

CRIMINAL LAW 1A*Finals, 1S 24-25*

Consolidated codal, case law and commentary

Codal

Commentary

Case law

ART. 14. ★*Aggravating circumstances*

The following are aggravating circumstances:

1. That advantage be taken by the offender of his public position.
2. That the crime be committed in contempt of or with insult to the public authorities.
3. That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation.
4. That the act be committed with abuse of confidence or ungratefulness.
5. That the crime be committed in the palace of the Chief Executive, or in his presence, or where public authorities are engaged in the discharge of their duties or in a place dedicated to religious worship.
6. That the crime be committed in the nighttime or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the crime.
Whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band.
7. That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic, or other calamity or misfortune.
8. That the crime be committed with the aid of armed men who injure or afford impunity.
9. That the accused is a recidivist.
A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code.
10. That the offender has been previously punished for an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.
11. That the crime be committed in consideration of a price, reward, or promise.
12. That the crime be committed by inundation, fire, poison, explosion, or by the use of any other artifice involving great waste and ruin.
13. That the act be committed with evident premeditation.
14. That craft, fraud, or disguise be employed.

15. That advantage be taken of superior strength, or means be employed to weaken the defense.
16. That the act be committed with treachery (*alevosia*).
There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend to directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.
17. That means be employed or circumstances brought about which add ignominy to the natural effects of the act.
18. That the crime be committed after an unlawful entry.
There is unlawful entry when an entrance is effected by a way not intended for the purpose.
19. That as a means to the commission of a crime a wall, roof, floor, door, or window be broken.
20. That the crime be committed with the aid of persons under fifteen years or age, or by means or motor vehicle, airships, or other similar means.
21. That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission.

Aggravating circumstances

Definition: Are those which, if attendant in the commission of the crime, serve to increase the penalty without, however, exceeding the maximum of the penalty provided by law for the offense.

Rationale: Greater perversity of the offender as shown by:

1. The motivating power
2. The place of commission
3. The means and ways employed
4. The time
5. The personal circumstances of the offender or offended party

Must be alleged in the information, and must be proven beyond reasonable doubt.

Aggravating circumstances that arise:

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

shall only serve to aggravate the liability in which such circumstances are attendant.

The circumstances which consist

1. In the material execution of the act

2. In the means employed to accomplish it shall serve to aggravate the liability of those persons only who had **knowledge** of them at the time of the execution of the act or their cooperation therein.

Kinds of aggravating circumstances

1. *Generic* – Can apply to all crimes
 - Can be offset by a mitigating circumstance
 - If not offset → penalty is maximum
2. *Specific* – Apply only to particular crimes
3. *Qualifying* – Changes the nature of the crime
 - Cannot be offset
4. *Inherent* – Necessary to accompany the commission of the crime

Exceptions, when aggravating circumstances do not increase the penalty

1. In themselves constitute a crime punishable by law
 - a. Example: ¶12 and arson
2. Included by the law in defining a crime and prescribing the penalty
 - a. Example: ¶3,18, or 19 and robbery
3. Inherent in the crime, i.e. it must of necessity accompany the commission
 - a. Example: ¶13 and theft, robbery, estafa, adultery; ¶1 and bribery and malversation

¶1: That advantage be taken by the offender of his public position

⚠ *Only applies when the offender is a public officer who takes advantage of his position.*

- The public officer must use his:
 - Influence
 - Prestige
 - Ascendancy
- **Threshold question:** *Did the accused abuse his office in order to commit the crime?*
- Failure in official duties is also tantamount to abuse of office.

Public officer – Any person who, by direct provision of the law, popular election, popular election or appointment by a 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 any of its branches

public duties as an employee, agent, or subordinate official, of any rank or classes (*Javier v. Sandiganbayan, citing the RPC*).

Not applicable when:

1. It is an integral element of, or inherent in, the offense (e.g. malversation [Art. 217] or falsification of document committed by public officers [Art. 171]).
2. If accused would have perpetrated the crime without occupying the position (e.g. a mayor who has a concubine).
3. If the accused did not take advantage of the I-P-A of his position.

¶2: That the crime be committed in contempt of or with insult to the public authorities

Requisites:

1. The public authority is engaged in the exercise of his functions
2. The crime is not committed against the public authority
3. The offender knows him to be a public authority
4. His presence has not prevented the offender from committing the criminal act

Public authority – (or a “person in authority”) A public officer who is directly vested with jurisdiction, that is, a public officer who has the power to govern and execute the laws.

⚠ *Not applicable when the crime is committed in the presence of an **agent** only (e.g. police).*

¶3.1: That the act be committed (1) with insult or in disregard of the respect due to the offended party on account of his (a) rank, (b) age, or (c) sex...

⚠ *Only applicable to crimes against persons or honor.*

“*With insult or in disregard*” – That, in the commission of the crime, the accused deliberately intended to offend or insult the sex or age of the offended party.

- In general, there **must be proof** of the specific fact or circumstance that the accused disregarded the respect due to the offended party (i.e. intent to offend).
- a. **Rank** – There must be a difference in the social condition of the offender and the offended party.
 - *Rank, defined:* Grade or official standing, relative position in civil or social life, or in any scale of comparison, status,

grade, including its grade, status or scale of comparison within a position.

b. **Age** – This applies both when the victim is of tender age (young) as well as of old age.

c. **Sex** – Only the female sex is being referred to here.

Disregard of sex is absorbed in treachery (¶16).

Not applicable when:

1. The offender acted with passion or obfuscation (Art. 13(6)).
2. There is a relationship between the victim and offender.
Not necessarily a familial relationship (e.g. employer-employee, ex-spouses).
3. The condition of being a woman is indispensable in the commission of the crime, such as:
 - a. Parricide
 - b. Rape
 - c. Abduction
 - d. Seduction

¶3.2: ... (2) or that it be committed in the dwelling of the offended party, if the latter has not given provocation

Dwelling – A building or a structure **exclusively** used for rest and comfort.

Dwelling includes/aggravating in:

1. Dependencies
2. Foot of the staircase
3. Enclosure under the house
4. Terrace
5. Another house where the victim used to live
6. Boarding house
7. Paternal home where the victim was a guest
8. A temporary dwelling

What aggravates:

1. Abuse of confidence
2. Violating of the sanctity of the home by trespassing

“If the latter has not given provocation” – If the offended party has provoked the incident, he loses his right to the respect due him in his own house.

- Prosecution must prove that no provocation was given by the victim so that this aggravating circumstance applies.

The provocation must be:

1. Given by the owner of the dwelling
2. Sufficient
3. Immediate

*Absent any of those, dwelling **is** aggravating.*

Not applicable when:

1. Both offender and victim lives in the same house
2. Robbery committed through force upon things (inherent)
 - a. But applicable in robbery with violence or intimidation
3. Trespass to dwelling (inherent)
4. There is sufficient and immediate provocation from the owner of the dwelling
5. The dwelling wasn't owned by the offended party
6. When the part of the dwelling isn't used as a private place of abode or residence
7. When a spouse and their paramour lives in the same house

¶4: That the act be committed with (1) abuse of confidence, or (2) obvious ungratefulness.

Abuse of confidence, requisites:

1. The offended party *trusted* the offender
2. The offender *abused* such trust by committing a crime against the offended party
3. The abuse of confidence *facilitated* the commission of the crime

The confidence must be immediate and personal between the victim and accused.

Abuse of confidence is **not aggravating** because it is inherent in:

1. Malversation (Art. 217)
2. Qualified theft (Art. 310)
3. Estafa by conversion or misappropriation (Art. 315)
4. Qualified seduction (Art. 337)

Obvious ungratefulness – It must be manifest and clear.

Examples:

1. Offender who killed his father-in-law who supported him
2. Offender killed the person whose house is where he lived and worked
3. Security guard who robbed the bank he's guarding
4. Visitor commits robbery in the house of his host

¶5: That the crime be committed in the palace of the Chief Executive, or in his presence, or where public authorities are engaged in the discharge of their duties, or in a place dedicated to religious worship

⚠ Official or religious functions are not necessary

1. Committing a crime in Malacañang or a church is aggravating,

- regardless of whether official/religious activities are done
2. The president need not be in Malacañang, his presence alone in other places is already aggravating

But, “*public authorities*” need to be engaged in the performance of duty

- There must be some performance of public functions

A place must be *actually* dedicated to religious worship

- Cemeteries are **not counted**.

In *People v. Jaurigue*, the court held that **the offender must have intention to commit a crime when he entered the place.**

- This doctrine may also be applicable in case a crime is committed in Malacañang or government offices.

¶16: That the crime be committed (1) in the nighttime, or (2) in an uninhabited place, or (3) by a band, whenever such circumstance may facilitate the commission of the offense.

The three are **aggravating when:**

1. *Facilitated* the commission of the crime (*statutory [objective] test*)
2. *Especially sought* for by the offender to ensure the commission of the crime or for the purpose of impunity
3. *Took advantage* thereof for the purpose of impunity

1. **Nighttime** – Period of darkness beginning at the end of dusk and ending at dawn.

a. Not aggravating when:

- i. Crime began at daytime
- ii. Crime didn't end during nighttime, though began at nighttime
- iii. Not actually committed in the darkness of light (i.e. brought a flashlight)
- iv. The place of crime is illuminated

2. **Uninhabited place** – This is determined whether in the place of its commission, there was a reasonable possibility of the victim receiving some help, i.e.:

- a. When the victims are the occupants of the only house in the place
- b. The offender **sought solitude** of the place to commit the crime either–
 - i. To an easy and uninterrupted accomplishment of their criminal design
 - ii. To ensure concealment of the offense

3. **Band** – Whenever *more than three armed malefactors* shall have *acted together* in the commission of an offense, it shall be deemed to have

been committed by a band.

