circumstantial evidence
 - Direct proof of sex is not required
- Each sexual intercourse is a count of adultery
 - This is because adultery is an instantaneous crime, which is consummated and completed at the moment of carnal union
- **Mitigating circumstance:** If the adultery happened while the woman is abandoned without justification by her husband
 - A good faith belief of her spouse's death is counted
 - Both defendants—the woman and her paramour—are entitled to the mitigating circumstance
 - *In pari delicto* is **not** a defense!

Element 3: Man must know her to be married

- The man may be single or married
- But the married man who is not liable for adultery because he did not know that the woman is married, may be held liable for concubinage (see Art. 334).
- The married woman is guilty of adultery. If her paramour is married and she knew him to be married, she will also be liable for concubinage!

Effect of acquittal of one of the defendants – *Does not* operate as acquittal of the other.

- Some defenses may be strictly personal to one defendant (e.g., insanity, death, etc.)
- There may not be a joint criminal intent, although there is a joint physical act

Effect of the death of–

1. Paramour – The wife may still be prosecuted.
2. Offended party – The proceedings must:
 - a. Continue, if a complaint has already been filed
 - b. Stop, if the complainant died before a complaint was filed

Pardon

Requisites:

1. The pardon must come *before* the institution of the criminal prosecution
2. Both offenders must be pardoned

Implied pardon – Having sexual intercourse after the adulterous conduct.

Effect of consent – Dismissal of charges.

- An agreement to separate *in fact* may be considered as an implied consent for the wife to find another partner.

ART. 334 Concubinage.

Any husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by *prision correccional* in its minimum and medium periods.

The concubine shall suffer the penalty of *destierro*.

Elements ♥

1. That the man must be married
2. That he committed any of the following acts:
 - a. Keeping a mistress in the conjugal dwelling
 - b. Having sexual intercourse under scandalous circumstances with a woman who is not his wife
 - c. Cohabiting with her in any other place
3. The woman must know him to be married

Offenders:

1. The married man
2. His concubine, if she knew the man to be married prior to the commission of the crime.

Element 1 – Married man

- Like adultery, concubinage is a violation of the marital vow.

⚠ *A married man is not liable for concubinage for mere sexual relations with a woman not his wife!*

Act 1: Keeping a mistress in the conjugal dwelling

- Mistress – A woman taken into the conjugal dwelling as a concubine
- Conjugal dwelling – The home of the husband and wife, even if the wife happens to be temporarily absent on any account.
- Under this act, **no positive proof of actual intercourse is necessary.**

Act 2: Having sexual intercourse under scandalous circumstances

- It is only when the mistress is kept elsewhere (outside the conjugal dwelling) that “scandalous circumstances” become an element of the crime, e.g.,
 - Live in the same room of a house

- Appear together in the public
- Perform acts in sight of the community
- When spies are employed, this act falls.

Act 3 – Cohabiting with a woman in any other place

- Proof of scandalous circumstance is unnecessary
- Cohabit – To dwell together, in the manner of husband and wife, for some period of time, as distinguished from occasional, transient interviews for unlawful intercourse.

Chapter 2 Rape and Acts of Lasciviousness

ART. 336 ★ Acts of lasciviousness.

Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

Elements ♥

1. The offender commits any act of lasciviousness of lewdness
2. The act is committed against a person of either sex
3. The act is done under any of the following circumstances:
 - a. By using force or intimidation
 - b. When the offended party is deprived of reason or otherwise unconscious
 - c. By means of fraudulent machination or grave abuse of authority
 - d. When the offended party is under 12 years of age or is demented

Element 1 – Act of lasciviousness/lewdness

- **Lewd** – Obscene, lustful, indecent, lecherous.
 - The form of immorality which has relation to moral impurity; or that which is carried on in a wanton manner.
 - Like forcing a woman to dance naked before a group of men
 - v. Grave coercion – If the compulsion is the very act constituting the offense of grave coercion.
- Motive is unimportant because the essence of lewdness is in the very act itself.
 - Embracing, kissing, and holding a woman's breasts
 - Kissing and embracing a woman against her will

- But lover's embrace and kisses are not
 - Placing a man's private parts over a woman's genital organ
- The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances.
 - It is a purely mental process discernible only by overt acts.

Acts of lasciviousness	Attempted rape
Same manner of committing the crime (four circumstances)	
Offended party is person of either sex	
Performance of acts of lascivious character is common	
No intent to lie	Purpose to lie (have sex) [1]
Lascivious acts are themselves the final objective sought by the offender	Lascivious acts are mere preparatory acts [2]
<i>Example:</i> Rubbing against or between the victim's thighs	<i>Example:</i> Touching of the vagina by the penis coupled with the intent to penetrate

[1] Intent of the perpetrator is deduced from his external acts.

[2] Desistance in the commission of attempted rape may constitute acts of lasciviousness.

⚠ *There are no attempted or frustrated acts of lasciviousness.*

v. unjust vexation – When the accused merely kissed and embraced her, either out of passion or other motive, touching the girl's breast as a mere incident is unjust vexation.

- Or when the lewd acts were done without force/intimidation (the 3rd element).

Chapter 3 Seduction, Corruption of Minors, and White Slave Trade

ART. 337
Qualified seduction.

The seduction of a minor, sixteen and over but under eighteen years of age, committed by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the minor seduced, shall be punished by *prision 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 have carnal knowledge of any of the persons and under the circumstances described therein.

Elements ♥

1. The offended party is a minor over 16 but under 18 years old
2. The offender had sexual intercourse [1]
3. There is abuse of authority, confidence or relationship on the part of the offender

[1] Without this, the crime becomes an act of lasciviousness under Art. 339.

Seduction – Enticing a person to unlawful sexual intercourse by promise of marriage or other means of persuasion **without use of force.**

Who are the offenders in qualified seduction?

1. Those who abused their authority:
 - a. Person in public authority
 - b. Guardian
 - c. Teacher
 - d. Person who, in any capacity, is entrusted with the education or custody of the person seduced
2. Those who abused confidence reposed in them:
 - a. Priest
 - b. House servant
 - c. Domestic
 - i. A person usually living under the same roof, pertaining to the same house.
 - ii. Includes all persons residing with the family and who are members of the same household
 - iii. Domestic is distinct from a house servant.
3. Those who abused their relationship
 - a. Brother who seduced his sister (incest)
 - b. Ascendant to seduced his descendant (incest)

What makes the crime of qualified seduction?

- The character of the person committing it, on account of the excess of power or abuse of confidence of which the offender availed himself.

The following are not required to be proven:

1. Deceit
2. Lack of consent

When does it become rape?

- When any of the four circumstances is present.

ART. 338

Simple seduction.

The seduction of a minor, sixteen and over but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*.

Elements ♥

1. The offended party is a minor over 16 but under 18 years old [1]
2. The offender had sexual intercourse with her
3. It is committed by means of deceit [2]

[1] If the person is less than 16 years old, the crime is statutory rape.

[2] Which generally takes the form of an unfulfilled promise of marriage.

ART. 339

Acts of lasciviousness with the consent of the offended party. [1]

The penalty of *arresto mayor* shall be imposed to punish any other acts of lasciviousness committed by the same persons and under the same circumstances as those provided in Articles 337 and 338.

[1] The offended party may have consent to the acts of lasciviousness being performed by the offender, but the consent is obtained by abuse of authority, confidence, relationship, or by means of deceit.

Elements ♥

1. The offender committed any act of lasciviousness or lewdness
2. The acts are committed upon a minor under 18 but over 16, or a sister or descendant regardless of her reputation or age
3. The offender accomplishes the acts by abuse of authority,

confidence, relationship, or deceit.

ART. 340

Corruption of minors.

Any person who shall promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another, shall be punished by *prision mayor* and if the culprit is a public officer or employee, including those in government-owned or controlled corporations, he shall also suffer the penalty of temporary absolute disqualification.

ART. 341

White slave trade.

The penalty of *prision 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 purposes of prostitution.

Acts penalized:

1. Engaging in the business of prostitution
2. Profiting by prostitution
3. Enlisting the services of women for the purpose of prostitution

Chapter 4 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.

Elements ♥

1. The person abducted is any woman, regardless of her age, civil status, or reputation
2. The abduction is against her will

3. The abduction is with lewd designs

ART. 343
Consented abduction.

The abduction of a virgin over twelve and under eighteen years of age, carried out with her consent and with lewd designs, shall be punished by the penalty of *prision correccional* in its minimum and medium periods.

Elements ♥

1. The offended party must be a virgin
2. She must be over 12 and under 18 years of age
3. The taking away of the offended party must be with her consent, after solicitation or cajolery from the offender
4. The taking away of the offended party with lewd designs

Chapter 5
Provisions Relative to the Preceding Chapters of Title Eleven

ART. 344
Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness.

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty party if they are both alive nor in any case if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape, or acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardians nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness, and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices, and accessories after the fact of the above-mentioned crimes.

ART. 345

Civil liability of persons guilty of crimes against chastity.

Persons guilty of rape, seduction, or abduction, shall also be sentenced:

1. To indemnify the offended woman;
2. To acknowledge the offspring, unless the law should prevent him from so doing;
3. In every case, to support the offspring.

The adulterer and the concubine in the case provided for in the Articles 333 and 334 may also be sentenced, in the same proceeding or in a separate civil proceeding, to indemnify for damages caused to the offended spouse.

ART. 346
Liability of ascendants, guardians, teachers, or other persons entrusted with the custody of the offended party.

The ascendants, guardians, curators, teachers, and any person who, by abuse of authority or confidential relationship, shall cooperate as accomplices in the perpetration of the crimes embraced in chapter 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.

TITLE IV
Crimes Against Public Interest

Chapter One
Forgeries

Section 1.

ART. 161
Counterfeiting the great seal of the Government of the Philippine Islands, forging the signature or stamp of the Chief Executive.

The penalty of *reclusion temporal* 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.

Acts punished:

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

ART. 162

Using forged signature or counterfeit seal or stamp.

The penalty of *prision mayor* shall be imposed upon any person who shall knowingly make the use of counterfeit seal or forged signature or stamp mentioned in the preceding article.

Elements ♥

1. That the Great Seal of the Republic was counterfeited or the signature or stamp of the president was forged by another person.
2. That the offender knew of the counterfeiting or forgery.
3. That he used the counterfeit seal or forged signature or stamp.

Section 2.

ART. 163

Making and importing and uttering false coins.

Any person who makes, imports, or utters false coins, in connivance with counterfeiters or importers, shall suffer:

1. *Prision correccional* in its minimum and medium periods and a fine not exceeding Four hundred thousand pesos (P400,000), if the counterfeited coins be any coinage of the Philippines.
2. *Prision correccional* in its minimum period and a fine not to exceed Two hundred thousand pesos (P200,000), if the counterfeited coin be currency of a foreign country.

Elements ♥

1. That there be false or counterfeited coins
2. That the offender either made, imported, or uttered such coins
3. That in case of uttering [1] such false or counterfeited coins, he connived with the counterfeiters or importers

[1] To pass, to deliver, to give away.

False coin – Forged or if it is not authorized by the government as a legal tender (counterfeited). Imitation of a legal or genuine coin.

Former coins may be counterfeited under Art. 163.

ART. 164

Mutilation of coins – Importation and utterance of mutilated coins.

The penalty of *prision correccional* in its minimum period and a fine not to exceed Four hundred thousand pesos (P400,000) shall be imposed upon any person who shall mutilate coins of the legal currency of the Philippines or import or utter mutilated coins, in connivance with the mutilator or importer.

Acts punished:

1. Mutilation of coins of the legal currency, with intent to damage or defraud another.
2. Importing or uttering mutilated coins, in connivance with the mutilator or importer in case of uttering.

Mutilation – To take off part of the metal either by filling it or substituting it for another metal of inferior quality.

Not included:

1. Mutilation of a not legal tender coin
2. Mutilation of foreign coin

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 the intent to utter the same, or shall actually utter such coin, shall suffer a penalty lower by one degree than that prescribed in the said articles.

Acts punished:

1. Possession of counterfeit or mutilated coin
2. Uttering false or mutilated coin

Elements (possession) ♥

1. Possession of the counterfeit or mutilated coin

2. With intent to utter
3. Knowledge

Elements (uttering) ♥

1. Actually uttering
2. Knowledge

Section 3.

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 the bearer and the importation and uttering in connivance with forgers or importers of such false or forged obligations or notes, shall be punished as follows:

1. By reclusion temporal in its minimum period and a fine not to exceed Two million pesos (P2,000,000), if the document which has been falsified, counterfeited, or altered is an obligation or security of the Philippines.

The words “obligation or security of the Philippines” shall mean all bonds, certificates of indebtedness, national bank notes, coupons, Philippine notes, treasury notes, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the Philippines, and other representatives of value, of whatever denomination, which have been or may be issued under any act of Congress.

2. By *prision mayor* in its maximum period and a fine not to exceed One million pesos (P1,000,000), if the falsified or altered document is a circulating note issued by any banking association duly authorized by law to issue the same.
3. By *prision mayor* in its medium period and a fine not to exceed One million pesos (P1,000,000), if the falsified or counterfeited document was issued by a foreign government.
4. By *prision mayor* in its minimum period and a fine not to exceed Four hundred thousand pesos (P400,000), when the forged or altered document is a circulating note or bill issued by a foreign bank duly authorized therefor.

Acts punished:

1. Forging or falsification of treasury or bank notes or other documents payable to bearer.
2. Importation of such false or forged obligations or notes.

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

Notes and other obligations and securities that may be forged/falsified:

1. Treasury or bank notes
2. Certificates
3. Other obligations and securities, payable to bearer
 - a. Payable to bearer – Negotiated by mere delivery (“I promise to pay the *bearer* of this note...”)

Bases of penalty:

1. Obligation or security issued by GRP
2. Circulating note issued by any banking association duly authorized by law to issue the same
3. Document issued by a foreign government
4. Circulating note or bill issued by a foreign bank duly authorized to issue the same

Obligation or security of the Philippines:

1. Bonds
2. Certificates of indebtedness
3. National bank notes
4. Coupons
5. Treasury notes
6. Fractional notes
7. Certificates of deposits
8. Bills
9. Checks
10. Drafts for money
11. Other representatives of value issued under any Act of Congress

ART. 167

*Counterfeiting, importing, and uttering instruments **not** payable to bearer.*

Any person who shall forge, import, or utter, in connivance with the forgers or importers, any instrument payable to order or other document of credit not payable to bearer, shall suffer the penalties of *prision correccional* in its medium and maximum periods and a fine not exceeding One million two hundred thousand pesos (P1,200,000).

Elements ♥

1. There be an instrument payable to order, or other document of credit not payable to bearer [1]
2. The offender either forged, imported, or uttered such instrument
3. That in case of uttering, he connived with the forger or importer

[1] Payable to order – Drawn payable to the order of a specified person or to him or his order. It is negotiated by indorsement and delivery.

ART. 168

Illegal possession and use of false treasury or bank notes and other instruments of credit.

Unless the act be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession, with intent to use any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles.

Elements ♥

1. Any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person
2. The offender knows that any of those instruments is forged or falsified
3. That he performs any of the acts–
 - a. Using any such forged or falsified instruments, or
 - b. Possessing with intent to use any of such forged or falsified instruments

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. [1]
2. By erasing, substituting, counterfeiting, or altering by any means the figures, letters, words, or sign contained therein. [2]

[1] Forging or counterfeiting

[2] Falsification

Section 4.

What is falsification?

- The commission of any of the eight acts in Art. 171 on:
 - Legislative documents
 - Public documents
 - Official documents
 - Commercial documents
 - Private documents

What is a document?

- A written statement that establishes a right or extinguishes an obligation
- Any writing or instrument which proves a fact
- One that proves, evidences, or sets forth some disposition or agreement

⚠ *For there to be falsification, the document must be complete or filled-up.*

- Hence, an unsigned payroll, or a blank receipt are *not* documents.

Four kinds of documents that can be the subject of falsification:

1. **Private document** – A deed or instrument executed between private persons or by a private person, for which a notary public has *not* intervened.
2. **Public document** – A private document that has been notarized, or one that has become part of public record.
 - a. This starts as a private document.
3. **Official document** – A document issued by a public official in the exercise of the functions of his office (the issuance is mandated by law and in the performance of official duty).
 - a. An official document is also a public document.
 - b. This is an official document *from the start*.
4. **Commercial document** – A document or instrument used to promote or facilitate trade. It is one that is regulated by mercantile laws.

ART. 170

Falsification of legislative documents.

The penalty of *prision correccional* in its maximum period and a fine not exceeding One million two hundred thousand pesos (P1,200,000) 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 Congress or any provincial board or municipal council.

Elements ♥

1. There be a bill, resolution, or ordinance enacted or approved or pending approval in Congress, any provincial or city/municipal board

2. The offender alters the same
3. He has no proper authority
4. The alternation has changed the meaning of the document

This only punishes alterations that made the document speak something false.

- The act of altering is the only act punished here.
 - And not all alterations, even! Only alterations that change the meaning of the document.
 - All other acts of falsification if committed on a legislative document are either punishable in Art. 171 or 172.
- The legislative document falsified must be genuine.
 - Hence, if it is simulated or fabricated, it becomes under Art. 171 or 172.

Falsification of a public document

ART. 171 ★

Falsification by public officer, employee or notary or ecclesiastical minister.

The penalty of *prison mayor* and a fine not to exceed One million pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document, by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature, or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy or 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 offense enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

Elements ♥

1. The offender is–
 - a. Public officer
 - b. Employee
 - c. Notary public
2. He takes advantage of his official position
3. He falsifies a document by committing any of the following acts:
 - a. Counterfeiting or imitating any handwriting, signature, or rubric
 - b. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate
 - c. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them
 - d. Making untruthful statements in a narration of facts
 - e. Altering true dates
 - f. Making any alteration or intercalation in a genuine document which changes its meaning
 - g. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original
 - h. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry or official book
4. In case the offender is an ecclesiastical minister, the act of falsification is committed with respect to any record or document of such character that its falsification is committed with respect to any record or document of such character that its falsification may affect the civil status of persons.

Element 1 – The offender

Ecclesiastical minister – A person commissioned to perform some act on behalf of the church or some religion or denomination.

- He is *only* liable under this article if he commits any of the eight acts with respect to any record/document that *affects the civil status of persons*.
- *Example:* Fr. X issued in an authenticated form a supposed marriage certificate of Y purporting to be a copy of an original marriage certificate when no such original exists.

Element 2 – Taking advantage of an official position

How does a public officer or notary public take advantage of his official position?

1. When he has the duty to make or to prepare or otherwise to intervene in the preparation of the document
2. When he has the official custody of the document which he falsifies

Example: A clerk stenographer changed the testimony of Y by making it appear that he admitted to having committed that crime. As a clerk, he both has the duty to prepare the document and place it under his custody.

⚠ *If the offender is a public official, but did not take advantage of his official position, liability is under Art. 172 (private).*

The acts of falsification ♥

Act 1: Counterfeiting or imitating any handwriting, signature or rubric

Two ways of committing:

1. Counterfeiting – Imitating/forging a handwriting, signature or rubric

Requisites:

1. There must be an attempt to imitate
2. The two signatures or handwritings–the genuine and forged–must bear some resemblance to each other
 - a. It need not be perfect, but the resemblance must be likely to deceive an ordinary person.