- a. The armed men must act together in the crime (principals by direct participation)
- b. Aggravating in–
 - i. Crimes against property
 - ii. Crimes against persons
 - iii. Crime of illegal detention
 - iv. Crime of treason
- c. “By band” absorbs abuse of superior strength and use of firearms.
- d. **Not applicable** when:
 - i. If 1 of the 4 armed persons is a principal by inducement
 - ii. When any of the three tests above is lacking
 - iii. Crimes against chastity
 - iv. Brigandage (inherent)

¶17: That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune.

The offender **must take advantage of the calamity or misfortune.**

- Hence, this will not apply if the offender was provoked by the victim to commit the crime during the calamity.

¶18: That the crime be committed with the aid of (1) armed men, or (2) persons who insure or afford impunity.

Requisites:

1. That the armed men or persons took part in the commission of the crime, **directly or indirectly**.
2. That the accused **availed** himself of their aid or **relied** upon them when the crime was committed.

⚠ *Mere presence of armed men near the scene of the crime is not an aggravating circumstance.*

“*Aid of armed men*” – The armed men must act as accomplices only.

- They must not act under the same purpose as the principal accused. Otherwise, they are to be regarded as co-principals or co-conspirators.

Not applicable when:

1. Both offender and victim are armed
2. When there is **conspiracy** – The accused and those who cooperated acted under the same plan and for the same purpose

Compared with “by band” in ¶16:

1. By band – at least 4 armed malefactors
2. Aid of armed men – Even if only 1 of the offenders relied on the armed men’s aid, actual aid is unnecessary

“Aid of armed men” is *absorbed* by “employment of a band.”

- If there are 4 armed men → absorbed in band
- If there are 3 or less armed men → aid of armed man is aggravating

“Persons who insure or afford impunity” – Not necessarily armed.

¶9: That the accused is a recidivist.

‘Di na natuto’

Recidivist – Is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the RPC.

Requisites:

1. The offender is on trial for an offense
2. He was *previously convicted by final judgment* of another crime
3. Both the 1st and 2nd offenses are embraced in the same title of the Code
4. The offender is convicted of the new offense

“At the time of his trial for one crime” – Meant to include everything done in the course of the trial, from arraignment until after sentence is announced by the judge in open court.

- What is controlling is the time of trial, not the time of the commission of the offense.

A judgment in a criminal case **becomes final**:

1. After the lapse of the period for perfecting an appeal
2. The sentence has been partially or totally satisfied or served
3. The accused has waived in writing his right to appeal
4. The accused has applied for probation

An appeal must be taken within 15 days from promulgation or notice of the judgment or order appealed from.

Pardon does not prevent a former conviction from being considered as an aggravating circumstance.

- But *amnesty* extinguishes the penalty and its effects.

¶10: That the offender has been previously punished for an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.

Requisites:

1. The accused is on trial for an offense
2. He previously served sentence for another offense to which the law attaches an equal or greater penalty, or for two or more crimes to which it attaches lighter penalty than that for the new offense:
 - a. When the penalty provided by law for the previous offense is equal to that for the new offense; or
 - b. When the penalty provided by law for the previous offense is greater; or
 - c. When the accused served at least two sentences, if even if the penalties provided by law for the crimes are lighter
3. He is convicted of the new offense

⚠ *It is the penalty attached to the offense, not the penalty actually imposed that must be looked at.*

	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 (G) (par. 9)
2. Reiteration or habituality (G) (par. 10)
3. Multi-recidivism or habitual delinquency (extraordinary)
 - 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 (special)
 - 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

¶11: That the crime be committed in consideration of a price, reward or promise.

There must be 2 or more principals:

1. The one who gives or offers the price or promise (*principal by inducement*), and
2. The one who accepts it (*principal by direct participation*).

Therefore, this A.C. affects both the offeror and acceptor.

It must be shown that one of the accused used money or other valuable consideration for the purpose of inducing another to perform a crime.

- It's not required that the consideration be of value (pecuniary)
- This will be appreciated if the price, etc. is the primary consideration of the principal by direct participation.
- This will **not apply** when the price, etc. was given after the felony.

¶12: That the crime be committed by means of inundation, fire, poison, explosion, stranding of a vessel or intentional damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste and ruin.

⚠ **Unless used by the offender as a means to accomplish a criminal purpose, this cannot be considered.**

When used as a means to kill another person → **murder** (Art. 248(3)):

1. **"By means of fire"** – There should be an actual design to kill and that the use of fire should be purposely adopted.
 - a. Cf.: *conflagration* (par. 7), which is a *big fire*.
2. **"By means of explosion"** – If with treachery, explosion is the qualifying as it is the principal mode of attack.
3. **"By means of derailment of locomotive"** – This is without prejudice to the criminal liability for other consequences of the criminal act:
 - a. Damage to means of communication (Art. 330)
 - b. Murder (Art. 248)
 - c. Complex crime of damage to means of communication with homicide (Art. 330 and 239, in rel. to Art. 4 and 48)

The A.C. of fire, explosion, or derailment **no longer applies** when they're already a part of the definition of a particular crime (e.g. arson, crime involving destruction, and damages and obstruction to means of communication).

¶13: That the act be committed with evident premeditation.

Evident premeditation – The execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.

- It must be **evident**, i.e. there must be evidence that the accused meditated and reflected on his intent.

Requisites:

The prosecution must prove–

1. The *time* when the offender determined to commit the crime;
2. An *act* manifestly indicating that the culprit has clung to his determination; and
3. A *sufficient lapse of time* between the determination and execution, allowing him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.

"an act manifestly indicating..." – Based upon external acts.

- **This exists** after the offenders had determined to commit the crime and clung to that determination:
 1. Crime carefully planned
 2. Offenders previously prepared the means to carry out the crime
 3. A grave was prepared
 4. The perpetrators made several statements saying the victim's "day of reckoning" will come and armed themselves
 5. The accused sharpened his bolo before the crime
 6. The accused previously attempted to kill the victim
 7. Plotted the commission of the crime, and made preliminary efforts to carry it out.
- **Mere threats** do not show evident premeditation:
 1. A threat to kill must be supported by evidence that would disclose the true criminal state of mind of the accused
 2. An expression of his own determination to commit the crime is different from premeditation.
 3. After deliberately planning to commit the crime, the accused must be shown to have persistently and continuously followed it, after meditation and reflection.
- Existence of ill-feeling of grudge *per se* is **not proof** of evident premeditation.

"a sufficient lapse of time..." –The offender must have an opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what he planned to do.

- An interval long enough for his conscience and better judgment to overcome his evil desire and scheme.

A sufficient lapse of time is:

1. The accused had three days' time to meditate upon the crime
2. One month after a previous altercation between the victim and accused
3. One whole day to prepare for the attack
4. Half a day for meditation and reflection
5. Four hours between the rage and aggression of the accused is sufficient time for desistance (to come to senses)
6. 3.5 hours between the plan and commission of the crime is sufficient to reflect dispassionately upon the consequences of their plan
7. When the accused conceived of the assault at least one hour before its perpetration

Not a sufficient lapse of time:

1. 15 minutes after an altercation
2. Half an hour
3. 3 minutes
4. 2 hours between the planning to killing

Other showing of evident premeditation:

1. Conspiracy, when directly established
 - a. Not applicable for implied conspiracy.
2. When done in consideration of price or reward
 - a. But: Premeditation is absorbed by reward or promise for the *inductor only*.
3. In robbery, when the premeditation included the killing of the victim.
 - a. Generally, evident premeditation is inherent in robbery.

Evident premeditation is **not aggravating when the victim is different from that intended** (*aberratio ictus*).

- **Exception:** When it is shown that the *conspirators were determined to kill anyone who dares to help the victim*.
- Hence, it is not necessary that there is a plan to kill a particular person.

People v. Tubongbanua, G.R. 171271, Aug. 31, 2006

Treachery was attendant:

1. **First requisite** – “Nadedemonyo na ako” and told the secretary he will kill her.
2. **Second requisite** – He talked to the associate, warning him to not get too close to the victim.
3. **Third requisite** – A day lapsed from the 1st requisite to the killing.

¶14: That (1) craft, (2) fraud, or (3) disguise be employed.

1. **Craft** – Use of intellectual trickery or cunning by the accused.
2. **Fraud** – Insidious words/machinations used to induce the victim to act in a manner which would enable the offender to carry out his design.
3. **Disguise** – Resorting to any device to conceal identity. It must be superficial but *somewhat effective*.

⚠ There is a thin line distinguishing fraud from craft.

This circumstance is characterized by the intellectual or mental rather than physical means to which the criminal resorts to carry out his design.

How is craft distinguished from fraud?

- Direct inducement by insidious words/machinations → fraud
- Act of accused to not arouse suspicion → craft

¶15: That (1) advantage be taken of superior strength, or (2) means be employed to weaken the defense.

“*advantage be taken*” – Means to use purposely excessive force out of proportion to the means of defense available to the person attacked.

Requisites:

1. That the accused is physically stronger, and
2. He abused such superiority.

Factors to consider:

1. Age
2. Size
3. Strength

of the parties. There must be a **notorious inequality** of forces between the victim and aggressor, which is taken advantage of.

No use of advantage of superior strength in–

1. One who attacks another with passion and obfuscation
 - a. This implies that Art. 13(6) cannot be taken with Art. 14(15).
2. When a quarrel arose unexpectedly and the fatal blow was struck at a time when the aggressor and victim were engaged against each other (*nag-aaway*).
3. When the perpetrators attacked the victim alternately (*ginulpi*)
4. In parricide (inherent)
5. 1 acted as principal; 2 as accomplices
6. When treachery is attendant (*treachery absorbs superior strength*)

Numerical superiority **does not always mean** abuse of superiority, but **there**

is when–

1. The assailants were armed
2. The assailants ganged up on the victim
3. Multiple assailants and victim was unarmed
4. Assailants, armed, cooperated to secure advantage

“by a band” vs. “abuse of superior strength” – the former is appreciated when there are at least 4 armed malefactors (**numerical, armed**), regardless of the comparative strength; in the latter, what is taken into account is the **relative physical strength**.

“means employed to weaken the defense” – A separate aggravating circumstance.

- Only applicable to crimes against persons, and persons and property (i.e. robbery with physical injuries or homicide).
- It is absorbed by treachery.

People v. Francisco, G.R. 118573-74, May 31, 2000

Anent the qualifying circumstance of taking advantage of superior strength, numerical superiority is not the sole criterion.

This is because there was only one knife used during the two stabbing incidents.

¶16: That the act be committed with treachery (alevosia).

Treachery – The offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself from the defense which the offended party might take.

- The offended party was not given the chance to make a defense
- When the attack was sudden, unexpected, without warning, and without giving the victim an opportunity to defend himself or repel the aggression
- Must be proven by clear and convincing evidence
- *Sudden-Unexpected-Deliberate*

Rules:

1. Applicable only to crimes against the person
2. Means, methods and forms need not insure accomplishment of crime (only execution)
 - a. It's not necessary that it be consummated.
3. The mode of attack must be consciously adopted
 - a. Accused must make some preparation to kill the victim

- b. Mode of attack must be thought of by the offender
- c. It may be inferred from the circumstances

Requisites:

1. That at the time of the attack, the victim was not in a position to defend himself
2. That the offender consciously adopted the particular means, method or form of attack employed by him

Examples of attacks showing intention to eliminate risk:

1. Victim asleep
2. Victim half-awake/just awakened
3. Victim grappling or being held
4. Victims were eating
5. Attacked from behind

Q: *Must treachery be present at the beginning of the assault?*

A: It must be shown that the treacherous acts were present and preceded the commencement of the attack which caused the injury complained of.

1. When the aggression is continuous, treachery must be present at the beginning of the assault
2. When the assault was not continuous, it is sufficient that treachery was present at the moment the fatal blow was given.

In treachery, it **makes no difference** if the victim was the same person the accused intended to kill.

- *Rationale:* When there is treachery, it is impossible for either the intended victim or the actual victim to defend himself against the aggression.

Treachery **may be appreciated even if:**

1. Aberratio ictus
2. Error in personae
3. The accused had a generic intent to kill

Treachery is **considered against all** the offenders, *when there is conspiracy*.

- The act of one is the act of all.

The **mastermind should have knowledge of the employment** of treachery if he was not present when the crime was committed.

- But, when it is not shown that the principal by induction directed/induced the killer to employ treachery, it shall not be taken against the principal by induction but to the actual killer only.

Treachery is absorbed in treason by killings (including evident premeditation and use of superior strength).

Treachery absorbs:

1. Abuse of superior strength (par. 15.1)
2. Aid of armed men (par. 8.1)
3. By a band (par. 6)
4. Nighttime (par. 6)
5. Means to weaken the defense (par. 15.2)

The following A.C. are included in treachery:

1. Craft
2. Disregard of age and sex

Treachery cannot coexist with passion or obfuscation (Art. 13(6)).

To avoid confusion–

- **Treachery** – means, methods or forms of attack are employed to make it hard/impossible for the victim to defend
- **Abuse of superior strength** – Offender only takes advantage of his superior strength
- **Means employed to weaken the defense** – Offender employs means to only *materially* weaken the victim's resistance.
 - Treachery > Means employed > Abuse of superior

People v. Gonzales, G.R. 139542, June 21, 2001

The determining factor on whether or not the commission of a crime is attended by treachery is not the resulting crime committed but the mode of attack employed in its execution.

Chance encounters, impulse killings or crimes committed at the spur of the moment or that were preceded by heated altercations are generally not attended by treachery for lack of opportunity of the accused to deliberately employ a treacherous mode of attack.

¶17: That means be employed or circumstances brought about which add ignominy to the natural effects of the act.

Ignominy – A circumstance pertaining to the moral order, which adds disgrace and obloquy to the material injury caused by the crime.

It is only the **result**, but it can be *achieved* either by **(1) means employed** or **(2) circumstances** brought about.

Applicable to:

1. Crimes against chastity
2. Less serious physical injuries

3. Light/grave coercion
4. Murder

“That means be employed” – e.g. when the accused raped a woman after winding cogon grass around his genitals.

“That ... circumstances be brought about” – e.g.:

1. Raping a married woman in the presence of her husband
2. Woman successively raped by men
3. The accused used not only missionary but also dog style of sexual intercourse
4. When the accused maltreated an old woman and took off her drawers because the removing of her drawers could have no other purpose but to put her to shame.

“Which add ignominy to the natural effects of the act” – The means employed or the circumstances brought about must tend to make the effects of the crime more humiliating or to put the victim to shame, e.g.:

1. Order the victims to display nakedness before being raped
2. Examined the genital of the victim before raping her
3. Inserted the pistol into her mouth and fired the gun

No ignominy in–

1. Slicing the flesh of the victim after killing her
2. Dismembering the body of an already dead person
3. Firing more shots at the prostrate bodies of the victims
4. Killing a man in the presence of his wife

Rape could be considered as ignominy in robbery with homicide (rape as an aggravating circumstance in itself).

¶18: That the crime be committed after an unlawful entry.

Unlawful entry – When an entrance is effected by a way not intended for the purpose.

- A means to effect entrance and not for escape.

⚠ *It is **not** aggravating in **trespass to dwelling and robbery with force upon things (inherent)**.*

There is unlawful entry in–

1. Rape committed in a house after an entry through the window
2. Murder where the accused entered the room of the victim via window
3. Robbery with violence against or intimidation of persons (not inherent)

4. Theft, if it is the only felony alleged in the information

Unlawful entry and dwelling may be **taken separately** in **murders** committed in a dwelling (*remember, dwelling only applies to crimes against persons/honor*).

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

“As a means to the commission of a crime” – It is not necessary that the offender should’ve entered the building (e.g. *sinungkit*). It’s enough that the breaking was utilized as a means to commit the crime.

- Must be to effect **entrance** only.

⚠ *This is not aggravating when the breaking was used to get out of the place. Only applies when the breaking is used to enter.*

Breaking, when lawful – The officer, when refused entry after announcing his purpose and authority, or to liberate himself when unlawfully detained (Rules of Criminal Procedure).

¶20: That the crime be committed (1) with the aid of persons under fifteen years of age, or (2) by means of motor vehicles, airships, or other similar means.

Rationale:

1. In (1): To repress the frequent practice of professional criminals to use minors, taking advantage of their irresponsibility
2. In (2): To counteract the great facilities found by modern criminals in said means to commit crime and flee and abscond once committed

“By means of motor vehicles” – Aggravating when the accused used the motor vehicle in going to the place of the crime, in carrying away the effects thereof, and in facilitating their escape.

“Or of similar means” – Motorized vehicles, or other efficient means of transportation similar to automobiles or airplanes.

- Hence, the use of a bike is not aggravating.

People v. Enguito, G.R. 128812, Feb. 14, 2000



To appreciate the qualifying circumstance of use of a motor vehicle, it must be shown that the accused intentionally chose the motor vehicle as a means

of committing the offense.

¶21: That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission.

Q: What is cruelty?

A: When the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary physical pain in the consummation of the criminal act.

- Deliberate prolongation of the physical suffering of the victim

Requisites of cruelty:

1. That the injury caused be *deliberately increased* by causing other wrong
2. That the *other wrong* be *unnecessary* for the execution of the purpose of the offender

“Be deliberately augmented by causing other wrong” – The accused at the time of the commission of the crime had a deliberate intention to prolong the victim’s suffering

“Other wrong not necessary for its commission” – e.g. striking the victim with a gun to point the offenders where the money is; striking is “other wrong” but necessary to the crime of robbery.

There is cruelty–

1. Offender burned the mouth of the child before killing him
2. Extracting victim’s eye and stuffing mud in his mouth

There is no cruelty when other wrongs were done after the victim was dead.

Plurality of wounds alone does not show cruelty.

- It must be shown that the wounds were used to prolong suffering

Q: When the series of acts causing unnecessary sufferings of the victim took place in rapid succession, is there cruelty?

A: Yes, e.g. when the offender grabbed the victim from the ground, while the other battered her with a rifle, and pounded her on the ground.

Ignominy vs. cruelty – The former is moral suffering, the latter is physical suffering.

Aggravating circumstance peculiar to certain felonies/crimes–

1. The offense (violation of domicile) 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 (Art. 128(2))

2. The crime (interruption of religious worship) shall have been committed with violence or threats (Art. 132(2))
3. That the (direct) 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 (Art. 148)
4. If the crime (slavery) be committed for the purpose of assigning the offended party to some immoral traffic (Art. 272(2))
5. If the (grave) threats be made in writing or through a middleman (Art. 282)
6. If the robbery with violence against or intimidation of persons is committed in an uninhabited place *or* by a band, etc., or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm (Art. 295)
7. If the robbery with the use of force upon things (Art. 299) is committed in an uninhabited place *and* by a band (Art. 300)
8. Use of an unlicensed firearm in homicide or murder
9. Use of explosives
10. Under the Dangerous Drugs Act: offender under drugs; drug pushers who use minors/mentally incapacitated as pushers; when the victim is a minor and drugs is the proximate cause of the death thereof

ART. 15.

Alternative circumstances

Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication, and the degree of instruction and education of the offender.

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

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

Alternative circumstances

Definition: Those which must be taken into consideration as *aggravating or mitigating*, according to the *nature and effects* of the crime and the *other conditions* attendant.

Rationale: Nature and effects of the crime and other conditions attending its commission.