2. **Feigning** – There is no original signature, handwriting or rubric, but there is forgery or simulation that does not in fact exist.

Example: Simulating a dead person's signature in a deed of sale

Act 2: Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate

Requisites:

1. Offender caused it to appear that a person participated in an act or proceeding
2. Such person did not in fact so participate in the act or proceeding

Example: A fake “certificate of appearance” issued by a clerk of court.

Act 3: Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them

Requisites:

1. A person participated in an act or proceeding
2. Such person made statements in that act or proceeding
3. The offender, in making a document, attributed to such person statements other than those in fact made by such person

Example: The Sanggunian secretary caused it to appear in the minutes of the session that a certain member voted for the resolution, when in fact he did not.

Act 4: Making untruthful statements in a narration of facts

Requisites:

1. The offender makes in a document statements in a narration of facts
2. He has a legal obligation to disclose the truth of the facts narrated by him
3. The facts narrated by the offender are *absolutely* false
4. There was the wrongful intent of injuring a third person
 - a. *Not required* when the falsified document is a public or official document.

Narration of facts – Hence, a conclusion of law is *not* contemplated here (i.e., declaring that you are “eligible” for candidacy).

Legal obligation – There must be a law requiring, expressly or impliedly, the disclosure of the truth of the fact alleged to have been falsified.

Absolutely false – If the statements are *not altogether false*, there being some “colorable truth” in such statements, the crime of falsification is *not* committed.

Act 5: Altering true dates

There is falsification only when the date mentioned in the document is *essential*.

- The alteration of the date in a document must either:
 - affect the veracity of the document or
 - the effects thereof

Examples:

1. The payroll clerk certified that he paid X on Nov. 30, but he actually paid X on Nov. 20. However, X worked up to Nov. 30. Here, while there was an alteration of the date of the actual payment of the salary, such alteration did not affect the veracity of the document or the effects thereof.
2. A clerk in the civil registrar altered the date of death in the certificate of death of Y to make it appear that Y was still alive when he sold a piece of land to Z. Here, the alteration is essential because it also affects the veracity of the sale.

Act 6: Making any alteration or intercalation in a genuine document which changes its meaning

Act 8: Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book

Elements:

1. There is an alteration (change) or intercalation (insertion) on a document
2. It was made on a genuine document
3. The alteration or intercalation has changed the meaning of the

document

4. The change made the document speak something false

Examples:

1. X falsified the traffic violation report issued to him by erasing “2” after the words “number of violations” and superimposing “1” to make it appear that he committed a violation only once. The ordinance authorizes harsher penalties for 2nd and subsequent violations.
2. X altered in his *cedula* his age from “46” to “45.” Here, there is no falsification as this is merely a correction. Falsification connotes the idea of deception.

Act 7: Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original

Only public officers or notaries who take advantage of their official positions can be held liable here because the authentication of a document can only be made by them.

- A private individual, however, who *conspires* with them will also be liable under this paragraph.

Examples:

1. Atty. X, upon request of Y who paid him a huge sum of money, made a supposed copy of a DOAS which is nonexistent, to make it appear that Z had sold a piece of land to Y. Atty. X issued in an authenticated form a document purporting to be a copy of an original document when no such original exists.
2. A civil registrar stated in a certified copy of Y’s birth certificate that he was “legitimate” when no such statement was in the original document.

Must the document be genuine in falsification?

- In nos. 1-5 and 1st part of no. 7, not necessarily. It may be a genuine or simulated document.
- In nos. 6, 2nd part of 7, and 8, there must be a genuine document being falsified.

Falsification of private and commercial documents

ART. 172 ★

Falsification by private individual and use of falsified documents.

The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than One million pesos (P1,000,000) shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official

document or letter of exchange or any other kind of commercial document;

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document, commit any of the acts of falsification committed in the next preceding article; and
3. 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.

Elements, par. 1 ♥

1. The offender is a private individual, or a public officer who did not take advantage of his official position
2. He committed any of the acts of falsification under Art. 171
3. The falsification was committed in a public, official, or commercial document.

Elements, par. 2 ♥

1. The offender is any person
2. The offender commits any of the acts of falsification in Art. 171, except no. 7
3. The falsification was committed in *any private* document
4. The falsification caused damage to another, or at least it was committed with intent to cause such damage
 - a. Hence, mere falsification without damage/intent to damage will not make the offender criminally liable.
 - i. *Example:* You falsified a receipt to make it appear that you already paid the thing sold to you, but just kept it.

Use of falsified documents

Acts punished in par. 3:

1. Using or introducing the falsified document in a judicial proceeding
2. Using the false or falsified document *in any other* transaction

To be liable here, the person who used the false/falsified document *must not be the one* who falsified the document.

- If he is, he will be punished under Art. 171, or par. 1 or 2 of Art. 172, as the case may be.

Elements, 3.1 ♥

1. The offender knew that a document was falsified by another person
2. The false or falsified document is embraced in Art. 171 or in par. 1 or 2

of Art. 172 (whether public, official, commercial, or private documents and committed through any of the 8 acts)

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

Elements, 3.2 ♥

1. The offender knew that a document was falsified by another person
2. The false document is embraced in Art. 171 or in par. 1-2 of Art. 172
3. The offender used such document in any other transaction
4. The use of the false document caused damage to another or at least it was used with intent to cause such damage
 - a. Here, damage is material, *it is not in 3.1.*

In connection with Art. 175:

When any of the false certificates in Art. 174 is used in a judicial proceeding, **Art. 172 is inapplicable.**

- This is because the use of false documents in judicial proceedings under Art. 172 is limited to those false documents in Art. 171/172.
 - In this case, it falls under Art. 175.

ART. 173

Falsification of wireless, cable, telegraph and telephone messages, and use of said falsified messages.



The penalty of *prision correccional* in its medium and maximum periods shall be imposed upon any officer or employee of the Government or 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.

Acts punished:

1. Uttering fictitious wireless, telegraph or telephone message
2. Falsifying wireless, telegraph or telephone message
3. Using such falsified message

A private individual *cannot* be a principal by direct participation in falsification of telegraphic dispatches under Art. 173.

- Unless: He is an employee of the telco corporation
- A private individual may be a principal by inducement
- A private individual may also violate no. 3 (using fictitious dispatch)

Nos. 1-2: Uttering and falsifying

Elements, uttering fictitious message or falsifying the same ♥

1. The offender is:
 - a. An officer or employee of the government [1]
 - b. An officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message
2. The offender commits any of the following acts:
 - a. Uttering fictitious wireless, telegraph or telephone message
 - b. Falsifying wireless, telegraph or telephone message

[1] The government officer/employee must also be engaged in the service of sending or receiving wireless, cable, telegraph or telephone messages.

No. 3 – Using

Elements, using such falsified message ♥

1. The accused knew that wireless, cable, telegraph or telephone message was falsified by any of the persons in par. 1, Art. 173
2. The accused used such falsified dispatch
3. The use of such falsified dispatch resulted in the:
 - a. prejudice of a third party, or
 - b. the use was with *intent* to cause such prejudice

Section 5. Falsification of medical certificates, certificates of merit or service and the like.

ART. 174

False medical certificates, false certificates of merits or service, etc.



The penalties of *arresto mayor* in its maximum period to *prision correccional* in its minimum period and a fine no to exceed Two hundred thousand pesos (P200,000) 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 of 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 (2) preceding subdivisions.

What is a certificate?

- A certificate is any writing by which testimony is given that a fact

has or has not taken place

Who are liable under Art. 174?

1. Physician or surgeon
 - a. In connection with the practice of his profession
 - b. "False medical certificate by a physician"
2. Public officer
 - a. In connection with a certificate of merit, service, good conduct, etc.
 - b. "False certificate of merit or service by a public officer"
3. Private individual
 - a. "False medical certificate by a private individual"
 - b. "False certificate of merit or service by a private individual"

ART. 175

Using false certificates.

The penalty of *arresto menor* shall be imposed upon any one who shall knowingly use any of the false certificates mentioned in the next preceding article.

Elements ♥

1. A physician or surgeon issued a false medical certificate, or a public officer issued a false certificate of merit, service, good conduct, etc., or a private person falsified any of said certificates
2. The offender knew that the certificate was false
3. The offender used the certificate

Section 6. Manufacturing, importing and possession of instruments or implements intended for the commission of falsification.

ART. 176

Manufacturing and possession of instruments or implements for falsification.

The penalty of *prision correccional* in its medium and maximum periods and a fine not to exceed One million pesos (P1,000,000) shall be imposed upon any person who shall make or introduce into the Philippines any stamps, dies, marks, or other instruments or implements intended to be used in the commission of the offenses of counterfeiting or falsification mentioned in the preceding sections of this Chapter.

Any person who, with the intention of using them, shall have in his possession any of the instruments or implements mentioned in the preceding paragraph shall suffer the penalty next lower in degree than that

provided therein.

Acts punished:

1. Making or introducing into the Philippines instruments or implements for counterfeiting or falsification
2. Possessing with intent to use the instruments or implements for counterfeiting or falsification made in or introduced into the Philippines by another person

This article punishes:

1. Even if the confiscated items do not form a complete set for counterfeiting
2. Even if the offender has mere constructive possession

**Chapter 2
Other Falsities**

Section 1. 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 any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prision correccional* in its minimum and medium periods.

Acts punished:

1. Usurpation of authority
2. Usurpation of public functions

Usurpation of authority – It is enough that he knowingly and falsely represented himself to be an officer.

- It is not necessary that he performs an act pertaining to a public officer.

Usurpation of official functions – The offender must perform an act

pertaining to a person in authority or public officer.

What must be the nature of false representation?

- The law demands positive, express and explicit representation by the offender before he can be convicted of usurpation of authority.
- The false representation may be shown by acts (e.g., acting as if a policeman, even though he did not explicitly claim that he was a police)

Who may be punished?

- Any person.
 - Hence, a public officer may violate Art. 177 (see *People v. Hilvano*)
- **Exception:** An usurper under color of title is not punished under Art. 177 (e.g., Chief Justice Sereno who has later to be declared as unqualified. Her appointment was under colorable title, but was nevertheless void.)

What offices may be usurped?

- Office of the Philippine government
- Office of *any* foreign government

ART. 178

Using fictitious name and concealing true name.

The penalty of *arresto mayor* and a fine not to exceed One hundred thousand pesos (P100,000) shall be imposed upon any person who shall publicly use a fictitious name for the purpose of concealing crime, evading the execution of a judgment or causing damage.

Any person who conceals his true name and other personal circumstances shall be punished by *arresto menor* or a fine not to exceed Forty thousand pesos (P40,000).

Acts punished:

1. Using fictitious name
2. Concealing true name

What is a fictitious name?

- Any other name which a person publicly applies to himself without authority of law.

Using fictitious name

Elements ♥

1. The offender uses a name other than his real name
2. He uses that fictitious name publicly
3. The purpose of the offender is:
 - a. To conceal a crime
 - b. To evade the execution of judgment
 - c. To cause damage to public interest [1]

[1] If the damage is to the detriment of a *private party*, it is **estafa** under Art. 315, par. (2)(a).

Concealing true name

Element ♥

1. The offender conceals:
 - a. His true name, and
 - b. All other personal circumstances
2. The purpose is *only* to conceal his identity

Using fictitious name	Concealing true name
The element of publicity must be present	Not necessarily public
Purpose is to: <ol style="list-style-type: none">1. Conceal a crime2. Evade a judgment3. Cause damage	Purpose is merely to conceal identity

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.

Elements ♥

1. The offender makes use of insignia, uniform or dress
2. The insignia, uniform or dress pertains to
 - a. an office *not* held by the offender, or
 - b. to a class of persons of which is *not* a member
3. The insignia, uniform or dress is used publicly and improperly

Wearing the uniform of an imaginary office is *not* punishable

- Element 2 is nonexistent

An exact imitation of a uniform or dress is unnecessary.

- A colorable resemblance calculated to deceive the common run of people is sufficient.

Section 2. False testimony.

Elements of false testimony ♥

1. Committed by a person who,
2. Being under oath
3. And required to testify
4. As to the truth of a certain matter
5. In a criminal or civil case
6. Pending before a court
7. Shall deny the truth or say something contrary to truth

Element 1 – Committed by a person

Witness – Any person who can perceive, and perceiving, can make known his perception to others.

- How do we perceive? Our five senses!

Element 2 – Under oath

What is an oath and its importance?

- An oath is an attestation by which a person signifies a person is bound in conscience to perform an act faithfully and truthfully.
- A person is not liable for false testimony if he is not under oath.

Element 3 – Required to testify

This includes:

1. Subpoenaed by the court, or
2. Volunteering to testify

Subpoena – A process directed to a person requiring him to attend and to testify at the hearing or trial of an action.

- Failure to obey without just cause is contempt of court. Hence, he may be ordered arrested by the court.

Element 4 – Truth

What is “truth?”

- The fact about something.

- You must tell the court what you actually saw
- Telling the truth is the primary and most important duty of a witness

Element 5 – In a civil or criminal case

Civil case – A party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.

- This may either be *ordinary* or *special*.

Criminal case – Is one by which the state prosecutes a person for an act or omission punishable by law.

Element 6 – Pending before a court

Pending – Not yet decided, or awaiting decision.

Courts – Courts of law (judicial)

Element 7 – Shall deny the truth or say something contrary thereto

Two kinds of false testimony in criminal cases:

1. False testimony against the defendant (**Art. 180**)
2. False testimony favorable to the defendant

ART. 180

False testimony against a defendant.

Any person who shall give false testimony against the defendant *in any criminal case* shall suffer:

1. The penalty of *reclusion temporal*, if the defendant in said case shall have been sentenced to death;
2. The penalty of *prision mayor*, if the defendant shall have been sentenced to *reclusion temporal* or *reclusion perpetua*.
3. The penalty of *prision 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 Two hundred thousand pesos (P200,000).

Elements ♥

1. There be a criminal proceeding
2. The offender testifies falsely under oath against the defendant

3. The offender who gives false testimony knows it is false
4. The defendant is either acquitted or convicted by final judgment

It is **not** necessary that the defendant be convicted.

Nevertheless, it is only after the defendant is either acquitted or convicted by final judgment can the witness be prosecuted for false testimony.

- A pending appeal prevents the judgment of conviction from attaining finality.

⚠ **Art. 180 does not impose a penalty when the defendant is sentenced only to a light penalty. The codal is silent on this point.**

ART. 181

False testimony favorable to the defendant.

Any person who shall give false testimony in favor of the defendant *in a criminal case*, shall suffer the penalties of *arresto mayor* in its maximum period to *prision correccional* in its minimum period and a fine not to exceed Two hundred thousand pesos (P200,000), if the prosecution is for a felony punishable by an afflictive penalty, and the penalty of *arresto mayor* in any other case.

Unlike **Art. 180**, here, it is enough that the accused in whose favor the false testimony was given is prosecuted for a felony punishable by an afflictive penalty or by other penalty.

- Hence, conviction or acquittal is not necessary

It is enough that the witness testified with the intent favorable to the accused.

- It is not necessary that his testimony directly influence the acquittal

If it is the accused who takes the stand and falsely testified to favor himself, is he liable under **Art. 181**?

1. Yes, if he imputed the crime to another (I didn't do it, he did!)
2. No, if he merely denied committing the crime (right against self-incrimination).

ART. 182

False testimony in civil cases.

Any person found guilty of false testimony in a civil case shall suffer the penalty of *prision correccional* in its minimum period and a fine not to

exceed One million two hundred thousand pesos (P1,200,000), if the amount in controversy shall exceed One million pesos (P1,000,000), and the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period and a fine not to exceed Two hundred thousand pesos (P200,000), if the amount in controversy shall not exceed said amount, or cannot be estimated.

Elements ♥

1. The testimony must be given in a civil case
2. The testimony must relate to the issues presented in said case
3. The testimony must be false
4. The accused knows his testimony to be false
5. The testimony must be malicious and given with an intent to affect the issues in said civil case

The witness here may be from the plaintiff, defendant or any other third party (if any).

When will prosecution under Art. 182 occur?

- Once the decision in the civil case attains finality.
- Whether or not the testimonies in the civil cases are false is a prejudicial question (Ark Travel Express Inc. v. Abrogar, G.R. 137010, August 29, 2003)

The crime of false testimony **does not apply to special proceedings** such as adoption, habeas corpus, cancellation or correction of entries in the civil registry, etc.

Perjury

ART. 183 ★

False testimony in other cases and perjury in solemn affirmation.

The penalty of *prision mayor* in its minimum period to *prision mayor* in its medium 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 made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein: *Provided*, That if the person responsible for the commission of this felony is a public officer or employee, the penalty shall be imposed in its maximum

period: *Provided, finally*, That the offender shall also suffer a fine not to exceed One million pesos (P1,000,000) and perpetual absolute disqualification from holding any appointive or elective position in the government or in any agency, entity or instrumentality thereof.

Two ways of committing perjury:

1. By falsely testifying under oath *not* in a judicial proceeding [1]
2. By making a false affidavit

[1] Because if it is in a judicial proceeding, it will fall under either Art. 180, 181, or 182.

Elements ♥

1. The accused made a statement under oath or executed an affidavit upon a material matter
2. The statement or affidavit was made before a competent officer, authorized to receive and administer oath
3. In the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood
4. The sworn statement or affidavit containing the falsity is required by law

Element 1 – Oath or affirmation over a material matter

Affidavit – A sworn statement in writing; a declaration in writing, made upon oath before an authorized magistrate or officer.

Material matter – The main fact which is subject of the inquiry or any circumstance which tends to prove that fact

- Any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of the inquiry
- Legitimately affects the creditor of any witness who testifies

Material, relevant and pertinent

- Material – Directed to prove a fact in evidence
- Relevant – Tends in any reasonable degree to establish the probability or improbability of a fact in an issue
- Pertinent – When it concerns collateral matters which make more or less probable the proposition at issue

Element 2 – Made before a competent officer

Who is a competent officer?

- A person who has a right to inquire into the questions presented to him upon matters under his jurisdiction.

- Hence, there is *no perjury* if the statement was made in a pleading *not required* to be verified.

Element 3 – Willful and deliberate assertion of a falsehood (malice)

This implies there can be *no perjury* through negligence or imprudence.

Likewise, good faith or lack of malice is a defense in perjury.

Element 4 – Required by law

As long as the statement is made under oath *for a legal purpose*, element 4 is satisfied.

- “Requires” should be given a permissive–not mandatory–effect.

Are two contradictory sworn statements sufficient to convict of perjury?

- No. The prosecution must prove which of the two statements is false, and must show the statement to be false by other evidence than the contradicting statement.
 - Illustrative example: Giving contradictory statements during the (1) preliminary investigation and (2) testifying before the court.
 - No. 1 is perjury, while no. 2 falls under either Art. 180, 181, or 182, as the case may be.

What is subornation of perjury?

- This is committed by a person who knowingly and wilfully procures another to swear falsely and the witness suborned does not testify under circumstances rendering him guilty of perjury.
- It is punished under **Art. 183 in relation to Art. 17** (principal by inducement and principal by direct participation).

ART. 184

Offering false testimony in evidence.

Any person who shall willfully and knowingly offer in evidence a false witness or testimony in any judicial or official proceeding, shall be punished as guilty of false testimony and shall suffer the respective penalties provided in this section.

Elements ♥

1. The offender offered in evidence a false witness or false testimony
2. He knew the witness or testimony was false
3. The offer was made in a judicial or official proceeding

“Shall knowingly offer in evidence a false witness or testimony”

- The person who called to the stand a false witness is liable under Art. 184
- The article requires to consummate the offense that the witness or the testimony must be offered in evidence

Art. 184 contemplates a case where a person without inducing another, but knowing him to be a false witness, presented him, and the latter testified falsely in a judicial or official proceeding.

- If there is inducement → conspiracy and Arts. 180-183 will apply.

What is the penalty?

- The penalty is that for false testimony if committed in a judicial proceeding or that for perjury if committed in other official proceeding.

Chapter 3 Frauds

Section 1. Machinations, monopolies and combinations.

ART. 185

Machinations in public auctions.

Any person who shall solicit any gift or promise as a consideration for refraining from taking part in any public auction, and any person who shall attempt to cause bidders to stay away from an auction by threats, gifts, promises, or any other artifice, with intent to cause the reduction of the price of the thing auctioned, shall suffer the penalty of *prision correccional* in its minimum period and a fine ranging from 10 to 50 per centum of the value of the thing auctioned.

Acts punished:

1. By soliciting any gift or promise as a consideration for *refraining* from taking part in any public auction
2. By attempting to cause bidders to stay away from an auction by threats, gifts, promises, or any other artifice

Soliciting gift or promise

Elements, soliciting gift or promise ♥

1. There be a public auction

2. The accused solicited any gift or promise from any of the bidders
3. Such gift or promise was the consideration for his refraining from taking part in that public auction
4. The accused had the intent to cause the reduction of the price of the thing auction

This is consummated by mere solicitation

- It is *not* required that the person making the proposal actually refrains from joining the auction
- It is consummated by *mere solicitation* of gift or promise as consideration for not bidding
- If the person to whom the solicitation is made agrees to pay or gives the gift or makes a promise, then he will be a principal in the crime
 - His act will be similar to the 2nd way of committing the crime

Elements, attempting to cause bidders to stay away ♥

1. There be a public auction
2. The accused attempted to cause the bidders to stay away from that public auction
3. It was done by threats, gifts, promise or any other artifice
4. The accused had the intent to cause the reduction of the price or thing auctioned

Other artifice – Like by telling the public that the bidding would not be held at that time to make them go away, knowing that the bidding would not be postponed.

Mere attempt consummates the crime

- The threat need not be effective, nor the offer or gift be accepted for the crime to arise.

Section 2. Frauds in commerce and industry.

ART. 187

Importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious metals or their alloys.

The penalty of *prision correccional* or a fine ranging from Forty thousand pesos (P40,000) to Two hundred thousand pesos (P200,000), or both, shall be imposed upon any person who shall knowingly import or sell or dispose of any article or merchandise made of gold, silver, or other precious metals, or their alloys, with stamps, brands, or marks which fail to indicate the actual fineness or quality of said metals or alloys.

Any stamp, brand, label, or mark shall be deemed to fail to indicate the actual fineness of the article on which it is engraved, printed, stamped, labeled 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 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.

Elements ♥

1. The offender imports, sells, or disposes of any of those articles or merchandise
2. The stamps, brands, or marks of those articles of merchandise fails to indicate the actual fineness or quality of said metals or alloys
3. The offender knows that the stamps, brands, or marks fail to indicate the actual fineness or quality of the metals or alloys

Articles or merchandise involved:

Those made of-

1. Gold
2. Silver
3. Other precious metals
4. Their alloys

It is not necessary that the misbranded articles be sold and the public be actually deceived.

- But there must be evidence that the articles were imported.

Art. 187 *does not apply* to the manufacturer of misbranded articles.

- Instead it's **estafa under Art. 315 (2)(b)** (altering the quality or fineness of anything pertaining to his art or business)

TITLE VII

Crimes Committed by Public Officers

Chapter 1

Preliminary Provisions

ART. 203
Who are public officers.

For the purpose of applying the provisions of this and the preceding titles of this book, any person who, by direct provisions 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.

Requisites of a public officer ♥

1. Taking part in the performance of public functions in the government, or
Performing in the government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class; and
2. That his authority to take part in the performance of public functions or to perform public duties must be-
 - a. By direct provision of the law, or
 - b. By popular election, or
 - c. By appointment of competent authority.

Chapter 2

Malfeasance and Misfeasance in Office

1. **Misfeasance** – The improper performance of some act which might lawfully be done.
 - a. Knowingly rendering unjust judgment
 - b. Rendering judgment through negligence
 - c. Rendering unjust interlocutory order
 - d. Malicious delay in the administration of justice
2. **Malfeasance** – The performance of some act which ought not to be done.
 - a. Direct bribery
 - b. Indirect bribery
3. **Nonfeasance** – The omission of some act which ought to be performed.
 - a. Dereliction of duty in prosecution of offenses

Section 1. Dereliction of duty.

ART. 204
Knowingly rendering unjust judgment.

Any judge who shall knowingly render an unjust judgment in any case submitted to him for decision, shall be punished by *prision mayor* and perpetual absolute disqualification.

Elements ♥

1. The offender is a judge
2. The judge renders a judgment in a case submitted to him for decision
3. The judgment is unjust
4. The judge knows his judgment is unjust

Judgment – The final consideration and determination of a court upon the matters submitted to it, in an action or proceeding.

Unjust judgment – A judgment contrary to law, or is not supported by evidence, or both.

Knowingly – Made deliberately and maliciously.

- Bad faith is the ground for liability.

Source of unjust judgment:

1. Error
2. Ill-will or revenge
3. Bribery

⚠ *This does not apply to collegiate courts.*

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.

Elements ♥

1. The offender is a judge
2. The judge renders a judgment in a case submitted to him for decision
3. The judgment is manifestly unjust
4. It is due to his inexcusable negligence or ignorance

“Manifestly unjust judgment” – It is so manifestly contrary to law, that even a person having a meager knowledge of the law cannot doubt the injustice.

Mere error of judgment or abuse of discretion are *not* punishable.

- There must be proof of bad faith, ill motive or improper consideration.

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.

Elements ♥

1. The offender is a judge
2. He performs any of the following acts:
 - a. Knowingly renders an unjust interlocutory order or decree, or
 - b. Renders a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance

Interlocutory order – Issued by the court between the commencement and the end of a suit or action and which decides some point or matter, but which, however, is not a final decision of the matter in issue.

- Does it leave something to be done in the trial court with respect to the merits of the case? If yes, it is interlocutory.

ART. 207

Malicious delay in the administration of justice.

The penalty of *prision correccional* in its minimum period shall be imposed upon any judge guilty of malicious delay in the administration of justice.

Elements ♥

1. The offender is a judge
2. There is a proceeding in his court
3. He delays the administration of justice
4. The delay is malicious—the delay is caused by the judge with deliberate intent to inflict damage on either party in the case [1]

[1] Hence, mere delay without malice is not a felony.

ART. 208

Prosecution of offenses; negligence and tolerance.

The penalty of *prision 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 punishment of violators of the law, or shall tolerate the commission of offenses.

Acts punished:

1. By maliciously *refraining* from prosecuting law breakers
2. By maliciously tolerating the commission of offenses

Elements ♥

1. The offender is a public officer or officer of the law who has a duty to cause the prosecution of, or to prosecute, offenses.
2. There is dereliction of the duties of his office—knowing the commission of the crime, he does not cause the prosecution of the criminal, or knowing that a crime is about to be committed, he tolerates its commission.
3. The offender acts with malice and deliberate intent to favor the violator of the law.

Who may be the offenders?

1. Public officer
 - a. Extends to officers of the prosecution department.
2. Officer of the law
 - a. All those who are duty-bound to cause the prosecution and punishment of the offenders, e.g., the chief of police or the barrio lieutenant (punong barangay)

“Shall maliciously refrain from instituting prosecution”

- A fiscal who knowing that the evidence against the accused is more than sufficient to secure his conviction in court, drops the case, may be liable under Art. 208
- “Malicious” – The offender must act with malice.
 - Hence, dereliction caused by poor judgment or honest mistake is *not* punishable.

“Shall tolerate the commission of offenses” – Like a police granting “protection” to a den of criminals.

The crime must be proved before conviction for dereliction

- The crime committed by the violator must be proved first before the person charged with dereliction may be held liable.
- The public officer to derelicts his duty and harbors, conceals, etc. the offender is a *principal* under Art. 208.

⚠ *This does not include refraining from punishing crimes punishable by reclusion perpetua to death. That's qualified bribery under Art. 211-A.*

ART. 209

Betrayal of trust by an attorney or solicitor—Revelation of secrets.

In addition to the proper administrative sanction, the penalty of *prision correccional* in its minimum period, or a fine ranging from Forty thousand pesos (P40,000) to Two hundred thousand pesos (P200,000), or both, shall be imposed upon any attorney-at-law or any person duly authorized to represent and/or assist a party to a case who, by any malicious breach of professional duty or of inexcusable negligence or ignorance, shall prejudice his client, or reveal any of the secrets of the latter learned by him in his professional capacity.

The same penalty shall be imposed upon an attorney-at-law or any person duly authorized to represent and/or assist a party to a case who, having undertaken the defense of a client or having received confidential information from said client in a case, shall undertake the defense of the opposing party in the same case, without the consent of his first client.

Acts punished:

1. By causing damage to his client, either—
 - a. By any malicious breach of professional duty, or
 - b. By inexcusable negligence or ignorance [1]
2. By revealing any of the secrets of his client learned by him in his professional capacity [2]
3. By undertaking the defense of the opposing party in the same case, without the consent of his first client, after having undertaken the defense of said first client or after having received confidential information from said client [3]

[1] Here, there must be damage to the client.

[2] Damage is not necessary.

[3] If the client consents, there is no crime.

Section 2. Bribery.

ART. 210 ★

Direct bribery.

Any public officer who shall agree to perform an act constituting a crime in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through, the mediation of another, shall suffer the penalty of *prision mayor* in its medium and minimum periods and a fine not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional*, in its medium period and a fine of not less than twice the value of such gift.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period to *prision mayor* in its minimum period and a fine not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

Acts punished:

1. By agreeing to perform, or by performing, in consideration of any offer, promise, gift or present—an act constituting a crime, in connection with the performance of his official duties.
2. By accepting a gift in consideration of the execution of an act which does not constitute a crime, in connection with the performance of his official duty.
3. By agreeing to refrain, or by refraining, from doing something which it is his official duty to do, in consideration of gift or promise.

Elements ♥

1. The offender be a public officer within the scope of Art. 203.
2. The offender accepts an offer or a promise or receives a gift or present by himself or through another.
3. That such offer or promise be accepted, or gift or present received by

the officer—

- a. With a view to committing some crime; or
 - b. In consideration of the execution of an act which does not constitute a crime, but the act must be unjust; or
 - c. To refrain from doing something which it is his official duty to do.
4. That the act which the offender agrees to perform or which he executes be connected with the performance of his official duties.

Element 1 – A public officer

- This refers to Art. 203.
- Temporary performance of public functions is sufficient to constitute a person a public officer.

Element 2 – Gift is personally received or through an intermediary

- Bribery exists—
 - When the gift is *offered voluntarily* by a private person
 - When the gift is *solicited* by a public officer and a private person *voluntarily* delivers it
 - When the gift is solicited by a public officer as a consideration for his *refraining* from the performance of an official duty
- A promise of gift to a public officer who accepts such a promise is sufficient
 - But in par. 2., the gift must be accepted.
- The offer of a gift or promise must be accepted. If not, the public officer is not liable, but the offeror is liable for corruption of public officials.
- The gift or present must have a value or be capable of pecuniary estimation.
 - This is because the penalty is based on the gift.

Element 3 – Three ways of committing direct bribery

1. The act performed must be a *crime*.
 - a. The officer's promise to commit an unlawful act is sufficient.
 - b. The public officer will suffer the penalty for direct bribery + the crime he committed.
 - c. The act (crime) must be committed to the officer's official duties.
 - i. The act need not be a statutory duty. It may be part of a procedural duty.
 - ii. It is *not* bribery if the act is in discharge of a mere *moral* duty.
 - iii. There is *no* bribery if the act is *so foreign* to the duties of the office as to even lack color of authority.
 1. However, excess of power, jurisdiction or authority is not a defense.

2. The act performed is *not* a crime.
 - a. Bribing a police officer to recover stolen goods
 - i. This was in connection to his duty as a police officer
 - b. A BIR examiner who accepted bribe to release a certificate authorizing registration.
 - c. A treasurer who accepted bribe to award market stalls favoring certain individuals
 - d. A judge who receives a bribe to decide a case in favor of a party

Q: Is the mere promise to give a gift and a mere promise to execute an act not constituting a crime sufficient?

A: No. Art. 210, par. 2 contemplates that there be at least an overt act done in pursuance and in manifestation of an intent or design ("if the act shall not have been accomplished"). This is because par. 2 contemplates two situations:

- a. The offender *executed* said act
 - b. The offender *did not accomplish* said act
3. The public officer *refrains* from doing his official duty.
 - a. Common example: Giving "protection money" to officers so as not to apprehend or inspect someone.
 - b. The inaction must not be tantamount to a crime, else → par. 1
 - i. Example: Refraining from prosecuting someone is a crime (prevericacion, Art. 208).
 1. In prevericacion, there is no bribe.

In bribery, the gift or present must be given to the public officer to corrupt him.

- As such, it is a crime involving moral turpitude.

ART. 211 ★ *Indirect bribery.*

The penalties of *prision correccional* in its medium and maximum periods, suspension and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

Elements ♥

1. The offender is a public officer.
2. He accepts gifts.
3. The said gifts are offered to him by reason of his office.

Rationale for punishment – Because a public officer should not accept any gift that may be offered in anticipation of a future favor from him.

Will there be indirect bribery if a public officer accepts a promise of gifts made to him by reason of his office?

- No, because Art. 211 uses the phrase "shall accept gifts."
- Mere physical receipt unaccompanied by any other sign, circumstance or act to show such acceptance *is not sufficient* to conclude the crime of indirect bribery.

PD 46 (Nov. 10, 1972) punishes the receiving of gifts on any occasion, including Christmastime.

- This includes throwing parties or entertainments in honor of the official or his immediate relatives.

	Direct bribery	Indirect bribery
Gift	A public officer <i>receives</i> a gift.	
Agreement	Explicit agreement exists between the public officer and the giver	No such explicit agreement is present
Act or omission	The public officer agrees to perform, performs an act, or refrains from an act due to the gift or promise	It's not necessary for the officer to perform or promise any specific act [1]
Reason for gift	The gift is directly linked to the performance or non-performance of a specific official duty	The gift is accepted by the officer simply by reason of their office or position
Focus	Centers on the <i>quid pro quo</i>	Focuses on the impropriety of a public officer receiving gifts due to their position

[1] The Court of Appeals held in *People v. Pamplona* that an act may be done in indirect bribery, provided that it was not unjust (cf. **Art. 210, par. 2**).

ART. 211-A ★ *Qualified bribery.*

If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by *reclusion perpetua* and/or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted.

If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of **death**.

Elements ♥

1. The offender is a public officer entrusted with law enforcement
2. The offender refrains from arresting or prosecuting an offender who has committed a crime punishable by reclusion perpetua and/or death
3. The offender refrains from arresting or prosecuting the offender in consideration of any present, gift, or promise

ART. 212

Corruption of public officials.

The same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person who shall have made the offers or promises or given the gifts or presents as described in the preceding articles.

Elements ♥

1. The offender makes offers or promises or gives gifts or presents to a public officer
2. The offers or promises are made or the gifts or presents given to a public officer, under circumstances that will make the public officer liable for direct bribery or indirect bribery

The offender here is the giver of gift or offeror of promise.

- The public officer sought to be bribed is not criminally liable, unless he accepts the gift or consents to the offer of the offender.
- **Art. 212** applies even if–
 - The gift was demanded, and
 - The offer was not made voluntarily prior to the demand

Chapter 3

Frauds and Illegal Exactions and Transactions

ART. 213

Frauds against the public treasury and similar offenses.

The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period, or a fine ranging from Forty thousand pesos (P40,000) to Two million pesos (P2,000,000), or both, shall be imposed upon any public officer who:

1. In his official capacity, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds, shall enter into an agreement with any interested party or speculator or make use of any other scheme, to defraud the Government;
2. Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty of any of the following acts or omissions:
 - a. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law.
 - b. Failing voluntarily to issue a receipt, as provided by law for any sum of money collected by him officially.
 - c. Collecting or receiving, directly or indirectly, by way of payment or otherwise things or objects of a nature different from that provided by law.

When the culprit is an officer or employee of the Bureau of Internal Revenue or the Bureau of Customs, the provisions of the Administrative Code shall be applied.

Acts punished:

1. Entering into an agreement with any interested party or speculator or making use of any other scheme to defraud the government
2. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law
3. Failing to voluntarily issue a receipt for any sum of money collected by him officially
4. Collecting or receiving by way of payment or otherwise, things or objects of a nature different from that provided by law

Par. 1: Frauds against the public treasury

Elements ♥

1. The offender be a public officer
2. He should take advantage of his office, i.e., he intervened in the transaction in his official capacity
3. He entered into an agreement with any interested party or speculator or made use of any other scheme with regard to–
 - a. Furnishing supplies
 - b. Making of contracts
 - c. The adjustment or settlement of accounts relating to public property/funds

4. The accused intended to defraud the government

This crime is **consummated** by the mere act of entering into an agreement or by merely making use of any other scheme to defraud the government.

- It is not necessary that the government is *actually* defrauded
- It is sufficient that the offender acted in his official capacity and had the intent to defraud the government

Par. 2: Illegal exactions

Elements ♥

1. The offender is a public officer entrusted with the collection of taxes, licenses, fees, and other imposts
2. He is guilty of any of the following acts of omissions:
 - a. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law
 - b. Failing to voluntarily issue a receipt for any sum of money collected by him officially
 - c. Collecting or receiving by way of payment or otherwise, things or objects of a nature different from that provided by law

Mere demand for larger/different amounts **consummates** the offense.

- This is because “demanding” is the *actus reus* in Art. 213 2(a).
- However, when there is **deceit** in demanding greater fees, it is estafa.
- Hence, a tax collector who collected a sum larger than that authorized by law *and* spent all of them is guilty of two crimes:
 - Illegal exaction
 - Malversation for misappropriating funds
 - However, *Art. 213 is inapplicable in officers/employees of the BIR and Customs!*

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.

Elements ♥

1. The offender is a public officer

2. He takes advantage of his official position
3. He commits any of the frauds or deceits enumerated in Arts. 315-318.

Elements 1-2 require that the public officer takes advantage of his position.

- Hence, if the offender is a public officer but *does not* take advantage of his official position, he may not be punished under Art. 214.

To recall, *RPC bk. 2, tit. 10, ch. 6* covers:

1. Estafa
2. Other forms of swindling
3. Swindling of a minor
4. Other deceits

ART. 215

Prohibited transactions.

The penalty of *prision correccional* in its minimum period or a fine ranging from Forty thousand pesos (P40,000) to Two hundred thousand pesos (P200,000), or both, shall be imposed upon any appointive public officer who, during his incumbency, shall directly or indirectly become interested in any transaction of exchange or speculation within the territory subject to his jurisdiction.