The alternative circumstances are:

1. Relationship
2. Intoxication
3. Degree of instruction and education of the offender

Relationship, alt. cir. 1

Taken into consideration when the offended party (victim) is the:

1. Spouse
2. Ascendant
3. Descendant
4. Legitimate, natural, or adopted brother or sister
5. Relative by affinity in the same degree of the offender
6. Other relatives included:
 - a. Stepparents and stepchild

Aggravating when:

1. **General rule:** In crimes against persons in cases where-
 - a. Victim is a higher degree than the offender (son to parent)
 - b. Offender and victim are in the same degree (brothers)
2. Any of the serious physical injuries (Art. 263) when the victim is a descendant (parent to child)
3. Homicide/murder when the victim is a lower degree
4. Crimes against chastity (always aggravating!)
5. In rape (crimes against persons), relationship is a special circumstance which increases penalty to death

Mitigating when:

1. Crimes against property (robbery, usurpation, fraudulent insolvency, and arson)
2. **Exempting** for theft, swindling or malicious mischief (Art. 332), if living together (*See e.g. Vda. de Carungcong v. People*)
3. Trespass to dwelling

Neither aggravating nor mitigating when it is an **element**, e.g.:

1. Parricide
2. Adultery
3. Concubinage

Rationale for difference in the rule: It is shocking for our moral sense that an elder has committed an offense against a relative of a lower degree (e.g. father raping his daughter).

⚠ *The rule may change because of the “other condition attending” the crime,*
e.g.:

1. Brothers-in-law could be mitigating when the accused killed his brother-in-law for being the paramour of the accused's wife.
2. Maltreatment of the accused to the brother-in-law when the cause of the maltreatment was the desire to render service to a relative.

Intoxication, alt. cir. 2

Mitigating:

1. If *not habitual*
2. If *not subsequent* to the **plan** to commit a felony

To **appreciate as a mitigating circumstance**, it must be shown that:

1. At the time of the commission of the crime, the accused has taken such quantity of alcoholic drinks as to *blur his reason and deprive him of a certain degree of control*
2. Intoxication is not habitual, or subsequent to the plan to commit the felony (*uminom bago gawin ang krimen, pero pagkatapos planuhin*).

Aggravating:

1. If *habitual*
2. If *intentional* (i.e. subsequent to the plan to commit a felony)

But see People v. Hernandez (91 Phil. 334): Even if intoxication is not habitual, it is aggravating when subsequent to the plan to commit the crime.

Habitual drunkard – One given to intoxication by excessive use of intoxicating drinks.

- The habit should be actual and confirmed
- But it is not necessary that it be continuous or by daily occurrence

Evidence for intoxication to be aggravating:

1. Excessive and habitual drinking
2. Purposely got drunk to commit the crime

In all cases, **the accused's state of intoxication must be proved.**

- But when intoxication is established by satisfactory evidence, it is presumed to be nonhabitual or intentional, unless the contrary is proven.
- **Presumption: Mitigating.** Intoxication is accidental and nonhabitual.

⚠ *Non-habitual intoxication, lack of instruction, and obfuscation cannot be taken as three distinct circumstances. Only one mitigating circumstance.*

Degree of instruction and education of the offender, alt. cir. 3

Low degree/lack → mitigating, i.e.:

1. Only applies to him who has not received any instruction
2. Did not finish grade 1

Requisites for mitigating:

1. Lack of sufficient intelligence
2. Illiteracy

⚠ *The question of lack of instruction must be raised in the trial court. It cannot be raised for the first time in the appellate court.*

Not mitigating, e.g.:

1. Accused finished grade 2, and answered English questions in Filipino
2. Knows how to sign his name

Ordinarily, low degree/lack of instruction is mitigating in all crimes, except:

1. In crimes against property (e.g. estafa, theft, robbery, arson)
2. Crimes against chastity (formerly, rape, and adultery)
3. Treason
4. Murder

Rationale: Natural law

High degree → aggravating, e.g.:

1. A lawyer who commits estafa
2. A medical student who was convicted of slander by deed

Requisite: When the offender availed himself or took advantage of it in committing the crime.

PERSONS CRIMINALLY LIABLE FOR FELONIES

ART. 16

Who are criminally liable.

The following are criminally liable for grave and less grave felonies:

1. Principals.
2. Accomplices.

3. Accessories.

The following are criminally liable for light felonies:

1. Principals.
2. Accomplices.

General rule: Only principals and accomplices are liable for light felonies.

Rules relative to light felonies:

1. Light felonies are punishable only in the consummated stage (Art. 7)
2. Punishable in the attempted and consummated stages if light felonies are committed against persons or property (Art. 7)
3. Only principals and accomplices are liable for light felonies (Art. 16)
4. Accessories are not liable for light felonies, even if committed against persons or properties (Art. 16)

Parties in a crime:

1. Active subject – the criminal
2. Passive subject – the injured party (e.g. man, juridical person, group, State)

Only natural persons can be offenders/active subjects because–

1. Only a natural person can act with malice or negligence
 2. A juridical person cannot commit a crime which malicious intent is required
 3. There is substitution of deprivation of liberty (subsidiary imprisonment) for pecuniary penalties in case of accused's insolvency
 4. Penalties like imprisonment and *destierro* can be executed only against individuals
- If the crime is committed by a juridical entity, its officers are responsible for the offenses and be penalized for the crime.
 - As such, criminal action is limited to the corporate agents guilty of an act amounting to a crime, and never against the corporation itself.
 - However, juridical persons are criminally liable in certain SPL, e.g.:
 - Corporation Code
 - Public Service Law
 - Securities Regulation Code
 - OEC
 - Only officers who are principals by direct participation, inducement, or indispensable cooperation, or as accomplices in the commission of an act punishable by law are liable.
 - Exceptions:
 1. Managing heads, directors or partners for SSS violations

2. Certain enumerated officers (partner, president, GM, branch manager, treasurer, OIC, and employees) for NIRC (tax) violations
3. Directors, trustees or officers for Corporation Code violations

- While corporations cannot be the active subject, it can be a passive subject of a crime.

ART. 17.

Principals

The following are considered principals:

1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it.
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

Principal – Criminal liability is limited to his own acts and presupposes absence of prior agreement or unity in purpose

Co-conspirator – His responsibility includes the acts of his fellow conspirators (the act of one is the act of all)

In **conspiracy by prior agreement**, it is necessary that a co-conspirator should have performed an overt act as a direct/indirect contribution in the execution of the crime agreed upon. His presence is necessary. The overt act may be:

1. Active cooperation in the commission of the crime,
2. Exerting moral ascendancy over other conspirators, or
3. Moral assistance to his co-conspirators by being present.

If there is no conspiracy, each of the offenders is liable only for the act performed by him.

¶1: Principals by direct participation

Requisites:

1. They participated in the criminal resolution
 2. They carried out their plan and personally took part in its execution by acts which directly tended to the same end
- Absent this:* Only **conspiracy** may be considered against the several defendants.

In conspiracy by prior agreement, the **principal by direct participation who does not appear** in the scene of the crime is **not liable** because:

1. Nonappearance implies desistance
2. Conspiracy in itself is not a felony, unless the code provides otherwise. Hence, the would-be participator has not yet committed any crime.
3. There is no basis for criminal liability because there is not criminal participation.

“Personally took part in its execution” – The principal by direct participation must be at the scene of the crime, personally taking part in its execution.

- **Except:** If there is conspiracy and the principal by direct participation has already performed his part prior to the actual commission of the crime.
- There must be showing that the cooperation is knowingly or intentionally given.

Q: What if there are two or more persons who personally execute the crime? Are all of them to be considered as principals by direct participation?

A: It depends. If there was a conspiracy by prior agreement, and all of them appeared at the scene of the crime, even if only one person personally executed the crime while the other merely stood and watched, both of them would be regarded as principals by direct participation.

⚠ *If conspiracy is instantaneous or spur of the moment, if the person alleged to be a conspirator did not actually participate, it shows that he had no intent to join in the commission of the crime.*

- **Implied conspiracy** – Deduced from the mode and manner in which the offense was committed.

¶2: Principals by inducement

Requisites:

1. That the inducement be made directly with the intention of procuring the commission of the crime
2. That such inducement be the determining cause of the commission of the crime by the material executor

How to constitute inducement:

1. The inducer must show persistent effort and presentation of the very strongest kind of temptation to commit the crime.
2. There must be principal by direct participation.
 - a. Obviously, the crime cannot be committed if there is no principal by direct participation.
3. The inducement must be the determining cause of the commission of the crime, i.e. the crime would not have been consummated without

the inducement (determining cause).

- a. If the crime committed has not been the one induced/given in the order, inducement is not material and not the determining cause.
4. The inducement must precede the act and must be so influential, that without it, the act would not have been performed.

Two kinds of principal by inducement:

1. Directly **forcing** another to commit a crime by:
 - a. Using **irresistible force** (the force must be **physical** and **irresistible**)
 - b. Causing **uncontrollable fear**
Requisites:
 1. The person causing the fear must be the same person who forces another to commit the felonious act
 2. The fear must be real and imminent
 3. The fear must be of an injury greater than or at least equal to the felonious act.

The executor may be exempt from criminal liability (Art. 12(5-6)). No conspiracy.

2. Directly **inducing** another to commit a crime by:
 - a. Giving of price or offering of reward or promise.
Both the principal and inducement and principal by direct participation are liable.
 - b. Using words of command
The person giving the command and the executor are equally liable.

Requisites:

1. Words must be uttered **prior** the crime
2. The one giving command must have **ascendancy or influence** over the person who acted
3. The executor has **no personal reason** to commit the crime
4. The words used must be so **direct, efficacious, and powerful** as to amount to physical/moral coercion
5. The one uttering must have the **intention of procuring** the commission of the crime

Q: What happens when the principal by direct participation is acquitted?

A: Conspiracy is negated by the acquittal of co-defendants. But it must be shown that another has actually committed the crime, otherwise, one cannot be guilty of instigating the crime.

- But if the principal by direct participation is acquitted because of lack of intent/malice, the principal by inducement will not be acquitted.
- Or, if the principal by direct participation avails any of the exempting circumstances, the principal by inducement can be held

liable.