Elements ♥

1. The offender is an appointive public officer
2. He becomes interested, directly or indirectly, in any transaction of exchange or speculation
3. The transaction takes place within the territory subject to his jurisdiction
4. He becomes interested in the transaction during his incumbency

Exchange or speculation – Such as buying and selling stocks, commodities, land, etc., hoping to take advantage of an expected rise or fall in price.

Purchasing of stocks or shares in a company is simply an investment and is not a violation of the article.

- But, buying regularly securities for resale *is speculation*.
 - In other words, the appointive public officer must not devote himself to commerce.

Conflict of interest

ART. 216

Possession of prohibited interest by a public officer.

The penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period, or a fine ranging from Forty thousand pesos (P40,000) to Two hundred thousand pesos (P200,000), or both, shall be imposed upon a public officer who directly or indirectly, shall become interested in any contract or business in which it is his official duty to intervene.

This provision is applicable to experts, arbitrators and private accountants who, in like manner, shall take part in any contract or transaction connected with the estate or property in appraisal, distribution or adjudication of which they shall have acted, and to guardians and executors with respect to the property belonging to their wards or estate.

Who are liable for possession of prohibited interest?

1. Public officer who directly or indirectly became interested in any contract or business in which it was his official duty to intervene
2. Experts, arbitrators and private accountants who took part in any contract or transaction connected with the estate or property in appraisal, distribution or adjudication of which they shall have acted
3. Guardians and executors with respect to the property belonging to their wards or estate

Is actual fraud necessary?

- No, because the act is punished because of the possibility that fraud may be committed or that the officer may place his own interest above that of the government or party which he represents.

There must be an intervention by virtue of the public office held.

- Hence, the official who intervenes in transactions unrelated with his office cannot commit a violation of Art. 216.

Chapter 4

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 *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (P40,000).
2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).
3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).
4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).
5. The penalty of *reclusion temporal* in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be *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.

Acts punished:

1. By *appropriating* public funds or property
2. By *taking* or *misappropriating*
3. By *consenting*, or through *abandonment* or *negligence*, *permitting* any other person to take public funds or property
4. By being *otherwise* guilty of the misappropriation or malversation of such funds or property.

Elements ♥

1. The offender is a public officer.
2. The offender had the *custody* or *control* of funds or property by *reason of the duties of his office*.
3. Those funds or property were public funds or property *for which he was accountable*.

4. That he–
 - a. Appropriated
 - b. Took
 - c. Misappropriated or consented
 - d. Through abandonment or neglect, permitted another person to take them

Element 1 – Public officer

- As contemplated in Art. 203

Private individuals in conspiracy with public officers can be guilty of malversation.

- Even private parties who participate as co-perpetrators in the offense of malversation could be penalized for the commission of such crime (see *e.g.*, US v. Ponte; People v. Sendaydiego & Bariaga v. Sandiganbayan).
- Private person who is in custody of public funds

Element 2 – Custody or control by reason of the duties of his office

- It is the nature of the duties of the public officer, not the name, that is controlling.
 - An emergency employee entrusted with the collection and/or custody of public funds may be held liable for malversation, if he misappropriated such funds.

Element 3 – Accountable officer

- Someone who has custody or control of public property by reason of the duties of his office.
- Tasked with the taking or money or property from the public which they are duty-bound to keep temporarily until such money or property are properly deposited in official depository banks or similar entities; or until they shall have endorsed such money or property to other accountable officers or concerned offices.

The funds or property must be received in an official capacity.

- Thus, when a public officer *had no authority to receive* said money or property, and he misappropriated such money or property → **Estafa**.
- When the public officer has no control over the fund or property → **Theft** (this is taking).

Private property may be involved in malversation

- As long as such funds or property are placed in the custody of the public officer.
 - *E.g.*, a property under consignment, or escrow.

Element 4 – Different acts of malversation

1. Appropriating public funds or property

- a. To appropriate public funds or property includes every attempt to dispose of the same *without right*.
2. Taking or misappropriating public funds or property
 - a. Take – Same as construed in theft or robbery.
 - b. Misappropriation – Embezzlement.
 - i. *E.g.*, spending funds you collected, as a government cashier, for personal uses.
3. Consenting or permitting, through abandonment or negligence, any other person to take public funds or property
 - a. When a public officer violates regulations of his office, that violence is evidence of negligence.
 - b. The negligence of the accountable public officer must be *positively and clearly shown* to be *inexcusable*, approximating malice or fraud (gross negligence).

In malversation committed through culpa, lack of criminal intent or good faith is a defense.

- Such as wrong payment through an honest mistake (civilly liable, though).

Presumption of malversation

- Upon demand by any duly authorized officer, the failure of a public officer to have duly forthcoming any public funds or property— with which said officer is accountable—is *prima facie* evidence of malversation.
 - This is a rebuttable and disputable presumption, and the burden of proof belongs to the defense.
 - This is a *presumption of law*.
- This *will not arise* if the fact that the funds are missing is *not* clearly established, such as if there are issues of accuracy, correctness, and regularity of the audit findings.

How is this rebutted?

- *Funds not used for personal purposes*. When the accused shows that not a single centavo of the missing funds was used by him for his personal interest, *such as* distributing the funds as cash advances to his co-employees in good faith, with no intent to gain and out of goodwill as it was a practice tolerated in the office (**INSANE**)
- *Funds were lost or stolen*. This may be done by presenting satisfactory evidence of loss or robbery committed by a person other than the accused.
- *Money presented upon demand*. If at the very moment when the shortage is discovered, the accountable officer is notified thereof and he *at once presents the money*, no *prima facie* evidence of malversation can arise.
- *Obedience to lawful order*. See Tabuena v. Sandiganbayan, G.R. No. 103501-03, February 17, 1997.

Tabuena v. Sandiganbayan, G.R. No. 103501-03, February 17, 1997

This is not a sheer case of blind and misguided obedience, but obedience in good faith of a duly executed order. Indeed, compliance to a patently lawful order is rectitude far better than contumacious disobedience. In the case at bench, the order emanated from the Office of the President and bears the signature of the President himself, the highest official of the land. It carries with it the presumption that it was regularly issued.

Is payment or reimbursement a defense?

- No, because damage is not an element of malversation. Nevertheless, it may be considered as a *mitigating circumstance*.

Is demand necessary?

- No, because it is not an element of malversation. It is merely a procedural rule, and is dispensable to constitute malversation.

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 Commission on Audit, or to a provincial auditor and who fails to do so for a period of two (2) months after such accounts should be rendered, shall be punished by *prision correccional* in its minimum period, or by a fine ranging from Forty thousand pesos (P40,000) to One million two hundred thousand pesos (P1,200,000) or both.

Elements ♥

1. The offender is a public officer, either in service or separated
2. He is an accountable officer
3. He is required by law or regulation to render accounts to COA or to a provincial auditor
4. He fails to do so for a period of 2 months after such accounts should be rendered

- Demand for accounting is unnecessary
- Return of unliquidated funds is only mitigating, not exempting
- Misappropriation is unnecessary. If there is, he will *also* be liable under **Art. 217**.

ART. 219

Failure of a responsible public officer to render accounts before leaving the country.



Any public officer who unlawfully leaves or attempts to leave the Philippines without securing a certificate from the Commission on Audit showing that his accounts have been finally settled, shall be punished by *arresto mayor*, or a fine ranging from Forty thousand pesos (P40,000) to Two hundred thousand pesos (P200,000), or both.

Elements ♥

1. The offender is a public officer
2. He is an accountable officer
3. He must have unlawfully left (or be on the point of leaving) the Philippines without securing from COA a certificate showing that his accounts have been finally settled
 - a. The act of leaving is *not authorized* or *permitted by law*.

Technical malversation

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 for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damages 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 has resulted, the penalty shall be a fine from 5 to 50 percent of the sum misapplied.

Elements ♥

1. The offender is a public officer
2. There is public fund or property under his administration
3. Such public fund or property has been appropriated by law or ordinance
4. He applies the same to a *public* use other than that for which such fund or property has been appropriated by law or ordinance

There is no technical malversation if there is no law/ordinance

appropriating the public funds or property for a particular purpose

- If the funds misappropriated were *not* appropriated by law → **Art. 217** (simple malversation).

Criminal intent is *not* an element of technical malversation.

- This is because the law is *mala prohibita*—it prohibits the act of diverting public property earmarked by law for a public purpose to *another* public purpose.

	Malversation	Technical malversation
Offender?	Accountable public officers	
Gain by offender?	Yes, he may profit from the proceeds	No, he does not derive any personal gain or profit
Money went to?	To the personal use and benefit of the offender or of another person	To another public use

[n] Technical malversation is not included nor does it necessarily include the crime of malversation in Art. 217.

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 from five (5) to twenty-five (25) percent 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 Ten thousand pesos (P10,000).

Acts punished:

1. Failing to make payment by a public officer who is under obligation to make such payment from government funds in his possession
2. Refusing to make delivery by a public officer who has been ordered by competent authority to deliver any property in his custody or under his administration

*Failure to make payment***Elements ♥**

1. The public officer has government funds in his possession
2. He is under obligation to make payment from such funds
3. He fails to make the payment maliciously [1]

[1] Malice is also required under the second act.

ART. 222

Officers included in the preceding provisions.

The provisions of this chapter shall apply to private individuals who in any capacity whatever, have any charge of any [national], 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.

Who are liable under Arts. 217-221?

1. Private individuals who, *in any capacity*, have charge of any government funds, revenue or property
2. Administrator or depository of funds or property attached, seized or deposited by public authority, even if such property belongs to a private individual
 - a. Such as sheriffs and receivers.
 - b. But judicial administrators are *not*.

In either case, the anti-graft court Sandiganbayan has *no* jurisdiction over such private persons.

Rationale for Art. 222: To extend the provisions of malversation to private individuals.

Private property is included, provided it is:

1. Attached,
2. Seized, or
3. Deposited by public authority.

Chapter 5
Infidelity of Public Officers**Section 1. 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 *prision 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 *prision 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.

Elements ♥

1. The offender is a public officer
2. He had in his custody or charge a prisoner, either detention prisoner or prisoner by final judgment
3. The prisoner escaped from his custody
4. The offender is in connivance with the prisoner's escape

Connivance – Agreement between the prisoner and the public officer

- Indispensable requirement

Classes of prisoners involved:

1. Sentenced by final judgment
2. Detention prisoner

Relaxation of imprisonment is considered infidelity (such as allowing prisoner to sleep in his house)

- But leniency and laxity is not

ART. 224

Evasion through negligence.

If the evasion of the prisoner shall have taken place through the negligence of the officer charged with the conveyance or custody of the escaping prisoner, said officer shall suffer the penalties of *arresto mayor* in its maximum period to *prision correccional* in its minimum period and temporary special disqualification.

Elements ♥

1. The offender is a public officer

2. He is charged with the conveyance or custody of a prisoner, either detention prisoner or prisoner by final judgment
3. Such prisoner escapes through his negligence

What is the graveman of the offense?

- Only that *positive carelessness* that is short of deliberate nonperformance of his duties as the guard.

The fact that the public officer recaptured the prisoner who had escaped from his custody does not afford complete exculpation.

Liability of escaping prisoner:

1. If the fugitive is already serving a sentence → Evasion of the service (Art. 157)
2. No liability if detention prisoner

ART. 225

Escape of prisoner under the custody of a person not a public officer.

Any private person to whom the conveyance or custody of a prisoner or person under arrest shall have been confided, who shall commit any of the offenses mentioned in the two preceding articles, shall suffer the penalty next lower in degree than that prescribed for the public officer.

Elements ♥

1. The offender is a *private person*
2. The conveyance or custody of a prisoner or person under arrest is confided to him
3. The prisoner or person under arrest escapes
4. The offender consents to the escape of the prisoner or person under arrest, or that the escape takes place through his negligence

⚠ *Art. 225 is inapplicable if the private person was the one who made the arrest, and he consented to the escape of the person he arrested.*

Section 2. Infidelity in the custody of documents.

Infidelity 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 *prision mayor* and a fine not exceeding Two hundred thousand pesos (P200,000), whenever serious damage shall have been caused thereby to a third party or to the public interest.
2. The penalty of *prision correccional* in its minimum and medium period and a fine not exceeding Two hundred thousand pesos (P200,000), 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 disqualification shall be imposed.

Elements ♥

1. The offender be a public officer
2. He abstracts, destroys, or conceals documents or papers
3. The documents should have been entrusted to such public officer by reason of his office
4. The damage, whether serious or not, to a third party or to the public interest should have been caused

Elements 1 & 3 – Public officer

- The public officer must be *officially* entrusted with the documents or papers
- A responsibility for safekeeping

Element 2 – Documents or papers

- The document must be complete and one by which a right could be established or an obligation could be extinguished
 - Hence, an unsigned payroll is *not* contemplated here
- Books, periodicals, pamphlets, etc. are *not* documents
- “Papers” include checks, promissory notes and paper money
 - So are money bills received as exhibits in court
- Liability of mailman and post personnel
 - The post official who retained the mail without forwarding the letters to their destination is *guilty* of infidelity in the custody of papers
 - Art. 226 applies though the offender is an officer or employee of the Philippine Postal Corporation
 - Delivering the document to the wrong party is infidelity in the custody thereof
- The *actus reus* are:
 - Abstracting – To removing something
 - Destroying
 - Concealing

■ These are *distinct* modes of committing the offense!

- The removal must be for **illicit purpose**, and it is for illicit purpose when the intention of the offender is–
 - To tamper with it
 - To profit by it
 - To commit an act constituting a breach of trust in the official care thereof

Element 4 – Damage

This element exists–

1. Whenever *serious* damage is caused to a third party or to the public interest
2. Whenever the damage caused is *not serious*.

Infidelity in the custody of document vs. malversation and falsification

- When the postmaster received money orders, signed the signatures of the payees, collected and appropriated the amounts → **Malversation and falsification** (falsification done to conceal the malversation)
- When the postmaster receives letters or envelopes containing money orders for transmission, and the money orders are not sent to the addressees, the postmaster cashing for his own benefit → **Infidelity in the custody of papers**

ART. 227

Officer breaking seal.

Any public officer charged with the custody of papers or property sealed by proper authority, who shall break the seals or permit them to be broken, shall suffer the penalties of *prision correccional* in its minimum and medium periods, temporary special disqualification and a fine not exceeding Four hundred thousand pesos (P400,000).

Elements ♥

1. The offender is a public officer
2. He is in charge with the custody of papers or property
3. These papers or property are sealed by proper authority
4. He breaks the seals or permits them to be broken

Damage or intent to cause is not necessary

- It is sufficient that the seal is broken, even if the contents are not tampered with.
- Even intent to cause damage is not required, nor is it an element.

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 Four hundred thousand pesos (P400,000).

Elements ♥

1. The offender is a public officer
2. Any closed papers, documents, or objects are entrusted to his custody
3. He opens or permits to be opened said closed papers, documents or objects
4. He does not have proper authority

Custody – Guarding or keeping safe; care.

The closed documents must be entrusted to the custody of the accused by reason of his office.

What would be the offense committed if, in opening closed papers or object, the public officer broke the seal?

- The offense would be breaking the seal under Art. 227, because the offender must be a public officer “not included in the provisions of the next preceding article.”

⚠ *Damage is not a requisite!*

Section 3. 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 *prision correccional* in its medium and maximum periods, perpetual special disqualification and a fine not exceeding Four hundred thousand pesos (P400,000) if the revelation of such secrets or the delivery of such papers shall have caused serious damage to the public interest; otherwise, the penalties of *prision correccional* in its minimum period, temporary special disqualification and a fine not exceeding One hundred

thousand pesos (P100,000) shall be imposed.

Acts punished:

1. By revealing any secrets known to the offending public officer by reason of his official capacity
2. By delivering wrongfully papers or copies or papers of which he may have charge and which should not be published.

Act 1

Elements ♥

1. The offender is a public officer
2. He knows of a secret by reason of his official capacity
3. He reveals such secret without authority or justifiable reasons
4. Damage, great or small, be caused to the public interest

Secrets must affect public interests

- Otherwise → **No crime**

Espionage is **not** contemplated in this article

- This does not include the revelation of secrets of the state to a belligerent nation, because such acts are already punished in **Art. 117**
- This article punishes minor official betrayals, infidelities of little consequence, affecting usually the administration of justice, executive or official duties, or the general interest of the public order

Act 2

Elements ♥

1. The offender is a public officer
2. He has charge of papers
3. Those papers should not be published
4. He delivers those papers or copies thereof to a third person
5. The delivery is wrongful
6. The damage be caused to public interest **[1]**

[1] Material damage to third person, not required.

Charge – Control or custody.

- Hence, being merely entrusted with the papers → **No crime**

If the papers contain secrets → **Revelation of secrets by a public officer**

If the papers do not contain secrets → **Infidelity in the custody of documents**

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 Two hundred thousand pesos (P200,000).

Elements ♥

1. The offender is a public officer
2. He knows of the secrets of a private individual by reason of his office
3. He reveals such secrets without authority or justifiable reasons

“Shall reveal such secrets” – Revelation to one person is sufficient, for public revelation is *not* required.

When the offender is an attorney-at-law, Art. 230 is not applicable.

- It is under **Art. 209**.

Damage to private individuals is not necessary!

Chapter 6

Other Offenses or Irregularities by Public Officers

Section 1. Disobedience, refusal of assistance, and maltreatment of prisoners

ART. 231

Open disobedience.

Any judicial or executive officer who shall openly refuse to execute the judgment, decision or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities, shall suffer the penalties of *arresto mayor* in its medium period to *prision correccional* in its minimum period, temporary special disqualification in its maximum period, and a fine not exceeding Two hundred thousand pesos (P200,000).

Elements ♥

1. The offender is either a-
 - a. Judicial, or

b. Executive officer

2. There is a judgment, decision or order of a superior authority
3. The judgment, decision or order was made within the scope of jurisdiction of the superior authority and issued with all the legal formalities
4. The offender, without any legal justification, openly refuses to execute said judgment, order or decision, which he is duty bound to obey

ART. 232

Disobedience to order of superior officer, when said order was suspended by inferior officer.

Any public officer who, having for any reason suspended the execution of the orders of his superiors, shall disobey such superiors after the latter have disapproved the suspension, shall suffer the penalties of *prision correccional* in its minimum and medium periods and perpetual special disqualification.

Elements ♥

1. The offender is a public officer
2. An order is issued by his superior for execution
3. He suspended the execution of such order
4. His superior disapproved the suspension
5. The offender disobeys his superior despite the disapproval of the suspension

This article does not apply if the order of the superior is illegal

- If the order is illegal, the subordinate has a legal right to refuse to execute such order
- Obedience to an illegal order is not justified and the subordinate who obeys may be criminally liable (see **Art. 11, par. 6**)

ART. 233

Refusal of assistance.

The penalties of *arresto mayor* in its medium period to *prision correccional* in its minimum period, perpetual special disqualification and a fine not exceeding Two hundred thousand pesos (P200,000) shall be imposed upon a public officer who, upon demand from the 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 One hundred thousand pesos (P100,000)

shall be imposed.

Elements ♥

1. The offender is a public officer
2. A competent authority demands from the offender that he lend his cooperation towards the administration of justice or public service
3. The offender fails to do so maliciously

Is damage to public interest essential?

- **Yes**, it may be to the public interest or a third party.
- If there is serious damage → higher penalty
 - Otherwise, lower penalty

Do not frustrate democracy!

ART. 234

Refusal to discharge elective office.

The penalty of *arresto mayor* or a fine not exceeding Two hundred thousand pesos (P200,000), or both, shall be imposed upon any person who, having been elected by popular election to a public office, shall refuse without legal motive to be sworn in or to discharge the duties of said office.

Elements ♥

1. The offender is elected by popular election to a public office
2. He refuses to be sworn in to discharge the duties of said office
3. There is no legal motive for such refusal to be sworn in or to discharge the duties of said office

What are some legal motives for a refusal?

- E.g, if the candidate is disqualified (underaged).

ART. 235 ★

Maltreatment of prisoners.

The penalty of *prison correccional* in its medium period to *prison mayor* 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 *prison mayor* in its minimum period, temporary special disqualification and a fine not exceeding One hundred thousand pesos (P100,000), in addition to his liability for the physical injuries or damage.

Elements ♥

1. The offender is a public officer or employee
2. He has under his charge a prisoner or detention prisoner
3. He maltreats the prisoner in either of the following manners:
 - a. By overdoing himself in the correction or handling of a prisoner or detention prisoner under his charge either—
 - i. By the imposition of punishments not authorized by the regulations, or
 - ii. By inflicting such punishments (those authorized) in a cruel and humiliating manner, or
 - b. By maltreating such prisoner to extort a confession or to obtain some information from the prisoner

The maltreatment (1) must relate to the correction or handling of the prisoner, or (2) must be for the purpose of extorting a confession or some information

- Thus, if the jailer's motive is due to personal grudge against the prisoner, he is **only** liable for **the physical injuries**
- Penalty is also pegged as the penalty for maltreatment + penalty for the appropriate physical injuries
 - Hence, there is **no complex crime** of maltreatment and physical injuries

Section 2. 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 Forty thousand pesos (P40,000) to One hundred thousand pesos (P100,000).

Elements ♥

1. The offender is entitled to hold a public office or employment, either by election or appointment
2. The law required that he should be first sworn in and/or should first give a bond
3. He assumes the performance of the duties and powers of such office
4. He has not taken his oath of office and/or given the bond required by law

ART. 237

Prolonging performance of duties and powers.

Any public officer who shall continue to exercise the duties and powers of his office, employment, or commission, beyond the period provided by law, regulations or special provisions applicable to the case, shall suffer the penalties of *prision correccional* in its minimum period, special temporary disqualification in its minimum period and a fine not exceeding One hundred thousand pesos (P100,000).

[n] Cf. Usurpation of official functions.

Elements ♥

1. The offender is holding a public office
2. The period provided by law, etc. for holding such office has already expired
3. The offender continues to exercise the duties and powers of such office

ART. 238

Abandonment of office or position.

Any public officer who, before the acceptance of his resignation, shall abandon his office to the detriment of the public service, shall suffer the penalty of *arresto mayor*.

If such office shall have been abandoned in order to evade the discharge of the duties of preventing, prosecuting, or punishing any of the crimes falling within Title One, and Chapter One of Title Three of Book Two of this Code, the offender shall be punished by *prision correccional* in its minimum and medium periods, and by *arresto mayor* if the purpose of such abandonment is to evade the duty of preventing, prosecuting, or punishing any other crime.

Elements ♥

1. The offender is a public officer
2. He formally resigns from his position
3. His resignation has not yet been accepted
4. He abandons his office to the detriment of the public service

Qualified abandonment of office or position

- A higher penalty is meted out if the offender evades the discharge of duties of preventing, prosecuting or punishing any of the following crimes:
 - Treason (including proposal, conspiracy, and misprision)
 - Espionage
 - Inciting to war or giving motives for reprisal
 - Violation of neutrality
 - Correspondence with hostile country
 - Flight to enemy country
 - Piracy and mutiny
 - Rebellion (including proposal, conspiracy, and inciting)
 - *Coup d'etat* (including proposal and conspiracy)
 - Disloyalty of public officers
 - Sedition (including inciting and conspiracy)

	Negligence and tolerance in prosecution of offenses (Art. 208)	Abandonment of office (Art. 238)
Who is liable?	By a public officer who has the duty to institute prosecution for the punishment of violations of the law	Any public officer
Act punished?	He fails to prosecute and offense by dereliction of duty or by malicious tolerance of the commission of the offenses	Abandonment of his office to evade the discharge of his duty

Section 3. Usurpation of powers and unlawful appointments.

ART. 239

Usurpation of legislative powers.

The penalties of *prision correccional* in its minimum period, temporary special disqualification, and a fine not exceeding Two hundred thousand pesos (P200,000), shall be imposed upon any public officer who shall encroach upon the powers of the legislative branch of the Government, either by making general rules or regulations beyond the scope of his authority, or by attempting to repeal a law or suspending the execution thereof.

Elements ♥

1. The offender is an executive or judicial officer
2. He–
 - a. Makes general rules or regulations beyond the scope of his authority, or
 - b. Attempts to repeal a law, or
 - c. Suspends the execution of a law

ART. 240

Usurpation of executive functions.

Any judge who shall assume any power pertaining to the executive authorities, or shall obstruct the latter in the lawful exercise of their powers, shall suffer the penalty of *arresto mayor* in its medium to *prision correccional* in its minimum period.

Elements ♥

1. The offender is a judge [1]
2. He–
 - a. Assumes a power pertaining to the executive authorities, or
 - b. Obstructs the executive authorities in the lawful exercise of their powers

[1] The liability of a legislative officer usurping executive functions will fall under Art. 177 (usurpation of official functions).

ART. 241

Usurpation of judicial functions.

The penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period shall be imposed upon any officer of the executive branch of the Government who shall assume judicial powers or shall obstruct the execution of any order or decision rendered by any judge within his jurisdiction.

Elements ♥

1. The offender is an officer of the executive branch of the government
2. He–
 - a. Assumes judicial powers, or
 - b. Obstructs the execution of any order or decision by any judge within his jurisdiction

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 One hundred thousand pesos (P100,000).

Elements ♥

1. The offender is a public officer
2. A proceeding is pending before such public officer
3. There is a question brought before the proper authority regarding his jurisdiction, which is not yet decided [1]
4. He has been lawfully required to refrain from continuing the proceeding
5. He continues the proceeding

[1] The disobedient public officer is liable, even if the jurisdictional question is resolved in his favor.

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 One hundred thousand pesos (P100,000).

Elements ♥

1. The offender is an executive officer
2. He addresses any order or suggestion to any judicial authority
3. The order or suggestion relates to any case or business coming within the exclusive jurisdiction of the courts of justice

Legislative or judicial officers are not liable

- Hence, a member of Congress who writes to a judge, requesting the latter to decide the case pending before him, or a judge who made a suggestion to another judge, are not liable under **Art. 242**

Purpose: To protect judicial independence

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 Two hundred thousand pesos (P200,000).

Elements ♥

- The offender is a public officer
- He nominates or appoints a person to a public office
- Such person lacks legal qualifications therefor **[1]**
- The offender knows that his nominee or appointee lacks the qualifications at the time he made the nomination of appointment

[1] There must be a law providing for the qualifications of a person to be nominated or appointed to a public office. The legal disqualification means disqualifications under the law.

Section 4. Abuses against chastity.

ART. 245 ★

Abuses against chastity–Penalties.

The penalties of *prision correccional* in its medium and maximum periods and temporary special disqualification shall be imposed:

- 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;
- 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 *prision correccional* in its minimum and

medium periods and temporary special disqualification.

Acts punished:

- By soliciting or making immoral or indecent advances to a woman interested in matters pending before the offending officer for decision, or with respect to which he is required to submit a report to or consult with a superior officer
- By soliciting or making immoral or indecent advances to a woman under the offender's custody
- By soliciting or making immoral or indecent advances to the wife, daughter, sister or relative within the same degree by affinity of any person in the custody of the offending warden or officer

Elements ♥

- The offender is a public officer
- He solicits or makes immoral or indecent advances to a woman
- Such woman must be–
 - Interested in matters pending before the offending officer for decision, or with respect to which he is required to submit a report to or consult with a superior officer
 - Under the custody of the offender who is a warden or other public officer directly charged with the care and custody of prisoners or persons under arrest
 - The wife, daughter, sister or relative within the same degree by affinity of the person in the custody of offender **[1]**

[1] Mothers not included.

Solicit – To propose earnestly and persistently something unchaste and immoral to a woman.

This crime is consummated by mere proposal

- It is not necessary that the woman solicited should have yielded to the solicitation of the offender
- Hence, proof of solicitation is *not* necessary when there is sexual intercourse

TITLE III Crimes Against Public Order

Chapter 1

Rebellion, Coup d'Etat, 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 Republic of the Philippines or any part thereof, of any body of land, naval, or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

Elements ♥

1. There be—
 - a. Public uprising, and
 - b. Taking arms against the government
2. The purpose of the uprising or movement is either—
 - a. To remove from the allegiance to said government or its laws:
 - i. The territory of the Philippines or any part thereof; or
 - ii. Any body of land, naval or armed forces; or
 - b. To deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives

Is an actual armed clash with the government required?

- No, because the mere fact that a person knowingly identified himself with the rebels (who were engaged in an armed uprising) was enough to make him guilty of the crime of rebellion.

Is it necessary that the purpose of the uprising be accomplished?

- No, it is enough that it is shown.
- It is not necessary, to consummate rebellion, that the rebels actually overthrow the government.

Is giving aid and comfort to rebels punishable?

- No, because the act of giving comfort or moral aid is not criminal in the case of rebellion. This is unlike treason.

How do you distinguish it from subversion?

- Subversion is a crime against national security, while rebellion is a crime against public order.

Rebellion

Treason

Act punished?

Levying of war against the government during peacetime

Levying of war against the government when performed to aid the enemy

Armed?

Yes. Always involves the taking up of arms against the government

Not necessary. May be committed by mere adherence to the enemy giving him aid or comfort

ART. 134-A

Coup d'etat—How committed.

The crime of coup d'etat is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications networks, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office or employment with or without civilian support or participation for the purpose of seizing or diminishing state power.

Elements ♥

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

ART. 135

Penalty for rebellion, insurrection or coup d'etat.

Any person who promotes, maintains, or heads a rebellion or insurrection, shall suffer the penalty of *reclusion perpetua*.

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

Any person who leads or in any manner directs or commands others to

undertake a coup d'état shall suffer the penalty of *reclusion perpetua*.

Any person in the government service who participates, or executes directions or commands of others in undertaking a coup d'état shall suffer the penalty of *prison mayor* in its maximum period.

Any person not in the government service who participates, or in any manner supports, finances, abets or aids in undertaking a coup d'état shall suffer the penalty of *reclusion temporal* in its maximum period.

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

Acts punished	Penalty
Promoting, maintaining, or heading a rebellion or insurrection	RP
Participating or executing commands in a rebellion or insurrection	RT
Leading, directing, or commanding a coup d'état	RP
Participating in a coup d'état as a government employee (executing directions or commands)	PM-max
Participating in, supporting, financing, abetting, or aiding a coup d'état as a private individual	RT-max

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

1. The leaders
 - a. Who promotes, maintains or heads a rebellion or insurrection
 - b. Who leads, directs, or commands others to undertake a coup
2. The participants
 - a. Any person who participates, or executes the commands of others in a rebellion or insurrection
 - b. Any person in the government service who participates, or executes directions or commands of others in a coup
 - c. Any person not in the government service who participates, supports, finances, abets, or aids in undertaking a coup

Is the silence of the public officer during the rebellion punishable?

- No, because for him to be punished, he must take active part in the rebellion. Mere silence or omission is *not* punishable.

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

- 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.

Is not taking an oath of allegiance to the government a defense?

- No, because it will defeat the right of the government to defend itself.

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

- No, because the acts involved in rebellion—such as engaging in war against the government and committing serious violence—are inherently inherent to the crime of rebellion itself.
- Likewise, acts in furtherance of rebellion are absorbed in rebellion.
 - Like the use of unlicensed firearms.

Does membership in a rebel organization automatically qualify one's criminal acts as absorbed in the rebellion?

- No, because the accused has the burden to demonstrate conclusively that his criminal acts were committed in furtherance of rebellion.

The political offense doctrine

- Common crimes, perpetrated in furtherance of a political offense, are divested of their character as “common” offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty.
- However, when killing, robbing, etc. for private purposes or profit, without any political motivation, would be separately punished and would not be absorbed in the rebellion.

Distinguish political crimes from common crimes

- **Political crimes** are offenses directed against the political order or committed to achieve a political purpose. The key element is intent or motive—that is, whether the act was done with a political end in view
- **Common crimes** are ordinary violations like homicide, theft, or arson, committed without political intent
- **Decisive factor:** The intent or political motive behind the act—not merely the nature of the act itself.

ART. 136

Conspiracy and proposal to commit coup d'état, rebellion or insurrection.

The conspiracy and proposal to commit coup d'état shall be punished by *prision mayor* in its minimum period and a fine which shall not exceed One million pesos (P1,000,000).

The conspiracy and proposal to commit rebellion or insurrection shall be punished respectively, by *prision correccional* in its maximum period and a fine not exceeding Four hundred pesos (P400,000).

Acts punished	Penalty
Conspiracy and proposal to commit coup d'état	PM-min; P1 million fine
Conspiracy and proposal to commit rebellion or insurrection	PC-max; P400,000 fine

Conspiracy to commit rebellion – When 2 or more persons **agree** to rise publicly and take arms against the government for the purposes of rebellion, and **decide** to commit it.

- Such as organizing a group of soldiers, soliciting membership in, and soliciting funds from the people

Proposal to commit rebellion – When the person who has decided to rise publicly and take arms against the government for any of the purposes of rebellion **proposes** its execution to some other person/s.

People v. Hernandez, G.R. L-6025, May 30, 1964

The mere fact of giving and rendering speeches favoring Communism would not make one guilty of conspiracy, because there was no evidence that the hearers of his speeches of propaganda then and there agreed to rise up in arms for the purpose of obtaining the overthrow of the democratic government as envisaged by the principles of Communism.

ART. 137

Disloyalty of public officers or employees.

The penalty of *prision 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.

Acts of disloyalty that are punished:

1. Failing to resist a rebellion by all the means in their power
2. Continuing to discharge the duties of their office under the control of the rebels
3. Accepting appointment to office under them

The offender must be a public officer or employee

- But he must *not* be in conspiracy with the rebels, else → **rebellion**

ART. 138

Inciting to rebellion or insurrection.

The penalty of *prision 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.

Elements ♥

1. The offender does not take arms or is not in open hostility against the government
2. He incites others to the execution of any of the acts of rebellion
3. The inciting is done by means of–
 - a. Speeches
 - b. Proclamations
 - c. Writings
 - d. Emblems
 - e. Banners
 - f. Other representations tending to the same end

Inciting to rebellion	Proposal to commit rebellion
Both induces another to commit rebellion	
The rebellion should <i>not</i> be committed	
The person inciting may or may not have decided to commit rebellion	The person who proposes has <i>decided</i> to commit rebellion
The person inciting is done publicly	The person proposing uses secret

means

ART. 139 ★

Sedition-How committed.

The crime of sedition is committed by persons who rise publicly and tumultuously in order to attain by force, intimidation, or by other means outside of legal methods, any of the following objects:

1. To prevent the promulgation or execution of any law or the holding of any popular election;
2. To prevent the National Government, or any provincial or municipal government, or any public officer thereof from freely exercising its or his functions, or prevent the execution of any administrative order;
3. To inflict any act of hate or revenge upon the person or property of any public officer or employee;
4. To commit, for any political or social end, any act of hate or revenge against private persons or any social class; and
5. To despoil, for any political or social end, any person, municipality or province, or the National Government of all its property or any part thereof.

Elements ♥

1. The offenders rise
 - a. Publicly, and
 - b. Tumultuously
2. The offenders employ–
 - a. Force,
 - b. Intimidation, or
 - c. Other means outside of legal methods
3. The offenders' purpose is any of the following:
 - a. To prevent the promulgation or execution of any law or the holding of any popular election
 - b. To prevent the NG, or any LGU, or any public officer from freely exercising his/its functions, or prevent the execution of any administrative order
 - c. To inflict any act of hate or revenge upon the person or property of any public officer or employee
 - d. To commit, for any political or social end, any act of hate or revenge against private persons or any social class
 - e. To despoil, for any political or social end, any person, LGU, or the NG of all of its property or any part thereof

What is the nature of the crime?

- It is the raising of commotions or disturbances in the state. Its

ultimate object is a violation of the public peace, or at least such a course of measures as evidently engenders it.

May it be committed by one person?

- The codal says "persons." Moreover, "tumultuous" implies plurality of individuals.

What distinguishes sedition from rebellion?

- The object at which the uprising aims (i.e., secession for rebellion)
- In both the crimes, there is public uprising.
 - In rebellion – taking up of arms
 - In sedition – that the public uprising is tumultuous
- If the uprising is not exactly against the government and not for the purposes included in Art. 134 → **sedition**

What distinguishes sedition from treason?

- Treason is violation of allegiance, while sedition is the raising of commotions or disturbances in the state.

The public uprising and object of sedition must concur 🍌

1. No public uprising – no sedition
2. No object of sedition – no sedition

Are common crimes absorbed in sedition?

- No. *See People v. Umali & People v. Cabrera* where the court affirmed convictions of individuals charged with sedition and murder, physical injuries, etc. as *separate crimes*.

ART. 140

Penalty for sedition.

The leader of a sedition shall suffer the penalty of *prision mayor* in its minimum period and a fine not exceeding Two million pesos (P2,000,000).

Other persons participating therein shall suffer the penalty of *prision correccional* in its maximum period and a fine not exceeding One million pesos (P1,000,000).

Who are liable for sedition?

1. Leaders of the sedition
2. Other persons participating in the sedition

ART. 141

Conspiracy to commit sedition.

Persons conspiring to commit the crime of sedition shall be punished by *prision correccional* in its medium period and a fine not exceeding Four hundred thousand pesos (P400,000).

What kind of agreement must occur for conspiracy to commit sedition to arise?

- There must be an agreement and a decision to rise publicly and tumultuously to attain any of the objects of sedition.

⚠ *There is no felony as proposal to commit sedition.*

ART. 142 ★
Inciting to sedition.

The penalty of *prision correccional* in its maximum period and a fine not exceeding Four hundred thousand pesos (P400,000) 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, writing, 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, or any of the duly constituted authorities thereof, or which tend to disturb or obstruct any lawful officer in executing the functions of his office, or which tend to instigate others to cabal and meet together for unlawful purposes, or which suggest or incite rebellious conspiracies or riots, or which lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government, or who shall knowingly conceal such evil practices.

What are the acts punished?

1. Inciting others to the accomplishment of any of the acts which constitute sedition by means of speeches, proclamations, writings, emblems, etc.
2. Uttering seditious words or speeches which tend to disturb the public peace
3. Writing, publishing, or circulating scurrilous libels against the government or any of the duly constituted authorities thereof, which tend to disturb the public peace

What does sedition punish?

- It punishes the use of words, emblems, etc. tending to disturb the peace or to disturb or obstruct any public office in executing the

functions of his office.