Q: Is there an exception where a conspirator need not be present at the scene of the crime?

A: The mastermind or the person who induced the others to execute the crime need not be present at the scene of the crime. That is why he induces others to commit the crime so that he would just remain in the background. His inducement is his criminal act.

13: Principals by indispensable cooperation

Requisites:

1. Participation in the criminal resolution:
 - a. Requires participation in the criminal resolution
 - b. Conspiracy
 - c. Concurrence is sufficient
 - d. Cooperation is indispensable
2. Cooperation in the commission of the offense by performing another act, without which it would not have been accomplished.
 - a. If corporation is dispensable → accomplice
 - b. If cooperation is necessary → direct participation

“Another act” – Act that should be different from the overt act of the principal by direct participation.

“Cooperate” – To desire or wish in common a thing.

- Does not necessarily mean previous understanding
- Can be inferred or explained from the circumstances of each case

Collective criminal responsibility

- Offenders are criminally liable in the same manner and to the same extent
 - Penalty → same for all
- Who has collective responsibility?
 1. PDPs
 2. PI ↔ PDP
 - Except:** PI who directly forced another to commit a crime (exempting)
 3. PIC ↔ PDP

Quasi-collective criminal responsibility

- Some of the offenders are principals and the others are accomplices
- Between collective and criminal

Individual criminal responsibility

- When there is no conspiracy (no unity of criminal purpose/intention) immediately before the commission of the crime
 - Criminal responsibility is individual
- Only liable for the act committed by him

ART. 18.

Accomplices

Accomplices are those persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.

Definition: Persons who, not acting as principals, cooperate in the execution of the offense by previous simultaneous acts, which are not indispensable (dispensable) to the commission of the crime

- Mere instruments
- Acts are not essential
- a.k.a. “accessory before the fact”

Requisites:

1. **Community** of design
2. He cooperates in the execution of the offense by **previous or simultaneous acts** by supplying material or moral aid in the execution of the crime in an efficacious way
3. There be a **relation** between the acts of the accomplice and principal

The cooperation may be:

1. Previous act
2. Simultaneous act

There must be a PDP:

1. PDP – originates the criminal design (mastermind)
2. Accomplice – merely concurs

Participation of the accomplice:

1. He was aware that the objective of the acts he was tasked to do was illicit, or if the crime actually committed was a natural or probable consequence of the intended crime (if the accomplice didn't know the “real” crime planned by the PDP)
 - a. Example: The owner of the gun is not an accomplice if he didn't know that the gun would be used to kill someone.
2. For mere presence to be appreciated as an accomplice, it must be shown that:
 - a. There must knowledge of the criminal purpose/design
 - b. Gave aid or encouragement, either morally or materially
3. The accomplice must not have inflicted mortal wounds.

a. i.e.: The accomplice's role must be lesser than that of the PDP.

⚠ *In case of doubt, rule in favor of the accused: Hence, participation will only be deemed as an accomplice.*

	Accomplice	Conspirator (principal)
As to when criminal intention is known	After the principals have reached the decision	They know it themselves because they planned it
As to participation	Merely instruments	Authors

In both instances, they know and agree/concur with the criminal design.

	PIC	Accomplice
Dispensability of cooperation	Indispensable (required)	Necessary and dispensable
Purpose of participation	Participation in the criminal resolution, either: <ol style="list-style-type: none"> 1. Conspiracy, or 2. Unity of criminal purpose and intention immediately before the crime.	Cooperates in the execution of the crime in an efficacious way
Timing	Cooperates before the commission	Cooperates prior/simultaneously
Nature of the act	Not an act of execution	Can be an act of execution

⚠ *There can be no accomplice if only one person committed the crime!*

ART. 19. *Accessories*

Accessories are those who, having knowledge of the commission of the

crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime.
2. By concealing or destroying the body of the crime, or the effects, instruments thereof, in order to prevent its discovery.
3. By harboring, concealing, or assisting in the escape of the principals of the crime, provided that the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

Accessories are those who–

1. Having knowledge of the commission of the crime; and
2. Without having participated either as principals or accomplices, take part subsequent to its commission in any of the following acts (pars. 1-3).

“Having knowledge” – An accessory must have knowledge of the commission of the crime, and having that knowledge, he took part subsequent to its commission.

“Commission of the crime” – The crime committed by the principal must be proved beyond reasonable doubt.

“Without having participated therein either as principals or accomplices” – Method of elimination: check first if Arts. 17 or 18 applies.

“Take part subsequent to its commission” – After the crime has been committed. Pars. 1-3 refer to acts which are performed after the crime has been committed.

⚠ *The accessory should not be in conspiracy with the principal, else he will also be a principal.*

¶1: By profiting themselves or assisting the offender to profit by the effects of the crime

1. By profiting themselves by the effects of the crime, e.g.:
 - a. A person who used a property received by another person, knowing that the thing was stolen. The person is an accessory to theft.
 - b. Shared the rewards in the murder of someone.
 - c. The accessory should not take the property without the

consent of the principal – If he took it without the principal's consent, he is a principal in the crime of theft.

But, when the person knowingly acquired or received property of brigands, the person is a principal (Art. 307).

2. Assisting the offender to profit by the effects of the crime, e.g.:
 - a. Selling a stolen object for the thief
 - b. Runners/couriers in obtaining the ransom money

¶2: By concealing or destroying the body of the crime to prevent its discovery.

“Body of the crime” – *Corpus delicti*. The body or substance of the crime, and the fact that a crime has been actually committed.

“To prevent its discovery” – “Its” → Crime.

Requisites:

1. The fact that the crime was committed
2. The participation of the offender in the commission of the crime

Concealing/destroying must be **intended** to prevent the discovery of the crime. Hence, mere silence is not punishable.

Except–

1. Conspiracy to commit treason → misprision of treason (Art. 116)
2. Inciting to sedition (Art. 142)

¶3: By harboring, concealing or assisting in the escape of the principal of the crime.

Public officers – Any crime.

Requisites:

1. Accessory is a public official
2. He harbors, conceals, or assists in the escape
3. Acts with abuse of his public functions
4. Any crime, **except** for light offenses

Private persons – Only TPMA-H.

Requisites:

1. Accessory is a private person
2. He harbors, conceals, or assists in the escape
3. The crime committed by the principal is either:
 - a. Treason
 - b. Parricide
 - c. Murder
 - d. Attempt against the life of the Chief Executive

- e. Or the principal is a habitual offender

“Habitually guilty of some other crime” – The accessory must have knowledge of the principal being habitually guilty of some other crime.

Accessory in robbery and theft is a principal in fencing.

- **Fencing** – Buying, receiving, possessing, keeping, acquiring, concealing, selling or disposing of an item to have been derived from the proceeds of the crime of robbery or theft.
- **Fence** – Any person which commits an act of fencing.
 - Hence, the crime of accessory in a robbery and fencing are separate and distinct offenses.

People v. Tolentino, G.R. 139179, April 3, 2002



A person who did not personally inflict the fatal blow could only be liable as a principal, if conspiracy is proven.

Prior knowledge of the criminal design does not automatically make one as an accomplice, if he did not show concurrence to the said plan.

Doing any of the acts in Art. 19 *while fearing for one's life* may exempt one as an accessory.

ART. 20.

Accessories who are exempt from criminal liability.

The penalties prescribed for accessories **shall not be imposed** upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sister, or relatives by affinity within the same degrees, **with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article.**

Rationale: Ties of blood and the preservation of the cleanliness of one's name, which **compels one to conceal crimes** committed by relatives so near as those mentioned in this article.

⚠ *Does not include relatives by consanguinity (cf: defense of a relative).*

People v. Ortega, G.R. 116736, Jul. 24, 1997



While Garcia was proven to have assisted in concealing the body of the crime, he must be acquitted as he is the brother-in-law of Ortega. Garcia, being a covered relative by affinity of the principal accused, Benjamin Ortega, Jr., is legally entitled to the aforementioned exempting provision of the Revised Penal Code.

Always begin by asking: Is there conspiracy?

PENALTIES

Penalty – The suffering inflicted by the State for the transgression of a law.

- **Purpose:** To secure justice.

Juridical conditions:

1. Productive of suffering
2. Commensurate with the offense
3. Personal
4. Legal
5. Certain
6. Equal for all
7. Correctional

Theories justifying penalty:

1. Prevention
2. Self-defense
3. Reformation
4. Exemplarity/deterrence
5. Justice

RPC penalty **three-fold purposes:**

1. Retribution or expiation – The penalty is commensurate with the gravity of the offense
2. Correction or reformation – As shown by the rules which regulate the execution of the penalties consisting in deprivation of liberty
3. Social defense – Shown by its inflexible severity to recidivists and habitual delinquents.

Constitutional restriction on penalties – Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted.

- **“Cruel and unusual”** – When it is so disproportionate to the offense committed as to shock the moral sense of all reasonable men as to what is right and proper under the circumstances.

ART 21.

Penalties that may not be imposed.

No felony shall be punishable for any penalty not prescribed by law prior to its commission.

This prohibits the government from punishing any person for any felony with any penalty which has not been prescribed by the law.

- Does not apply to the RPC because all felonies here as
- An act or omission cannot be punished if during the time of its commission, there was no law prohibiting it.
- *Nullum crimen nulle poena sine lege* – There is no crime where there is no law punishing it.

There is no such thing as common law crimes in the Philippines.

ART. 22.

Retroactive effect of penal law.

Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

Art. 22 **does not apply** to the RPC as it can only be invoked where some former or subsequent law is being considered. It must relate:

1. To penal laws existing *prior* to the RPC, in which the penalty was less severe than those of the code, or
2. To laws enacted *subsequent* to the RPC, in which the penalty is more favorable to the accused.

General rule: Give criminal laws *prospective* effect.