Act 1: Inciting to sedition to accomplish any of its objects

Elements ♥

1. The offender does not take direct part in the sedition
2. He incites others to the accomplishment of any of the acts which constitute sedition
3. The inciting is done by means of speeches, proclamations, writings, emblems, cartoons, banners or other representations tending to the same end

What should the offender incite?

- The offender must incite the people to rise publicly and tumultuously in order to attain any of the objectives in **Art. 139**.

Is it necessary that the words result in the rising of the people?

- No, because the law's purpose is to punish utterances which may endanger public order.

When are uttering seditious words punishable?

- When they-
 1. Tend to disturb or obstruct any lawful officer in executing the functions of his office; or
 2. They tend to instigate others to cabal and meet together for unlawful purposes; or
 3. They suggest or incite rebellious conspiracies or riots; or
 4. They lead to 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

What does "knowingly concealing such evil practices" mean?

- This is an act of an accessory, but punished as an act of a principal.

Is disturbance or disorder not necessary in inciting to sedition?

- No, because the law is aimed to punish utterances which may endanger public order.

What are the 2 rules relative to seditious words?

1. **Clear and present danger rule** – The danger should be both clear and imminent
2. **Dangerous tendency rule** – Words that tend to create a danger of public uprising may be punished.

Chapter 2

Crimes Against Popular Representation

ART. 143

Acts tending to prevent the meeting of Congress and similar bodies.

The penalty of *prision correccional* or a fine ranging from Forty thousand pesos (P40,000) to Four hundred thousand pesos (P400,000), or both, shall be imposed upon any person who, by force or fraud, prevents the meeting of Congress or of any of its committees or subcommittees, Constitutional Commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board.

Elements ♥

1. There be a projected or actual meeting of Congress, Constitutional Commissions, or any local legislative body
2. The offender prevents such meeting by force or fraud

ART. 144

Disturbance of proceedings.

The penalty of *arresto mayor* or a fine from Forty thousand pesos (P40,000) to Two hundred thousand pesos (P200,000) shall be imposed upon any person who disturbs the meetings of Congress or of any of its committees or subcommittees, Constitutional Commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board, or in the presence of such bodies should behave in such manner as to interrupt its proceedings or to impair the respect due it.

Elements ♥

1. There be a meeting of Congress, Constitutional Commissions, or any local legislative body
2. The offender does any of the following acts:
 - a. He disturbs any of such meetings
 - b. He behaves while in the presence of any such bodies in such a manner as to interrupt its proceedings or to impair the respect due it

ART. 145

Violation of parliamentary immunity.

The penalty of *prision mayor* shall be imposed upon any person who shall use force, intimidation, threats or fraud to prevent any member of the

National Assembly from attending the meetings of the Assembly or of any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, from expressing his opinions or casting his vote; and the penalty of *prision correccional* shall be imposed upon any public officer or employee who shall, while the Assembly is in regular or special session, arrest or search any member thereof, except in case such member has committed a crime punishable under this Code by a penalty higher than *prision mayor*.

Acts punished:

1. Using force, intimidation, threat or frauds to prevent the Congress from—
 - a. Attending the meeting of the Congress, or any of its committees, Constitutional Commissions or committees or divisions thereof
 - b. Expressing his opinions
 - c. Casting his vote
2. By arresting or searching any member thereof while the Congress is in session, except for offenses punished by imprisonment of more than 6 years

Act 1: Speech or debate clause

Elements ♥

1. The offender uses force, intimidation, threats or fraud
2. The purpose of the offender is to prevent any member of the Congress from—
 - a. Attending the meeting of Congress, or constitutional commissions
 - b. Expressing his opinions
 - c. Casting his vote

Act 2: Freedom from arrest

Elements ♥

1. The offender is a public officer or employee
2. He arrests or searches any member of Congress
3. The Congress was in session at the time of the arrest
4. The member of Congress has not committed a crime punishable by a penalty higher than 6 years imprisonment

Is it necessary that the member be actually prevented from attending?

- No, because it is sufficient that the offender, in using force, threats, frauds, or intimidation, has the purpose of preventing a member from exercising any of his such prerogatives.

Chapter 3 Illegal Assemblies and Associations

ART. 146 *Illegal assemblies.*

The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period shall be imposed upon the organizers or leaders of any meeting attended by armed persons for the purpose of committing any of the crimes punishable under this Code, or of any meeting in which the audience is incited to the commission of the crime of treason, rebellion or insurrection, sedition or assault upon a person in authority or his agents. Persons merely present at such meeting shall suffer the penalty of *arresto mayor*, unless they are armed, in which case the penalty shall be *prision 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.

Acts punished:

1. Any meeting attended by armed persons for the purpose of committing any of the crimes punishable under the Code.
2. Any meeting in which the audience, whether armed or not, is incited to the commission of the crime of treason, rebellion or insurrection, sedition, or assault upon a person in authority or his agents

Act 1: Attended by armed persons

Elements ♥

1. There is a meeting, a gathering or group of persons, whether in a fixed place or moving;
2. The meeting is attended by armed persons;
3. The purpose of the meeting is to commit any of the crimes punishable under the Code

What crime is committed by 40 unarmed persons who gather together in a meeting for the purpose of committing theft of large cattle?

- None. They are unarmed. If at all, they only conspire to commit qualified theft, which is not punishable.

Suppose seven of the 40 persons are armed but the rest are not, and the purpose of the gathering is to commit robbery, must the meeting be considered an illegal assembly?

- Yes, because the law does not state how many of the persons attending the meeting must be armed. It is said that a good number, say, at least four must be armed.

What is the criminal liability of the unarmed person?

- Assuming he is also attending to commit any crime under the Code, the unarmed person suffers the penalty of *arresto mayor*.

What if the person present carries an unlicensed firearm?

- It is presumed that the meeting's purpose is to commit a crime under the Code; and
- He is considered to be a leader or organizer of the meeting

Quarendum: What if the unarmed persons do not know that several of their companions are armed?

Act 2: Meeting to incite sedition, etc.

Elements ♥

1. There is a meeting, a gathering or group of persons, whether in a fixed place or moving
2. That the audience, whether armed or not, is incited to the commission of the crime of:
 - a. Treason
 - b. Rebellion or insurrection
 - c. Sedition
 - d. Direct assault

Must the persons be actually incited to commit those crimes?

- Yes, because the law uses the phrase “the audience is incited.”
- Hence, there is *no liability for illegal assembly*—yet—if the meeting is stopped just before the persons are incited.

Assuming there is actual inciting, what would be the criminal liability of the persons involved?

- The persons in attendance are liable for illegal assembly
- The leaders or organizers are liable for illegal assembly and inciting to sedition/rebellion (as the case may be)

Who are the persons liable for illegal assembly?

1. The organizers or leaders of the meeting
2. Persons merely at the meeting

What if the person is in the meeting because he is simply curious?

- He may have no liability, because he does not have the intent to commit the felony of illegal assembly.
- Remember that *felony* requires the *actus reus* and *mens rea*.

ART. 147
Illegal associations.

The penalty of *prision correccional* in its minimum and medium periods and a fine not exceeding Two hundred thousand pesos (P200,000) 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*.

What are illegal associations?

1. Associations totally or partially organized for the purpose of committing any of the crimes punished under the Code;
2. Associations totally or partially organized for some purpose contrary to public morals

Who is liable?

1. Founders, directors and president of the association
2. Mere members of the association

Illegal assembly	Illegal associations
There is an actual meeting or assembly of armed persons to commit any felony; or unarmed persons who are incited to commit treason, sedition, rebellion or direct assault	No such meeting is required
The meeting and attendance at such meeting is punished	The act of forming or organizing and membership in that association are punished
The persons liable are: <ol style="list-style-type: none"> 1. Organizers/leaders 2. Persons present 	The persons liable are: <ol style="list-style-type: none"> 1. Founders, directors and president 2. Members

Chapter 4

Assault Upon, and Resistance and Disobedience to, Persons in Authority and their Agents

ART. 148 ★
Direct assaults.

Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of *prision correccional* in its medium and maximum periods and a fine not exceeding Two hundred thousand pesos (P200,000), when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. If none of these circumstances be present, the penalty of *prision correccional* in its minimum period and a fine not exceeding One hundred thousand pesos (P100,000) shall be imposed.

Acts punished:

1. Without public uprising, by employing force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition
2. Without public uprising, by attacking, by employing force, or by seriously intimidating or seriously resisting any person in authority or any of his agents, while engaged in the performance of official duties, or on the occasion of such performance

Act 1: Using force or intimidation to attain sedition or rebellion

Elements ♥

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

Is it necessary that the offended party be a person in authority or his agent?

- It doesn't seem so. If the aim of the offender is to attain an object of sedition, the offended party may be a private individual or person belonging to a social class.

Act 2: The offender attacks, employs force, etc.

Elements ♥

1. The offender–
 - a. Makes an attack
 - b. Employs force
 - c. Makes a serious intimidation
 - d. Makes a serious resistance
2. The person assaulted is a person in authority or his agent
3. At the time of the assault, the offended party–
 - a. Is engaged in the actual performance of official duties; or
 - b. He is assaulted by reason of the past performance of official duties
4. The offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties
5. There is no public uprising

Element 1 – The offender makes an attack, etc.

1. **Attack** – Includes any offensive or antagonistic movement or action of any kind
2. **Employ force** –
 - a. *If agent of a person in authority* – The force must be of a serious character as to indicate determination to defy the law and its representatives at all hazards
 - b. *If a person in authority* – The force employed need not be serious
3. **Serious intimidation** – Such as pointing a gun, and the intimidation must produce its effect immediately
 - a. If the threat is for a future evil → **not an assault**
4. **Serious resistance** – Must be active for it to be grave

Element 2 – The person assaulted is a person in authority or his agent

1. **Person in authority** – A person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board, or commission.
 - a. This includes a punong barangay.
 - b. This includes teachers, professors and persons charged with the supervision of public or recognized private schools, and SUCs.
 - c. *Directly vested with jurisdiction* – The power or authority to govern and execute the laws.
2. Agent of a person in authority – One who, by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property.
 - a. These include the *police*, BPSO, chief tanod, kagawad, and any other persons who come to the *aid of persons in authority*.

Element 3 – In the performance of duty or by reason thereof

This is satisfied when the officer/agent is either–

1. Engaged in the actual performance of his official duty
2. At least that the assault is done by reason of the past performance of said duty
 - a. Because *“on occasion of”*

When is a person in authority/agent not considered in the performance of official duties?

- When the officer goes beyond the scope of his powers. If they violate any recognized right of the citizens, the latter may resist said invasion, especially when it is clear and manifest.
 - In other words, when a person in authority/agent *provokes* and *attacks* another person, the latter is entitled to defend himself and cannot be held liable for assault or resistance nor for physical injuries (self-defense!).
- When the officer descend to matters which are private in nature
- In either case, the crime committed may only be any of the physical injuries, homicide, etc. as the case may be.

What if a person in authority attacks another person in authority?

- The attacker can still be liable for direct assault. In fact, the crime is aggravated when the offender is a public officer or employee.

Element 4 – Knowledge that the victim is a person in authority/agent

Why?

- Because the accused must have the intention to offend, injure or assault the offended party as a person in authority or agent of authority.
 - And this knowledge must be alleged in the information

Is motive important in the prosecution of direct assault?

- Yes, because evidence of motive is important when the offended party is attacked while *not in the actual performance* of his official duty.
 - Motive is important here because the attacker may have had personal grudges. In this case, it's not direct assault.

Element 5 – Without a public uprising

- If there is public uprising, the crime may be sedition

When is direct assault qualified?

- When the assault is committed with a weapon
- When the offender is a public officer or employee
- When the offender lays hands upon a person in authority

May direct assault be complexed with other felonies?

- Yes. When the offended party is killed, it may be direct assault with

homicide or murder, as the case may be.

- Where in the commission of direct assault, serious or less serious physical injuries are also inflicted, the offender is guilty of the complex crime of direct assault with serious or less serious physical injuries

Is the crime of slight physical injuries absorbed in direct assault?

- Yes, because it is *a necessary consequence* of the force or violence inherent in all kinds of assault.

ART. 149

Indirect assaults.

The penalty of *prision correccional* in its minimum and medium periods and a fine not exceeding One hundred thousand pesos (P100,000) 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.

Elements ♥

1. A person in authority or his agent is the victim of direct assault
2. A person comes to the aid of such authority or his agent
3. The offender uses force or intimidation upon such person coming to the aid of the authority or his agent

What is the indispensable element?

- A direct assault must also be committed.

May a private person be the offended party here?

- Yes, because a private person may aid the person in authority/agent being assaulted.

ART. 150

Disobedience to summons issued by Congress, its committees or subcommittees, by the Constitutional Commissions, its committees, subcommittees or divisions.

The penalty of *arresto mayor* or a fine ranging from Forty thousand pesos (P40,000) to Two hundred thousand pesos (P200,000), or both such fine and imprisonment, shall be imposed upon any person who, having been duly summoned to attend as a witness before Congress, its special or standing committees and subcommittees, the Constitutional



Commissions and its committees, subcommittees, or divisions, or before any commission or committee chairman or member authorized to summon witnesses, refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions. The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summons or refusal to be sworn by any such body or official.

Acts punished:

1. Refusal, without legal excuse, to obey a summons to attend as a witness.
2. Refusal to be sworn or placed under affirmation when present before a legislative or constitutional body or official.
3. Refusal to answer any legal inquiry when present before a legislative or constitutional body or official (*ad testificandum*).
4. Refusal to produce any books, papers, documents, or records in one's possession when required by a legislative or constitutional body or official (*duces tecum*).
5. Restraining another from attending as a witness.
6. Inducing disobedience to a summons or refusal to be sworn by any such body or official.

What does the phrase “without legal excuse” mean?

- It means that only disobedience without legal excuse is punishable.

What does the phrase “in the exercise of their functions” mean?

- It means that Congress must have jurisdiction over the matter being heard.
- Hence, the investigation of a crime is *not* under the province of Congress. But when the investigation is for the purpose of passing remedial legislation, it is validly under the powers of Congress.

Is a person under contempt of Congress also liable under Art. 150?

- Yes, it is possible.

What is the rationale for Art. 150 (and the inherent contempt power)?

- So there are means for compulsion for Congress to acquire complete information.

What is the period of imprisonment for contempt during inquiries in aid of legislation?

- Only until the termination of the legislative inquiry, or upon the next adjournment of Congress, whichever is earlier.

ART. 151 ★

Resistance and disobedience to a person in authority or the agents of such person.

The penalty of *arresto mayor* and a fine not exceeding One hundred thousand pesos (P100,000) shall be imposed upon any person who **not being included in the provisions of the preceding articles shall resist or seriously disobey any person in authority, or the agents of such person, while engaged in the performance** of official duties.

When the disobedience to an agent of a person in authority is **not of a serious nature**, the penalty of *arresto menor* or a fine ranging from Two thousand pesos (P2,000) to Twenty thousand pesos (P20,000) shall be imposed upon the offender.

Acts punished:

1. Resistance and serious disobedience (par. 1)
2. Simple disobedience (par. 2)

*Resistance and serious disobedience***Elements ♥**

1. A person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender
2. The offender resists or seriously disobeys such person in authority or his agent
3. The act of the offender is *not* under Arts. 148, 149, and 150.

Must the officer be in the actual performance of duty?

- Yes. The officer may either be in performance of his duty or he gave an order which the offender disobeyed or resisted.

What is the disobedience contemplated here?

- It is the failure or refusal to obey a direct order from the authority or his agent.

Must the offender know that the person arresting him is a person in authority?

- Yes. This knowledge must be proven beyond reasonable doubt.

Is there justified resistance?

- Yes, such as resisting an agent who is making an illegal search upon his body. The resistance, however, must be adequate and not excessive.

*Simple disobedience***Elements ♥**

1. An agent of a person in authority is engaged in the performance of an official duty or gives a lawful order to the offender
2. The offender disobeys such agent of a person in authority
3. The disobedience is not of a serious nature

What are instances of simple disobedience?

- The act of lying on the road and refusing, despite the order of the police, to get out therefrom 🤨
 - This was *not* a peaceful picketing

What if the order given was not lawful?

- Then, resistance is justified.
 - Hence, an act of exercising the right against unreasonable searches cannot be equated to disobedience

Direct assault	Serious disobedience
The offended party (PIA/agent) must be in the performance of official duties, or he is assaulted by reason thereof	The PIA/agent must be in <i>actual</i> performance of his duties
The direct assault (act 2) may be committed by: <ol style="list-style-type: none"> 1. Attacking 2. Employing force 3. Seriously intimidating 4. Seriously resisting 	This is committed only by resisting or seriously disobeying a PIA/agent
In direct assault of an agent, force is used, and it must be serious and deliberate	In resistance of an agent, force is also used, but not so serious as there is no manifest intention to defy the law and the officers enforcing it

ART. 152

Persons in Authority and Agents of Persons in Authority—Who shall be deemed as such.

In applying the provisions of the preceding and other articles of this Code, any person directly vested with jurisdiction, whether as an individual or as a member of some court or government corporation, board, or commission, shall be deemed a **person in authority**. A barangay captain and a barangay

chairman shall also be deemed a person in authority.

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

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

Who are persons in authority?

- Any person directly vested with jurisdiction, i.e., the power and authority to govern and execute the laws.

Who are agents of persons in authority?

One who is charged with:

1. The maintenance of public order
2. The protection and security of life and property

Chapter 5 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 *prision correccional* in its minimum period and a fine not exceeding Two hundred thousand pesos (P200,000) 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 (3) 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 an 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 Forty thousand pesos (P40,000) shall be imposed upon those persons who in violation of the provisions contained in the last clause of Article 85, shall bury with pomp the body of a person who has been legally executed.

What are tumults and other disturbances of public order?

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

What must be the character of the “serious disturbance?”

- It must be planned or intended.
- Hence, a disturbance that merely “disturbs the attention of those attending the meeting” does not fall under Art. 153

If the persons disturbing the meeting or religious ceremony are public officers, what is their liability?

- They may be punished under Art. 131 or 132.
- Hence, if the offender (the person who disturbs) is a private person, it falls under Art. 153.

What does “outcry” mean?

- It means to shout subversive or provocative words tending to stir up the people to obtain by means of force or violence any of the objects of rebellion or sedition.

When may an outcry be a crime of inciting to sedition, and when may it be considered a simple public disorder under Art. 153(4)?

- For an outcry to constitute inciting to commit rebellion/sedition, it is necessary that the offender should have done the act with the idea of aforethought of inducing
- But if the outcry is more or less unconscious outburst which, although seditious or rebellious in nature, is not intentionally

calculated to induce others to commit rebellion or sedition, it is only public disorder

What is “tumultuous?”

- The disturbance or interruption is deemed tumultuous if caused by more than 3 persons who are armed or provided with means of violence
- This is a circumstance which aggravates the penalty by one degree higher

Can there be multiple offenses?

- Yes, such as when the offender fired a machine gun to cause disturbance, but inflicted serious physical injuries on another
- It's public disorder + serious physical injuries

ART. 154

Unlawful use of means of publication and unlawful utterances.

The penalty of *arresto mayor* and a fine ranging from Forty thousand pesos (P40,000) to Two hundred thousand pesos (P200,000) shall be imposed upon:

1. Any person who by means of printing, lithography, or any other means of publication shall publish or cause to be published as news any false news which may endanger the public order, or cause damage to the interest or credit of the State;
2. Any person who by the same means, or by words, utterances or speeches, shall encourage disobedience to the law or to the constituted authorities or praise, justify, or extol any act punished by law;
3. Any person who shall maliciously publish or cause to be published any official resolution or document without proper authority, or before they have been published officially;
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.