Exception: Give them *retroactive* effect when favorable to the accused.

Giving the law a retroactive effect, if unfavorable to the accused, will make the law an **ex post facto law**.

1. Makes criminal an act done before the passage of the law and punishes such an act;
2. Aggravates a crime;
3. Inflicts a greater punishment than the law annexed to the crime when committed;
4. Alters the legal rules of evidence, and authorizes conviction upon

less or different testimony than the law required at the time of commission of the crime;

5. Assumes to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and
6. Deprives a person accused of a crime some lawful protection he was initially entitled to.

“Although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same” – Retroactive effect applies even to persons already serving sentence, or–

1. The crime has been committed and the prosecution begins
2. Sentence has been passed but service has not begun
3. The sentence is being carried out

“Habitual criminal” – If within a period of 10 years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robbery, theft, estafa, or falsification, he is found guilty of any said crime a third time or oftener.

- **Not entitled** to retroactivity of a favorable statute.

Effects of repeal/amendments of penal laws

1. Lighter penalty – If the repeal makes the penalty lighter in the new law, the new law shall be applied, except:
 - a. When the law does not provide for retroactivity
 - b. When the accused is a habitual offender
 2. Heavier penalty – If the new law imposes a heavier penalty, the law in force at the time of the offense shall be applied.
 3. Decriminalization – If the new law repeals the existing law such that the act penalized is no longer punishable, the crime is obliterated.
- If an old law has been repealed by a new law, but still reenacted the penal provision, a person may be charged under the new (repealing) law.
 - When the old and new law penalize the same offense, the law with a lighter penalty prescribed must be applied.
 - A self-repealing law also carries with it the consequence of decriminalization.

If a penal law has been completely repealed–

1. *Pending case* – Dismissed, whether the accused is a habitual delinquent or not
2. *Offender already convicted/serving sentence* – Released if he is not a habitual delinquent or the law provides that detention is to continue.

If a penal law has been partially repealed, impliedly repealed, or

repealed by reenactment–

1. *First law will govern* – If the accused is a habitual delinquent or when the favorable second law prohibits retroactivity
2. *Second law will govern* – If favorable to the offender who is not a habitual delinquent or the law is silent as to its retroactivity

ART. 23.

Effect of pardon by the offended party.

A pardon by the offended party does not extinguish criminal action **except as provided in Article 344 of this Code**; but civil liability with regard to the interest of the injured party is extinguished by his express waiver.

Rationale: A crime committed is an offense against the State. Only the Chief Executive can pardon the offenders (Art. 36).

“Except as provided in Article 344” – The offended party in the crimes of adultery and concubinage cannot institute criminal prosecution, if he shall have consented or pardoned the offenders.

- Can be implied
- Must be done before prosecution/filing of information
- Does not extinguishes criminal liability, only a bar to prosecution

There is also no prosecution if the offender has been expressly pardoned:

1. Seduction
2. Abduction
3. Acts of lasciviousness
4. Adultery
5. Concubinage

An offense causes 2 classes of injury:

1. Social injury – Disturbance and alarm which are the outcome of the offense
2. Personal injury – Caused to the victim

The victim can only waive personal injury which gives rise to civil liability. The waiver must be express, not implied.

ART. 24.

Measures of prevention of safety which are not considered penalties.

The following shall not be considered as penalties.

1. The arrest and temporary detention of accused persons, as well as

their detention by reason of insanity or imbecility, or illness requiring their confinement in a hospital.

2. The commitment of a minor to any of the institutions mentioned in Article 80 and for the purposes specified therein.
3. Suspension from the employment or public office during trial or in order to institute proceedings.
4. Fines and other corrective measures which, in the exercise of their administrative or disciplinary powers, superior officials may impose upon their subordinates.
5. Deprivation of rights and the reparations which the civil law may establish in penal form.

These are not considered penalties because they are not imposed as a result of judicial proceedings. They are merely preventive measures.

1. Confinement of an insane/imbecile who has not been arrested for a crime.
2. Referral of a CICL to a Bahay Pag-Asa
3. Preventive suspension – A measure intended to enable the disciplining authority to investigate the charges against the respondent by preventing the latter from intimidating or in any way influencing witnesses against him.
4. Fines not imposed by courts
5. *E.g.* Art. 332 of the Civil Code, which provides that parental rights are lost by any parent found guilty of the crime of corruption of their minor.

ART. 25. ★

Penalties which may be imposed.

The penalties which may be imposed, according to this Code, and their different classes, are those included in the following:

SCALE PRINCIPAL PENALTIES

Capital punishment:
Death

Afflictive penalties:
Reclusion perpetua
Reclusion temporal
Perpetual or temporary absolute disqualification
Perpetual or temporary special disqualification
Prision mayor

Correctional penalties:

Prision correccional
Arresto mayor
Suspension
Destierro

Light penalties:

Arresto menor
Public censure

Penalties common to the three preceding classes:

Fine, and
Bond to keep the peace.

ACCESSORY PENALTIES

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

Classifications of penalties:

1. Principal – Those expressly imposed by the court in the judgment of conviction.
2. Accessory – Those that are deemed included in the imposition of the principal penalties.

According to their **divisibility**:

1. Indivisible – Those which have no fixed duration
 - a. Death
 - b. Reclusion perpetua
 - c. Perpetual absolute or special disqualification
 - d. Public censure
2. Divisible – Those that have fixed duration and are divisible into three periods.

Classification of penalties **according to subject-matter**:

1. Corporal (death)
2. Deprivation of freedom (reclusion, prision, arresto)
3. Restriction of freedom (destierro)
4. Deprivation of rights (disqualification and suspension)

5. Pecuniary (fine)

Classification of penalties **according to their gravity:**

1. Capital
2. Afflictive
3. Correctional
4. Light

Penalties that are **either principal or accessory:**

1. Perpetual or temporary absolute disqualification
2. Perpetual or temporary special disqualification
3. Suspension

ART. 26.

Fine.

When afflictive, correctional, or light penalty. – A fine, whether imposed as a single or as an alternative penalty, shall be considered an afflictive penalty, if it exceeds One million two hundred pesos (P1,200,000.00); a correctional penalty, if it does not exceed One million two hundred pesos (P1,200,000.00) but is not less than Forty thousand pesos (P40,000.00); and a light penalty, if it be less than Forty thousand pesos (P40,000.00).

	Fine	Bond to keep the peace
>P1.2 million	Afflictive	Afflictive
P40,000-P1.2 million	Correctional	Correctional
<P40,000	Light penalty	Light penalty

Recall Art. 9:**Art. 9****Grave felonies, less grave felonies, and light felonies.**

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

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

Light felonies are those infractions of law for the commission of which the penalty of *arresto menor* or a fine of not exceeding P40,000, or both, is provided.

§1. Duration of penalties**ART. 27. ★**

Reclusion perpetua. – The penalty of reclusion perpetua shall be from twenty years and one day to forty years.

Reclusion temporal. – The penalty of reclusion temporal shall be from twelve years and one day to twenty years.

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

Prision correccional, suspension, and destierro. – The duration of the penalties of prison correccional, suspension, and destierro shall be from six months and one day to six years, except when suspension is imposed as an accessory penalty, in which case, its duration shall be that of the principal penalty.

Arresto mayor. – The duration of the penalty of arresto mayor shall be from one month and one day to six months.

Arresto menor. – The duration of the penalty of arresto menor shall be from one day to thirty days.

Bond to keep the peace. – The bond to keep the peace shall be required to cover such period of time as the court may determine.

Penalty	Minimum	Maximum
Reclusion perpetua	20 years and 1 day	40 years
Reclusion temporal	12 years and 1 day	20 years
Prision mayor	6 years and 1 day	12 years

Prision correccional	6 months and 1 day	6 years
Arresto mayor	1 month and 1 day	6 months
Arresto menor	1 day	30 days

Temporary disqualification and suspension, when imposed as accessory penalties, have different duration—they follow the duration of the principal penalty, e.g.:

- If the penalty is *arresto mayor*, the duration of suspension of the right to hold office and right to suffrage is also *arresto mayor*.

Destierro is imposed in the following instances:

1. Serious physical injuries or death under exceptional circumstances (Art. 247)
2. In case of a failure to give bond for good behavior (Art. 284)
3. As a penalty for the concubine in concubinage (Art. 334)
4. In cases where after reducing the penalty by 1 or more degrees, *destierro* is the proper penalty.

Bond to keep the peace is not specifically provided as a penalty for any felony.

ART 28.

Computation of penalties.

If the offender **shall be in prison**, the term of the duration of the temporary penalties shall be computed from the day on which the judgment of conviction shall have become final.

If the offender **be not in prison**, the term of the duration of the penalty consisting of deprivation of liberty shall be computed from the day that the offender is placed at the disposal of the judicial authorities for the enforcement of the penalty. The duration of the other penalties shall be computed only from the day on which the defendant commences to serve his sentence.

Rules:

1. When the offender is *in prison* – the duration of the temporary penalties is from the day on which the judgment of conviction becomes final
2. When the offender is *not in prison* – the duration of penalty consisting in deprivation of liberty is from the day that the offender

- is placed at the warden's custody for the enforcement of the penalty
3. The duration of *other penalties* – the duration is from the day on which the offender commences to serve his sentence

Examples of temporary penalties:

1. Temporary absolute disqualification
2. Temporary special disqualification
3. Suspension

Examples of penalties consisting in deprivation of liberty:

1. Imprisonment
2. Destierro

ART. 29.

Period of preventive imprisonment deducted from term of imprisonment.

Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing after being informed of the effects thereof and with the assistance of counsel to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following circumstances:

1. When they are recidivists or have been convicted previously twice or more times of any crime; and
2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall do so in writing with the assistance of counsel and shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment.

Credit for preventive imprisonment for the penalty of *reculsion perpetua* shall be deducted from thirty (30) years.

Whenever an accused has undergone preventive imprisonment for a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. Computation of preventive imprisonment for purposes of immediate release under this paragraph shall be the actual period of detention with good conduct time allowance: *Provided, however*, That if the accused is absent without justifiable cause at any stage of the trial, the court may *motu proprio*

order the rearrest of the accused: *Provided, finally*, That recidivists, habitual delinquents, escapees and persons charged with heinous crimes are excluded from the coverage of this Act. In case the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after thirty (30) days of preventive imprisonment.

Preventive imprisonment – When the offense charged is nonbailable, or even if bailable, he cannot furnish the required bail.

Crediting of preventive imprisonment:

1. Full-time – If the accused agrees voluntarily in writing, after being informed of the effects thereof, and with the assistance of counsel, to abide by the same disciplinary rules imposed upon convicts.
2. Four-fifths – If the accused does not agree to abide by the same disciplinary rules imposed upon convicts, he must do so in writing with the assistance of counsel.

Caveats:

1. The credit for preventive imprisonment for the penalty of *reclusion perpetua* shall be deducted from 30 years (not 40).
2. The credit only applies for service of sentences consisting of deprivation of liberty (this includes *destierro*).
3. The computation of the maximum possible imprisonment for purposes of immediate release is the actual period of detention + good conduct time allowance (GCTA).
 - a. GCTA for study, teaching or mentoring: 15 days credit for each month of study, teaching, or mentoring.
4. A CICL shall be credited in the service of his/her sentence with the full time spent in actual commitment and detention.

Immediate release:

1. When the penalty imposed is less than the full-time or four-fifths of the time of preventive imprisonment.
2. When the time of preventive imprisonment is equivalent to the possible maximum imprisonment for the offense charged.

Offenders not entitled to full time or four-fifths of crediting:

1. Recidivists or those convicted previously twice or more times of any crime.
2. Those who, upon being summoned for the execution of their sentence, failed to surrender voluntarily.
 - a. This is not the one contemplated in Art. 14(7)–that refers to voluntary surrender after the commission of the crime.
3. Habitual delinquents
4. Escapees or those who have escaped from confinement from a penal establishment
5. Persons charged with heinous crimes.

§2. Effects of the penalties according to their respective nature

ART. 30.

Effects of the penalties of perpetual or temporary absolute disqualification

The penalties of **perpetual or temporary absolute disqualification for public office** shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held, even if conferred by popular election.
2. The deprivation of the right to vote in any election for any popular elective office or to be elected to such office.
3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.
In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this Article shall last during the term of the sentence.
4. The loss of all rights to retirement pay or other pension for any office formerly held.

ART. 31

Effects of the penalties of perpetual or temporary special disqualification.

The penalties of **perpetual or temporary special disqualification for public office, profession or calling** shall produce the following effects:

1. The deprivation of the office, employment, profession, or calling affected.
2. The disqualification for holding similar officer or employments either perpetually or during the term of sentence, according to the extent of such disqualification.

ART. 32

Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage.

The **perpetual or temporary special disqualification for the exercise of the right of suffrage** shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.

ART. 33.

Effects of the penalties of suspension from any public office, profession or calling, or the right of suffrage.

The **suspension from public office, profession or calling, and the exercise of the right of suffrage** shall disqualify the offender from holding such office or exercising such profession or calling or right of suffrage during the term of the sentence.

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

ART. 34.
Civil interdiction.

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

ART. 35.
Effects of bond to keep the peace.

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

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

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

Breaking (it) down

Art. 30 talks about the penalties of perpetual/temporary absolute disqualification for public office. It has the following effects:

1. Deprivation of public offices and employments (including elective)
2. Deprivation of the right to vote and be elected
3. Disqualification ([1] talks about removal) for the offices or employments and for the exercise of any of the rights mentioned
4. Loss of retirement pay or pension for any office formerly held

- **Perpetual absolute disqualification** – Effective during the lifetime of the convict.

- **Temporary absolute disqualification** – Lasts during the term of the sentence, except:
 - Deprivation of the public office/employment
 - Loss of all retirement pay or pension

Art. 31 talks about the penalties of perpetual/temporary special disqualification for public office, profession, or calling. It has the following effects:

1. Deprivation of the office, employment, profession or calling affected.
2. Disqualification for holding similar offices or employments perpetually or during the term of sentence.

Art. 32 talks about the penalties of perpetual/temporary special disqualification for the exercise of the right of suffrage. It has the following effects:

1. Deprivation of the right to vote or be elected.
2. Cannot hold any public office during the period of disqualification.

Art. 33 talks about the penalties of suspension from public office, profession or calling or the right of suffrage. It has the following effects:

1. Disqualification from holding such office or exercising such profession or calling or right of suffrage during the term of the sentence.
2. If suspended from public office, the offender cannot hold another office with similar functions during the period of suspension.

→ *Combination of Arts. 31 + 32, but has to be within a **certain period** only.*

Art. 34 talks about civil interdiction and its effects:

1. Deprivation of the rights of parental authority or guardianship of any ward
2. Deprivation of marital authority
3. Deprivation of the right to manage his property and of the right to dispose such property by any act or any conveyance *inter vivos*.
 - a. But he can dispose of such property by will or donation *mortis causa*.

Art. 35 talks about the bond to keep the peace.

1. The offender must present 2 sufficient sureties who shall undertake that the offender will not commit the offense sought to be prevented.
 - a. In case it is committed, they will pay the amount determined by the court.
2. The offender must deposit such amount with the clerk of court to guarantee said undertaking
3. The offender may be detained if he cannot give the bond, but not to exceed:
 - a. 6 months if grave/less grave felony, or
 - b. 30 days if light felony.

⚠ *This is not bail bond.*

ART. 36.
Pardon; its effects.

A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

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

Constitutional limitations upon the exercise of the pardoning power:

1. That such power can only be exercised after conviction (final judgment).
2. That such power does not extend to cases of impeachment.
3. That such power does not extend to cases involving violation of election laws, rules, and regulations when there is no favorable recommendation from COMELEC.

Pardon does not remove accessory penalty except:

1. When the pardon expressly provides so
2. When the pardon is granted after the term of imprisonment has expired
3. When the facts and circumstances of the case show that the president intended to restore those rights

Pardon given by →	President	Offended party
Extinguishes?	Criminal liability	Civil liability
What felonies?	Any crime	Crimes against chastity and marital rape
To whom granted?	Any or all	Principals, accomplices and accessories
When should be given?	After conviction by final judgment	Before institution of criminal prosecution
Conditional?	Can be absolute or conditional	Absolute (no conditions)

ART. 37.
Costs.

What are included. – Costs shall include **fees and indemnities** in the course of the judicial proceedings, whether they be fixed or unalterable amounts previously determined by law or regulations in force, or amounts not subject to schedule.

Costs – Expenses of litigation (fees and indemnities).

They are chargeable to the accused only in cases of conviction. In case of acquittal, the costs are *de oficio*—each party bearing his own expenses.

No costs shall be allowed against the Republic, unless otherwise provided by law.

Payment of costs is a matter at the discretion of courts. Whether costs should be assessed against the accused lie within the discretion of the court.

ART. 38.
Pecuniary liabilities.

Order of payment. – In case the property of the offender should not be sufficient for the payment of all his pecuniary liabilities, the same shall be met in the following order:

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

When is Art. 38 applicable?

If the property of the offender is insufficient for the payment of all his pecuniary liabilities. Hence, if the offender has no property at all, Art. 38 doesn't apply.

ART. 39.
Subsidiary penalty.

If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of **one day for each amount equivalent to the**

highest minimum wage rate prevailing in the Philippines at the time of the rendition of judgment of conviction by the trial court, subject to the following rules:

1. If the principal penalty imposed be prison correccional or arresto and fine, he shall remain under confinement until his fine referred in the preceding paragraph is satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner.
2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a light penalty.
3. When the principal penalty imposed is higher than *prison correccional*, no subsidiary imprisonment shall be imposed upon the culprit.
4. If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict, during the period of time established in the preceding rules, shall continue to suffer the same deprivations as those of which the principal penalty consists.
5. The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from the fine in case his financial circumstances should improve.

Subsidiary penalty – To be suffered by the convict who has no property to meet the fine, at the rate of one day for each amount equivalent to the minimum wage in NCR at the time of conviction.

- P645 is the current daily minimum wage in NCR.
- Included in the judgment must be the subsidiary imprisonment.

Penalty imposed	Subsidiary penalty
Prison correccional or arresto, <u>and</u> fine <i>Basis:</i> Penalty imposed	<ol style="list-style-type: none"> 1. Not more than $\frac{1}{3}$ of the term of the sentence 2. Not to exceed 1 year
Fine	<ol style="list-style-type: none"> 1. Grave or less grave → max. 6 months 2. Light → max. 15 days
Higher than <i>prison correccional</i>	No subsidiary penalty

If the penalty imposed is not to be executed by confinement but of fixed duration

Subsidiary penalty shall consist in the same deprivations as those of the principal penalty, under the same rules as in numbers 1, 2 and 3.

In case the convict's financial situation improves

Pay the fine

§3. Penalties in which other accessory penalties are inherent

ART. 40.

Death – Its accessory penalties.

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

Art. 41.

Reclusion perpetua and reclusion temporal – Their accessory penalties.

The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

ART. 42.

Prison mayor – Its accessory penalties.

The penalty of prison mayor shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

ART. 43.

Prison correccional – Its accessory penalties.

The penalty of prison correccional shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in this article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the

pardon.

ART. 44.

Arresto – Its accessory penalties.

The penalty of arresto shall carry with it that of suspension of the right to hold office and the right of suffrage during the term of the sentence.