Is actual public disorder or damage necessary?

- No. The codal says “which may endanger the public order...” Hence, it is not necessary that the false news actually cause public disorder or damage/prejudice.
- The mere possibility of causing such danger or damage is sufficient.
- Corollarily, if there is no possibility of danger or damage, Art. 154 is inapplicable.

Must the offender know that the news is false?

- Yes. Criminal intent is required.

ART. 155 ★

Alarms and scandals.



The penalty of *arresto menor* or a fine not exceeding Forty thousand pesos (P40,000) 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 [1];
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 nocturnal amusements, shall disturb the public peace; or
4. Any person who, while intoxicated or otherwise, shall cause disturbance or scandal in public places, provided that the circumstances of the case shall not make the provisions of Article 153 applicable.

[1] Calculated to cause alarm or danger should be “which produces alarm or danger.”

No. 1 talks about discharge of firearm. How is this different from the felony of discharge of firearm under Art. 254?

- Here, the firearm must not be aimed at a person. Otherwise, it becomes punishable under Art. 254.

What should be considered, the intent or the result?

- The result. The act must produce alarm or danger as a consequence.

What is charivari?

- A medley of discordant voices, a mock serenade of discordant noises made on kettles, tins, horns, etc.

What if the disturbance is of a serious nature?

- See Art. 153 and not under Art. 155(4).

ART. 156

Delivering prisoners from jail.

The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who shall remove

from any jail or penal establishment any person confined therein or shall help the escape of such person, by means of violence, intimidation or bribery. If other means are used, the penalty of *arresto mayor* 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 periods.

Elements ♥

1. There is a person confined in a jail or a penal establishment
2. The offender removes therefrom such person, or helps the escape of such person

Who are the prisoners covered?

- Both detention prisoner and person serving final judgment.

Are hospitals or asylums considered here?

- Yes, if the prisoner is confined there.

Who is a usual offender of this case?

- An outsider.
- It may also be an officer of the penal institution, provided that he does not have custody or charge of such person.
 - Else, that is **Art. 223** (infidelity in the custody of a prisoner)
- It may also apply to a prisoner who helps the escape of another prisoner.

Must violence, intimidation or bribery be used?

- No, but the penalty will be higher.
 - However, when the offender receives or agrees to a bribe to perform the offense, it will be a generic aggravating circumstance (price, reward or promise).

Must deceit be used?

- No, because it is not an element.

Is the person, who substituted for a prisoner by taking his place in jail, liable under Art. 156?

- Yes, because that is removal of the prisoner from jail "by other means," that is, by deceit.
- But if the person is serving sentence for treason, murder, parricide, this act is an act of an accessory and he may be held liable as accessory of that crime (treason, murder, etc.) (see **Art. 19, par. 3**).

What is the liability of the prisoner who escapes?

- He will only have liability if he is a person serving sentence by final judgment.
- If he is only a detention prisoner → no liability

Chapter 6 Evasion of Service of Sentence

ART. 157

Evasion of service of sentence.

The penalty of *prision 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, gates, walls, roofs, or floors, or by using picklocks, false keys, disguise, deceit, violence or intimidation, or through connivance with other convicts or employees of the penal institution, the penalty shall be *prision correccional* in its maximum period.

Elements ♥

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

Is a detention prisoner covered?

- No, he must be a convict by final judgment

Is this applicable to sentence executed by deportation?

- No, because it is not a sentence to imprisonment. Moreover, it is an executive remedy.

What is escape?

- It is the unlawful departure of a prisoner from the limits of his custody.

Is this applicable to the sentence of destierro?

- Yes, because it originally meant deprivation of liberty.

When is the offense qualified?

- A higher penalty is imposed if the escape takes place—
 1. By means of unlawful entry (climbing or scaling the wall)

2. By breaking doors, windows, gates, walls, roofs or floors
3. By using picklocks, false keys, disguise, deceit, violence or intimidation
4. Through connivance with other convicts or employees of the penal institution
 - a. In the latter case, the employee may be liable for infidelity under Art. 223

ART. 158

Evasion of service of sentence on the occasion of disorders, conflagrations, earthquakes, or other calamities.

A convict, who shall evade the service of his sentence, by leaving the penal institution where he shall have been confined, on the occasion of disorder resulting from a conflagration, earthquake, explosion, or similar catastrophe, or during a mutiny in which he has not participated, shall suffer an increase of one-fifth of the time still remaining to be served under the original sentence, which in no case shall exceed six months, if he shall fail to give himself up to the authorities within forty-eight hours following the issuance of a proclamation by the Chief Executive announcing the passing away of such calamity.

Convicts, who, under the circumstances mentioned in the preceding paragraph, shall give themselves up to the authorities within the above mentioned period of 48 hours, shall be entitled to the deduction provided in Article 98.

Elements ♥

1. The offender is a convict by final judgment, who is confined in a penal institution
2. There is a disorder resulting from–
 - a. Conflagration
 - b. Earthquake
 - c. Explosion
 - d. Similar catastrophe
 - e. Mutiny, in which he has not participated
3. The offender evades the service of his sentence by leaving the penal institution where he is confined, on the occasion of such disorder or during the mutiny
4. The offender fails to give up himself up to the authorities within 48 hours following the issuance of a proclamation by the chief executive announcing the passing away of such calamity

What happens if the offender fails to give himself up?

- He shall suffer an increase of 1/5 of the time still remaining to be served

What happens if he voluntarily surrenders within 48 hours?

- He will be entitled to 1/5 deduction of the period of his sentence

What is mutiny?

- An organized unlawful resistance to a superior officer; a sedition; a revolt.

ART. 159

Other cases of evasion of service of sentence.

The penalty of *prision correccional* 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.

Elements ♥

1. The offender was a convict
2. The offender was granted a conditional pardon by the president
3. The offender violated any of the conditions of such pardon

What is the nature of a conditional pardon?

- It is a contract between the president and the convict. The pardoned convict is required to fulfill its conditions and accept all its consequences, not as he chooses, but according to its strict terms.
 - The violation of the condition is a resolutive condition which terminates the conditional pardon.

Until when must the convict not violate the condition?

- It seems that, unless the pardon explicitly states the duration, it will only be until the expiration of the original sentence imposed, i.e., for the “time remitted.”

Must the offender be found guilty of the 2nd offense before prosecution for Art. 159 can begin?

- Yes, because the usual condition in the pardon is that the offender “shall not again commit another crime.” It is necessary that he be found guilty of that offense.

What are the penalties?

1. *Prision correccional* minimum – if the penalty remitted does not exceed 6 years

2. The unexpired portion of his original sentence – if the penalty remitted is higher than 6 years

What does the term “penalty remitted” mean?

- Time remitted = Penalty imposed – Penalty served *before* the pardon
 - The time during which the convict was out of prison cannot be deducted from the unexecuted portion of his sentence.

Can the court require the convict to serve the unexpired portion of his original sentence if it does not exceed 6 years?

- No, because Art. 159 does not provide that the accused shall serve the unexpired portion *plus* prison correccional minimum.
- The proper penalty is *only* prison correccional minimum.

Is this a distinct crime?

- Yes, this is different from the crime in which the offender was granted a pardon for.

Is this a substantive offense?

- No, because the penalty imposed is just the unexpired portion of the punishment (or *prison correccional minimum*).

If the offender has been pardoned for an offense punishable by destierro, and he violates the pardon, what is his penalty under Art. 159?

- Destierro has a duration of 6 months and 1 day to 6 years. Hence, the proper penalty may be *prison correccional* minimum.
- However, §64(i) of the 1917 Revised Administrative Code empowers the president to order the arrest and reincarceration of conditional pardon violators.
 - Hence, the executive branch has two options: administratively (under §64(i)) or criminally (under Art. 159).

Chapter 7

Commission of Another Crime During Service of Penalty Imposed for Another Previous Offense

Quasi-recidivism

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.

Elements ♥

1. The offender was already convicted by final judgment of one offense
2. He committed a new felony before beginning to serve such sentence or while serving the same

What does “before beginning to serve such sentence” mean?

- He commits an offense after being convicted by final judgment (affirmed by appellate courts) and before his commitment to jail.

What does “or while serving the same” mean?

- He commits an offense while serving the sentence in the first offense.

Must the first offense be a felony?

- No, because Art. 160 is silent on this matter.

Must the second offense be a felony?

- Yes, because Art. 160 explicitly refers to a “new felony.”

Must the second offense be different from that of the first offense?

- No. It may be the same.

Must it be under the same code?

- No. If the two offenses are under the same code, that is recidivism, which is an aggravating circumstance.

May quasi-recidivism be offset by an ordinary mitigating circumstance?

- No, because Art. 160 specifically provides that the offender “shall be punished by the maximum period of the penalty prescribed” for the second offense.
 - But a privileged mitigating circumstance—such as minority—may allow the penalty to be lowered by one degree.

When may a 70-year-old PDL be pardoned?

- A quasi-recidivist shall be pardoned when he—
 - Reached the age of 70 *and* served out his original sentence (for the first offense); or
 - When he shall complete the original sentence after reaching 70

- Exceptions:

- A habitual criminal may *not* be pardoned
- PDL who is *unworthy* by reason of his conduct may *not* be pardoned
- *N.B.* Ultimately, the president has discretion whether to pardon or not.

Review!

	Reiteracion	Recidivism
What is required?	The offender has served out his sentence for the 1st offense	A final judgment has been rendered in the 1st offense
Relatedness of offense?	Offenses must <i>not</i> be in the same title	Offenses must be in the same title
Effect on penalty?	Not always an A.C.	Always taken into consideration in fixing the penalty to be imposed

Four forms of repetition

1. Recidivism
2. Reiteracion or habituality
3. Multi-recidivism or habitual delinquency
 - A person, within 10 years from his release or last conviction of the crimes of serious/less serious physical injuries, robbery, theft, estafa, or falsification is found guilty of any of those crimes a third time or oftener.
 - Punishment: additional penalty for habitual delinquency
4. Quasi-recidivism
 - A person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence or while serving it.
 - Punishment: maximum period for the new felony

TITLE II

Crimes Against the Fundamental Law of the State

Section 1. 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 *prision correccional* in its minimum period, if the detention has not exceeded three days;
2. The penalty of *prision 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 *prison mayor*, if the detention has continued for more than fifteen days but not more than six months; and
4. That of *reclusion 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.

Elements ♥

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

What if the offender is a private person?

- He may be held liable for serious or slight illegal detention under Art. 267 or 268.
- But if the private person *conspired* with the public officer, arbitrary detention is *still* applicable.

When is there a detention?

- When there is *actual confinement of a person* in an enclosure, or in any manner detaining and depriving him of liberty.
- It may also be restraint resulting from fear (*Astorga v. People*, G.R. No. 154130, Oct. 1, 2003).

What are the legal grounds to detain a person?

1. The person committed a crime
2. Violent insanity or any other ailment requiring the compulsory confinement of the patient in a hospital

What is the usual cause of arbitrary detention?

- A warrantless arrest.
 - Concomitantly, there is no arbitrary detention when there is a valid arrest.

When is warrantless arrest lawful?

1. When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense
2. When an offense has in fact just been committed, and he has probable cause to believe based on personal knowledge of facts and circumstances that the person to be arrested has committed it
3. When the person to be arrested is a prisoner who has escaped from a penal establishment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

What are the requisites of a valid warrantless arrest under no. 1?

1. The person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and
2. Such overt act is done in the presence or within the view of the arresting officer

What are the requisites of a valid warrantless arrest under no. 2?

1. The crime should have been just committed; and
2. The arresting officer's exercise of discretion is limited by the standard of probable cause to be determined from the facts and circumstances within his personal knowledge.

Here, the officer does not have to personally witness the offense.

Is there a minimum period of detention?

- No, any period may be sufficient to violate the law.

Length of detention (x)	Penalty
$0 < x \leq 3$ days	Arresto mayor (max.) to prision correccional (min.)
$3 \text{ days} < x \leq 15$ days	Prision correccional (med.-max.)
$15 \text{ days} < x \leq 6$ months	Prision mayor
$x > 6$ months	Reclusion temporal

ART. 125

Delay in the delivery of detained persons to the proper judicial authority.

The penalties provided in the next preceding articles shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities

within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.

Elements ♥

1. The offender is a public officer or employee
2. He has detained a person for some legal ground
3. He fails to deliver such person to the proper judicial authorities within
 - a. 12 hours – light penalties
 - b. 18 hours – correctional penalties
 - c. 36 hours – afflictive/capital penalties

Reglementary period	Covered penalties
12 hours	Arresto menor Public censure
18 hours	Prision correccional Arresto mayor Suspension Destierro
36 hours	Reclusion perpetua Reclusion temporal Perpetual/temporary absolute/special disqualification Prision mayor

Who are judicial authorities?

- Judges or courts of justice vested with judicial power.
 - If there is no judge → person must be released

Should holidays be counted?

- No, non-office days (such as holidays) are included in the computation of the reglementary period.

Does a violation of Art. 125 affect the legality of confinement?

- No, because it only concerns the liability of the arresting officer. Moreover, if a warrant has subsequently been issued, then, the arrest becomes valid.

Will a valid information subsequently filled absolve the accused from liability under Art. 125?

- No, because the violation of Art. 125 has already occurred even before the filing of the information.

What are the rights of the person detained?

1. To be informed of the cause of his detention
2. To be allowed to communicate and confer at anytime with his counsel

May this be waived?

- Yes, so long as the waiver is in writing and signed by the person in the presence of his counsel.

ART. 126
Delaying release.

The penalties provided 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.

Acts punished:

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

Elements ♥

1. The offender is a public officer or employee
2. There is a judicial or executive order for the release of a prisoner or detention prisoner, or that there is a proceeding upon a petition for the liberation of such person
3. The offender without good reason delays:
 - a. The service of the notice of such order to the prisoner
 - b. The performance of such judicial or executive order for the release of the prisoner

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

ART. 127
Expulsion.



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

Acts punished:

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

Elements ♥

1. The offender is a public officer or employee
2. He expels any person from the Philippines, or compels a person to change his residence
3. The offender is *not* authorized to do so by law [1]

[1] Only the court by final judgment can order a person to change his residence.

Section 2. Violation of domicile.

ART. 128
Violation of domicile.

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

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

Acts punished:

1. Entering any dwelling against the will of the owner

2. Searching papers or other effects found therein without the previous consent of the owner
3. Refusing to leave the premises, after having surreptitiously entered said dwelling and after having been required to leave it

Elements ♥

1. The offender is a public officer or employee
2. He is not authorized by judicial order to enter the dwelling and/or to make a search therein for papers or other effects

Element 1 – Public officer

- Hence, if the offender is a private individual → trespass to dwelling (Art. 280).

Element 2 – Actus reus

If the offender has a search warrant?

- There is no liability.

What does “against the will of the owner” connote?

- There must be active opposition or prohibition by the owner.
 - Hence, if the entrance (per se) is without the owner's consent, there is *no violation* of Art. 128.
 - This is because entering surreptitiously is *not punishable*, but the refusal to leave after entering so.

May the right against unreasonable searches be waived?

- Yes, either explicitly or implicitly (i.e., silence).
 - However, care must be taken to ensure if the consent was free and intelligent.

Where is this applicable?

- Only when the officer searches the house of the offended party.
- If a person is searched outside his dwelling it is either:
 - **Grave coercion** → there is violence or intimidation (Art. 286)
 - **Unjust vexation** → there is *no* violence or intimidation (Art. 287)

When is the crime qualified?

- If done during (a) nighttime, or (b) the things seized are *not* returned immediately.

ART. 129

Search warrants maliciously obtained and abuse in the service of those legally obtained.

In addition to the liability attaching to the offender for the commission of any other offense, the penalty of *arresto mayor* in its maximum period and a fine not exceeding Two hundred thousand pesos (P200,000) shall be imposed upon any public officer or employee who shall procure a search warrant without just cause, or, having legally procured the same, shall exceed his authority or use unnecessary severity in executing the same.

Acts punished:

1. Procuring a search warrant without just cause
2. Exceeding his authority or by using unnecessary severity in executing a search warrant legally procured

Act 1: Procuring a SW without just cause

Elements ♥

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

When is a search warrant 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.
- Whether the affidavit filed in support for the application has been drawn in such a manner that perjury could be charged thereon and affiant be held liable for damages caused.

In addition to liability under Art. 129, may the offender be also held liable for other crimes?

- Yes, because he may also be held liable for perjury if he made a willful and deliberate assertion of falsehood in the affidavits.
- However, because of the phrase “in addition to the liability attaching to the offender for the commission of any other offense,” perjury and Art. 129 *cannot* be complexed.

Act 2: Using unnecessary severity/exceeding his authority

Elements ♥

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

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.

Elements ♥

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

Does this cover the offended party's domicile only?

- Yes. The papers and other belongings must originate from dwelling.
- This is also a form of violation of the dwelling.

Section 3. Prohibition, interruption, and dissolution of peaceful meetings.

ART. 131

Prohibition, interruption, and dissolution of peaceful meetings.

The penalty of *prision correccional* in its minimum period shall be imposed upon any public officer or employee who, without legal ground, shall prohibit or interrupt the holding of a peaceful meeting, or shall dissolve the same.

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

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

Acts punished:

1. Prohibiting or interrupting, without legal ground, the holding of a peaceful meeting, or by dissolving the same
2. Hindering any person from joining any lawful association or from

attending any of its meetings

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

Elements ♥

1. The offender is a public officer or employee
2. He performs any of the acts punished

What if the offender is a private person?

- His liability is **disturbance of public** order under Art. 153.
- In any case, the offender must be *stranger* in the peaceful meeting

To constitute violation of prohibiting or interrupting the meeting:

1. The meeting must be *peaceful*; and
2. There is no legal ground for prohibiting, interrupting or dissolving that meeting

What is the ground to prohibit the holding of a meeting?

- That there is ground to believe that the danger apprehended is imminent and that the evil to be prevented is a serious one (clear and present danger)

What if the meeting is a convening of the legislative body?

- Then, the offense falls under either Art. 143 or 144.

What if the person or meeting stopped is speaking against a certain religion?

- The offender may be liable under Art. 131.

Section 4. Prohibition, interruption, and dissolution of peaceful meetings.

ART. 132

Interruption of religious worship.

The penalty of *prision 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 *prision correccional* in its medium and maximum periods.

Elements ♥

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

What qualifies the offense?

- If it is done with violence or threats.

ART. 133

Offending the religious feelings.

The penalty of *arresto mayor* in its maximum period to *prision 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.

Elements ♥

1. The acts complained of were performed:
 - a. In a place devoted to religious worship, or
 - b. During the celebration of any religious ceremony
2. The acts must be notoriously offensive to the feelings of the faithful

Is it necessary that there is a religious ceremony going on inside the church?

- No, because the two phrases are separated by “or.”

What are religious ceremonies?

- They are religious acts performed outside of a church, such as processions and special prayers for burying dead persons.

What are acts notoriously offensive to the feelings of the faithful?

- The acts must be directed against religious practice or dogma or ritual for the purpose of ridicule, as mocking or scoffing at or attempting to damage an object of religious veneration.

The offense is judged from whose point of view?

- From the complainant's point of view.

Must there be intent?

- Yes, there must be deliberate intent to hurt the feelings of the faithful.

TITLE IX Crimes Against Personal Security and Liberty

Chapter 1 Crimes Against Liberty

ART. 267 ★

Kidnapping serious illegal detention.

Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days;
2. If it shall have been committed simulating public authority;
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made;
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention, or is raped or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

Elements ♥

1. The offender is a private individual
2. He kidnaps or detains another, or in any other matter deprives the latter of his liberty
3. The act of detention or kidnapping must be illegal
4. In the commission of the offense, any of the following circumstances is present:
 - a. The kidnapping or detention lasts for more than three days;
 - b. It is committed simulating public authority
 - c. Any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made
 - d. The person kidnapped or detained is a minor, female, or a public officer

Element 1 – Private individual

What if the offender is a public officer?

- It becomes arbitrary detention.

What if the victim is a minor and the perpetrator is the parent/s?

- The penalty is just *arresto mayor* or a fine not exceeding P40,000, or both

Element 2 – Kidnaps, detains another

What must be the perpetrator's intent?

- There must be intention to deprive the victim of his liberty for purposes of extorting ransom.
 - Hence, a group of robbers restraining their victims is not kidnapping because the intent there is to delay or prevent assistance from being rendered—not necessarily deprivation of liberty.

Must there be actual demand for ransom?

- No, as long as the purpose is to demand ransom, it falls under Art. 267.

How may the kidnapping be done?

- Either forcibly or fraudulently.

Is detention or locking up essential?

- Yes, because the confinement or restriction of the offended party is the very essence of the crime.
 - But it needed not be in an enclosure.
- But the restraint need not be permanent.

Element 3 – The detention is illegal

Are there cases where the detention is lawful?

- When the detention is ordered by a competent authority or permitted by law.

Element 4 – Presence of any of the four circumstances

When is it no longer necessary to prove any of the four circumstances in par. 1?

- When the kidnapping or detention was committed for the purpose of extorting ransom.
 - The purpose becomes *immaterial* when any of the four circumstances is present.

Special complex crimes of kidnapping

1. Kidnapping with murder
2. Kidnapping with frustrated murder
3. Kidnapping with rape

When is it murder, and when is it kidnapping?

- Where the taking of the victim was *incidental* to the basic purpose to kill → **only murder**
 - The kidnapping is merely a preparatory act
- Specific intent is determinative whether crime is committed is murder or kidnapping

What is the *corpus delicti*?

- Is the fact that an individual has been deprived of his liberty for the purpose of extorting ransom from the victim or any other person
- Whether the ransom is actually paid is immaterial

What is the special complex crime of kidnapping with rape?

- It occurs when the victim is raped while under the illegal detention.
- No matter how many rapes had been committed, the resultant crime is *only one kidnapping with rape*.

When is the crime just forcible abduction with rape?

- In kidnapping with rape → offender should *not* have taken the victim with lewd designs
 - *Else* → forcible abduction with rape (complex crime)
- If the taking was *by* forcible abduction and the woman was raped several times, the crimes committed are:
 - One complex crime of forcible abduction with rape
 - Each of the other counts of rape constitutes distinct and separate count of rape

When is the maximum penalty imposed?

- The maximum penalty of *reclusion perpetua without possibility*:
 1. If the purpose of kidnapping or detention is to extort ransom
 2. When the victim is killed or dies as a consequence of the detention
 3. When the victim is raped
 4. When the victim is subjected to torture or dehumanizing acts

ART. 268

Slight illegal detention.

The penalty of *reclusion 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 *prision mayor* in its minimum and medium periods and a fine not exceeding One hundred thousand pesos (P100,000).

Elements ♥

1. The offender is a private individual
2. He kidnaps or detains another, or in any other manner deprives him of his liberty
3. The act of kidnapping or detention is illegal
4. The crime is committed *without* the attendance of any of the circumstances enumerated in Art. 267

What is the liability of an accomplice?

- He who furnishes the place for the crime, an act of an accomplice, is elevated to that of a co-principal.

What are the *privileged* mitigating circumstances?

A lower penalty is imposed when-

1. Offender voluntarily releases the person so kidnapped within 3 days from the commencement of the detention
2. Without having attained the purpose intended
3. Before the institution of criminal proceedings

Is voluntary release *privileged* mitigating if the victim is a woman?

- No, because when the victim is a woman, it is punished under Art. 267

ART. 269

Unlawful arrest.

The penalty of *arresto mayor* and a fine not exceeding One hundred thousand pesos (P100,000) shall be imposed upon any person who, in any case other than those authorized by law, or without reasonable ground therefor, shall arrest or detain another for the purpose of delivering him to the proper authorities.

Elements ♥

1. The offender arrests or detains another person
2. The purpose of the offender is to deliver him to the proper authorities
3. The arrest or detention is *not authorized by law* or there is *no reasonable grounds* therefor

Unlawful arrest	Delay in the delivery
Detention <i>not</i> authorized by law	Detention is for some legal ground
It is committed by making an arrest not authorized by law	It is committed by failing to deliver such person to the proper judicial authority within a certain period of time

Who is the offender?

- Any person, whether a public officer or a private person.
- Unlawful arrests by public officers → arbitrary detention (Art. 124)
- Unlawful arrests by private persons → unlawful arrest (Art. 269)

How is this distinguished from other illegal detention?

- If the purpose of the arrest is to deliver him to the authorities, it is unlawful arrest.
 - In any other case, the detention may be liable for other illegal detention.

ART. 270

Kidnapping and failure to return a minor.

The penalty of *reclusion perpetua* shall be imposed upon any person who, being entrusted with the custody of a minor person, shall deliberately fail to restore the latter to his parents or guardians.

Elements ♥

1. The offender is entrusted with the custody of a minor
2. He deliberately fails to restore the said minor to his parents or guardians

What is the act punished?

- The deliberate failure of the custodian of a minor to restore him to his parents or guardian.

Is there a conflict between Art. 267 and 270?

- No, because Art. 270 requires that the offender be entrusted with the custody of the minor, while Art. 267 does not.

ART. 271

Inducing a minor to abandon his home.

The penalty of *prision correccional* and a fine not exceeding One hundred thousand pesos (P100,000) 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 (2) preceding articles shall be the father or the mother of the minor, the penalty shall be *arresto mayor* or a fine not exceeding Forty thousand pesos (P40,000) or both.

Elements ♥

1. The minor is living in the home of his parents or guardian or the person entrusted with his custody
2. The offender induces said minor to abandon his home

What kind of inducement must it be?

- It should be actual, committed with criminal intent, and determined by a will to cause damage.

Must the minor actually abandon his home?

- No, because the provision punishes the act of inducing a minor “to abandon his home.”
- But the minor should *not* leave his home out of his free will.

ART. 272

Slavery.

The penalty of *prision mayor* and a fine of not exceeding P10,000 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.

Elements ♥

1. The offender purchases, sells, kidnaps or detains a human being.
2. The purpose of the offender is to enslave such human being.

When is the offense qualified?

- When the purpose of the offender is for some immoral traffic (prostitution).

What distinguishes this from kidnapping?

- If the purpose is to enslave, it's slavery. Otherwise, it's kidnapping.

ART. 273

Exploitation of child labor.

The penalty of *prision correccional* in its minimum and medium periods and a fine not exceeding P500 shall be imposed upon anyone who, under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian, or person entrusted with the custody of a minor, shall, against the latter's will, retain him in his service.

Elements ♥

1. The offender retains a minor in his service.
2. It is against his will.
3. It is under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian or person entrusted with the custody of such minor.

ART. 274

Services rendered under compulsion in payment of debt.

The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period 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.

Elements ♥

1. The offender compels a debtor to work for him, either as household servant or farm laborer [1]
2. It is against the debtor's will
3. The purpose is to require or enforce the payment of debt

[1] This is an exclusive list.

Chapter 2 Crimes Against Security

ART. 275

Abandonment of persons in danger and abandonment of one's own victim.

The penalty of *arresto mayor* shall be imposed upon:

1. Anyone who shall fail to render assistance to any person whom he shall find in an uninhabited place wounded or in danger of dying, when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense;
2. Anyone who shall fail to help or render assistance to another whom he has accidentally wounded or injured;
3. Anyone who, having found an abandoned child under seven years of age, shall fail to deliver said child to the authorities or to his family, or shall fail to take him to a safe place.

Acts punished:

1. By failing to render assistance to any person whom the offender finds in an uninhabited place wounded or in danger of dying when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense.
2. By failing to help or render assistance to another whom the offender has accidentally wounded or injured.
3. By failing to deliver a child, under seven years of age whom the offender has found abandoned, to the authorities or to his family, or by failing to take him to a safe place.

Elements ♥

1. The place is not inhabited
2. The accused found there a person wounded or in danger of dying
3. The accused can render assistance *without detriment to himself*
4. The accused fails to render assistance

ART. 276

Abandoning a minor.

The penalty of *arresto mayor* and a fine not exceeding One hundred thousand pesos (P100,000) shall be imposed upon anyone who shall abandon a child under seven (7) years of age, the custody of which is incumbent upon him.

When the death of the minor shall result from such abandonment, the culprit shall be punished by *prision correccional* in its medium and maximum periods; but if the life of the minor shall have been in danger only, the penalty shall be *prision correccional* in its minimum and medium periods.

The provisions contained in the two (2) preceding paragraphs shall not prevent the imposition of the penalty provided for the act committed, when the same shall constitute a more serious offense.

Elements ♥

1. The offender has the custody of a child
2. The child is under seven years of age
3. He abandons such child
4. He has no intent to kill the child when the latter is abandoned

What if the child dies?

- The penalty is higher.

What if there was intent to kill?

- Then it could be one of the manslaughters (e.g., parricide).

What are the circumstances qualifying the offense?

1. Death of the child
2. Child's life became in danger due to the abandonment

ART. 277

Abandonment of minor by person entrusted with his custody; indifference of parents.

The penalty of *arresto mayor* and a fine not exceeding One hundred thousand pesos (P100,000) shall be imposed upon anyone who, having charge of the rearing or education of a minor, shall deliver said minor to a public institution or other persons, without the consent of the one who entrusted such child to his care or, in the absence of the latter, without the consent of the proper authorities.

The same penalty shall be imposed upon the parents who shall neglect their children by not giving them the education which their station in life required and financial condition permits.

Acts punished

1. Delivering a minor to a public institution or other persons without the consent of the one who entrusted such minor to the care of the offender or, in the absence of that one, without the consent of proper authorities
2. By neglecting his (offender) children by not giving them the education which their station in life requires and financial condition permits

Act 1: Delivering a minor to others

Elements ♥

1. The offender has charge of the rearing or education of a minor

2. He delivers said minor to a public institution or other persons
3. The one who entrusted such child to the offender has *not* consented to such act; or if the one who entrusted such child to the offender is absent, the proper authorities have not consented to it

Abandonment of minor by person entrusted with custody (Art. 277)	Abandonment of a minor (Art. 276)
The custody of the minor is specific, that is, the custody for the rearing or education of the minor	The custody of the offender is general
The minor is under 18	The minor is under 7
The minor is delivered to a public institution or other person	The minor is abandoned to deprive him of the care and protection that his tender years need

Act 2: Parental indifference

Elements ♥

1. The offender is a parent
2. He neglects his children by *not* giving them education
3. His station in life requires such education and his financial condition permits it

ART. 278

Exploitation of minors.

The penalty of *prision correccional* in its minimum and medium periods and a fine not exceeding One hundred thousand pesos (P100,000) shall be imposed upon:

1. Any person who shall cause any boy or girl under sixteen (16) 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 exhibitions of these kinds, children under sixteen (16) years of age who are not his children or descendants.
3. Any person engaged in any of the callings enumerated in the next preceding paragraph who shall employ any descendant of his under twelve (12) years of age in such dangerous exhibitions.
4. Any descendant, guardian, teacher, or person entrusted in any capacity with the care of a child under sixteen (16) years of age, who

shall deliver such child gratuitously to any person following any of the callings enumerated in paragraph 2 hereof, or to any habitual vagrant or beggar.

If the delivery shall have been made in consideration of any price, compensation, or promise, the penalty shall in every case be imposed in its maximum period.

In either case, the guardian or curator convicted shall also be removed from office as guardian or curator; and in the case of the parents of the child, they may be deprived, temporarily or perpetually, in the discretion of the court, of their parental authority.

5. Any person who shall induce any child under sixteen years of age to abandon the home of its ascendants, guardians, curators, or teachers to follow any person engaged in any of the callings mentioned in paragraph 2 hereof, or to accompany any habitual vagrant or beggar.

Acts punished

1. Causing any boy or girl under 16 to perform any dangerous feat of balancing, physical strength, or contortion, the offender being *any person*
2. Employing children under 16 who are *not* the children or descendants of the offender in exhibitions of acrobat, gymnast, rope-walker, diver, or wild-animal tamer, the offender being an acrobat, etc., or circus manager or person engaged in a similar calling
3. Employing any descendant under 12 in exhibitions of acrobat, gymnast, rope-walker, diver, or wild-animal tamer, the offender being engaged in any of the said callings
4. Delivering a child under 16 gratuitously to any acrobat, gymnast, rope-walker, diver, wild-animal tamer or circus manager, or person engaged in a similar calling, or to any habitual vagrant or beggar, the offender being an ascendant, guardian, teacher or person entrusted in any capacity with the care of such child
5. Inducing any child under 16 to abandon the home of its ascendants, guardians, curators or teachers to follow any acrobat, gymnast, rope-walker, diver, wild-animal tamer or circus manager, or person engaged in a similar calling or to accompany any habitual vagrant or beggar, the offender being any person

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.

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 Two hundred thousand pesos (P200,000).

If the offense be committed by means of violence or intimidation, the penalty shall be *prision correccional* in its medium and maximum periods and a fine not exceeding Two hundred thousand pesos (P200,000).

The provisions of this article shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling, or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose of rendering some service to humanity or justice, nor to anyone who shall enter cafes, taverns, inns, and other public houses, while the same are open.

Elements ♥

1. The offender is a private person
2. He enters the dwelling of another
3. The entrance is against the latter's will

ART. 281*Other forms of trespass.*

The penalty of *arresto menor* or a fine not exceeding Forty thousand pesos (P40,000), or both, shall be imposed upon any person who shall enter the closed premises or the fenced estate of another, while either or both of them is uninhabited, if the prohibition to enter be manifest and the trespasser has not secured the permission of the owner or the caretaker thereof.

Elements ♥

1. The offender enters the closed premises or the fenced estate of another
2. The entrance is made while either of them is uninhabited
3. The prohibition to enter be manifest
4. The trespasser has not secured the permission of the owner or the caretaker thereof

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 (2) degrees shall be imposed.

If the threat be made in writing or through a middleman, the penalty shall be imposed in its maximum period.

2. The penalty of *arresto mayor* and a fine not exceeding One hundred thousand pesos (P100,000), if the threat shall not have been made subject to a condition.

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*.

ART. 284*Bond for good behavior.*

In all cases falling within the two next preceding articles, the person making the threats may also be required to give bail not to molest the person threatened, or if he shall fail to give such bail, he shall be sentenced to *destierro*.

ART. 285*Other light threats.*

The penalty of *arresto menor* in its minimum period or a fine not exceeding Forty thousand pesos (P40,000) 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.

ART. 286 ★
Grave coercions.

The penalty of *prision correccional* and a fine not exceeding One hundred thousand pesos shall be imposed upon any person who, without authority of law, shall, by means of violence, threats or intimidation, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.

If the coercion be committed in violation of the exercise of the right of suffrage, or for the purpose of compelling another to perform any religious act or to prevent him from exercising such right or from so doing such act, the penalty next higher in degree shall be imposed.

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 Fifteen thousand pesos (P15,000).

Any other coercion or unjust vexation shall be punished by *arresto menor* or a fine ranging from One thousand pesos (P1,000) to not more than Forty thousand pesos (P40,000), or both.

ART. 288
Other similar coercions – (Compulsory purchase of merchandise and payment of wages by means of tokens).

The penalty of *arresto mayor* or a fine ranging from Forty thousand pesos (P40,000) to One hundred thousand pesos (P100,000), 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 Philippines, unless

expressly requested by the laborer or employee.

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 Sixty thousand pesos (P60,000) 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 act shall not constitute a more serious offense in accordance with the provisions of this code.

- Elements ♥**
1. The offender employs violence or threats, in such a degree to compel or force the laborers or employers in the free and legal exercise of their industry or work
 2. That the purpose is to organize, maintain or prevent coalitions of capital or labor, strike of laborers or lockout of employees

TITLE I
Crimes Against National Security and the Law of Nations

ART. 114 ★
Treason.

Any Filipino citizen who levies war against the Philippines or adheres to her enemies, giving them aid or comfort within the Philippines or elsewhere, shall be punished by *reclusion perpetua* to death and shall pay a fine not to exceed Four million pesos (P4,000,000).

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

Likewise, an alien residing in the Philippines, who commits acts of treason as defined in paragraph 1 of this Article shall be punished by *reclusion temporal* to death and shall pay a fine not to exceed Four million pesos (P4,000,000).

- Elements ♥**
1. The offender is a Filipino citizen or an alien residing in the

Philippines

2. There is war in which the Philippines is involved
3. The offender either–
 - a. Levies war against the government, or
 - b. Adheres to the enemies, giving them aid or comfort

ART. 115

Conspiracy and proposal to commit treason.

The conspiracy and proposal to commit the crime of treason shall be punished respectively, by *prision mayor* and a fine not exceeding Two million pesos (P2,000,000), and *prision correccional* and a fine not exceeding One million pesos (P1,000,000).

ART. 116

Misprision of treason.

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

ART. 117

Espionage.

The penalty of *prision correccional* shall be inflicted upon any person who:

1. Without authority therefor, enters a warship, fort, or naval or military establishment or reservation to obtain any information, plans, photographs, or other data of a confidential nature relative to the defense of the Philippine Archipelago; or
2. Being in possession, by reason of the public office he holds, of the articles, data, or information referred to in the preceding paragraph, discloses their contents to a representative of a foreign nation.

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

ART. 118

Inciting to war or giving motives for reprisals.

The penalty of *reclusion temporal* shall be imposed upon any public officer or

employee, and that of *prision mayor* upon any private individual, who, by unlawful or unauthorized acts, provokes or gives occasion for a war involving or liable to involve the Philippine Islands or exposes Filipino citizens to reprisals on their persons or property.

ART. 119

Violation of neutrality.

The penalty of *prision 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.

ART. 120

Correspondence with hostile country.

Any person, who in the time of war, shall have correspondence with an enemy country or territory occupied by enemy troops shall be punished:

1. By *prision correccional*, if the correspondence has been prohibited by the Government;
2. By *prision mayor*, if the correspondence be carried on in ciphers or conventional signs; and
3. By *reclusion 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 *reclusion temporal* to death.

ART. 121

Flight to enemy's country.

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.

ART. 122

Piracy in general and mutiny on the high seas or in Philippine waters.

The penalty of *reclusion perpetua* shall be inflicted upon any person who, on the high seas or in Philippine waters, 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 or in Philippine waters.

ART. 123
Qualified piracy.

The penalty of *reclusion perpetua* 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.