Outline of accessory penalties inherent in principal penalties

1. Death (when not executed)
 - a. Perpetual absolute disqualification
 - b. Civil interdiction for 30 years
2. Reclusion
 - a. Civil interdiction for life/during the sentence
 - b. Perpetual absolute disqualification
3. Prision mayor
 - a. Temporary absolute disqualification
 - b. Perpetual special disqualification from suffrage
4. Prision correccional
 - a. Suspension from public office, profession or calling
 - b. Perpetual special disqualification from suffrage, only if the duration of the imprisonment exceeds 18 months
5. Arresto
 - a. Suspension of the right to hold office and the right of suffrage during the term of the sentence

⚠ *Arts. 40-43 may be remitted by the pardon, but must be done so explicitly.*

ART. 45.

Confiscation and forfeiture of the proceeds or instruments of the crime.

Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

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

Forfeitures

General rule: A penalty imposed carries with it the forfeiture of the proceeds of the crime and the instruments or tools in favor of the

government.

- Confiscation can be ordered only if the property is submitted in evidence or placed at the disposal of the court.
- Articles which are forfeited, when the forfeiture order is already final, cannot be returned even in case of an acquittal.

Exception: Property of a third person not liable for the offense may not be confiscated.

- **Exception to the exception:** Property not subject to lawful commerce shall be destroyed, regardless of ownership.

ART. 46. ★

Penalty to be imposed upon principals in general.

The penalty prescribed by law for the commission of a felony shall be imposed upon the principals in the commission of such felony.

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

The penalty prescribed by law *in general terms* shall be imposed:

1. Upon the principals
2. For consummated felony

Exception: When the law fixes a penalty for frustrated or attempted felony.

Graduation of penalties:

1. By degree – Stages of execution and degree of participation
2. By division – Proper periods taking into account the qualifying circumstances.

ART. 47.

In what cases the death penalty shall not be imposed; Automatic review of death penalty cases.

The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be reclusion perpetua.

In all cases where the death penalty is imposed by the trial court, the records

shall be forwarded to the Supreme Court for automatic review and judgment by the court en banc, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

RA 9346 prohibited the imposition of the death penalty.

The Court of Appeals shall handle the appeal when the RTC imposed the death penalty, but the Supreme Court will still review the appellate court's decision when it affirmed the imposition of the death penalty.

- Then reclusion perpetua or life imprisonment is imposed, a notice of appeal is required.

ART. 48. ★

Penalty for complex crimes.

When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

Plurality of crimes – It consists in the successive execution, by the same individual of different criminal acts, upon any of which no conviction has yet been declared.

Kinds:

1. Real/material – Different crimes in law, as well as in the conscience of the offender
 - a. The offender shall be punished for each and every offense that he committed.
2. Formal/ideal – Only one criminal liability

A complex crime is only one crime

- Although 2 or more crimes are actually committed, they constitute only one crime.
- The offender has only one criminal intent.
 - Hence, there is only one penalty imposed for the complex crime.

Two kinds of complex crimes under Art. 48:

1. **Compound crime** – Single act constitutes two or more grave or less grave felonies

2. **Complex crime proper** – An offense is a necessary means for committing the other.

⚠ *This does not apply to SPLs, but applicable to both dolo and culpa.*

Compound crime

Requisites:

1. That only a single act is performed by the offender
2. That the single act produces–
 - a. 2 or more grave felonies
 - b. 1 or more grave felonies and 1 or more less grave felonies
 - c. 2 or more less grave felonies

Light felonies produced by the same act should be treated and punished as separate offenses, or may be absorbed by the grave felony.

1. Several light felonies from one act is not a complex crime.
2. When the crime is committed by force or violence, slight physical injuries are absorbed such as in direct assault and rape.

Examples of complex crimes:

1. A single bullet killed 2 persons
2. Several accused killed 50 people and it was impossible to determine the number of persons killed by them individually, except if they're in conspiracy.
3. A grenade thrown at 1 person, but injured others.

See People v. Buyco (1948) and People v. Herrera (2001).

Complex crime proper

Requisites:

1. That at least two offenses are committed
2. That one or some of the offenses must be necessary to commit the other
 - a. *“necessary means”* – does not mean indispensable
 - b. When in the definition of a felony, one offense is a means to commit the other, there is no complex crime.
3. That both or all of the offenses must be punished under the same statute.

Question: *What kind of document? Is it necessary to commit the other crime?*

Rules regarding complex crimes

1. Art. 48 is in favor of the accused.
2. The penalty for the complex crime is the penalty for the most serious crime in its maximum period.
3. The court of higher jurisdiction shall try the complex crime.
4. If the different crimes have the same penalty, either penalty shall be imposed but in its maximum period.
5. When the felonies constituting the complex crime are punishable by imprisonment and fine, only imprisonment should be imposed.
6. When the code provides a specific penalty for a complex crime, that penalty must be followed.
7. When a complex crime is charged and one offense is not proven, the accused can be convicted of the other.
8. When the law provides one single penalty for a special complex crimes, Art. 48 does not apply., e.g.
 - a. Robbery with rape
 - b. Kidnapping with serious physical injuries
 - c. Kidnapping with murder or homicide

No complex crime in the following cases:

1. Continuous crimes
2. One offense is committed to conceal the other
3. When the other crime is an indispensable part or element of the other offenses
4. Where one of the offenses is penalized by an SPL
5. When the provision provides for a two-tiered penalty.

Art. 48 is not applicable:

1. The crimes have common elements
2. The crimes are subject to the rule of absorption of one crime by the other
3. Where two offenses resulting from a single act are punished specifically as a single crime, e.g. LSPI + slander → LSPI with ignominy.
4. Special complex crimes or composite crimes
5. The crimes cannot be legally complexed

Special complex crimes or composite crimes

A person committing multiple crimes is punished with a single penalty.

- The law itself fixes a single penalty for 2 or more crimes committed

Characteristics:

1. Treated as single indivisible crimes
2. There is only one penalty imposed
3. No reference to Art. 48 (the law itself penalizes the crime)

Examples:

1. Rape with homicide
2. Kidnapping with homicide
3. Kidnapping with rape
4. Kidnapping with SPI
5. Robbery with homicide
6. Robbery with rape
7. Robbery with mutilation
8. Robbery with SPI
9. Arson with homicide
10. Cattle rustling with homicide (SPL)
11. Cattle rustling with SPI (SPL)
12. Carnapping with homicide (SPL)
13. Carnapping with rape (SPL)

SCC	Art. 48
Combination fixed by law	Combination is determined by Art. 48
Penalty is specified	Penalty to be applied is the penalty of the most serious offense in the maximum period
There is only 1 composite crime to be charged; the excess crimes will be absorbed <ul style="list-style-type: none"> • X kidnapped and rape Y. After, X raped Y five more times. • Only 1 crime of kidnapping with rape will be charged. 	The first shall be complexed, while the other counts will be treated as separate crimes. <ul style="list-style-type: none"> • X with lewd designs forcibly abducted Y and raped her. After, X raped Y five more times. • The first rape will be complexed with forcible abduction. But the five counts of rape will be treated as separate crimes.
Since there is only 1 composite crime to be charged, all the other accompanying crimes committed against the victim/s will be absorbed. <ul style="list-style-type: none"> • In kidnapping with homicide, the number of 	Only the felonies subject to Art. 48 will be compounded or complex. The excess will be treated as separate crimes.

kidnap victims killed is immaterial. All the other deaths will be absorbed.	
SCCs are provided by RPC and SPLs.	<p>There is no complex crime of "offenses" or felony + offense.</p> <ul style="list-style-type: none"> There can be a complex prime proper involving 2 offenses if punished under the same law. Compound crimes refer only to grave and less grave felonies.

Continuous crimes

Definition: It is one where the offender, impelled by a single criminal impulse, commits a series of overt acts at about the same time, in about the same place, and all the overt acts violate one and the same provision of law.

Elements:

1. The offender is impelled by a single criminal purpose.
2. Offender commits a series of overt acts.
3. The series of overt acts is committed at about the same time and in about the same place.
4. All of the overt acts violate one and the same provision of law.

Transitory/continuing crimes

Transitory: Where some acts material and essential to the crime occur in one place and some in another, in which case, the court where any of the essential ingredients of the crime took place has jurisdiction to try the case.

- **Example:** BP 22. The court of the place where the worthless check was issued and delivered or the court of the place where the check was dishonored by the drawee bank has jurisdiction to try the case.

Continuing: Some or all the elements/ingredients of the crime may occur in one place or in different places, yet by reason of the very nature of the offense committed, the violation of the law is deemed to be continuing.

Examples:

1. Kidnapping with SID: as long as the kidnapper continues to detain his victim
2. Rebellion: as long as the offender continues to take up arms against the government

- They may be arrested without warrant at any place where they may be found.

ART. 49.

Penalty to be imposed upon the principals when the crime committed is different from that intended.

In cases in which the felony committed is different from that which the offender intended to commit, the following rules shall be observed:

1. If the penalty prescribed for the felony committed be higher than that corresponding to the offense which the accused intended to commit, the penalty corresponding to the latter shall be imposed in its maximum period.
2. If the penalty prescribed for the felony committed be lower than that corresponding to the one which the accused intended to commit, the penalty for the former shall be imposed in its maximum period.
3. The rule established by the next preceding paragraph shall not be applicable if the acts committed by the guilty person shall also constitute an attempt or frustration of another crime, if the law prescribes a higher penalty for either the latter offenses, in which case the penalty provided for the attempt or the frustrated crime shall be imposed in the maximum period.

Rules:

1. If the penalty for the felony committed be *higher* than the intended felony → lower penalty, maximum period.
2. If the penalty for the felony committed be lower than the intended felony → lower penalty, maximum period
3. If the act committed is an attempt/frustration of another crime and the law prescribes a higher penalty for either of the latter → penalty for the attempted/frustrated, maximum period

Art. 49 applies only when there is a mistake in the identity of the victim of the crime, and the penalty for the crime committed is different from that for the crime intended to be committed (*only error in personae*).

- It has no application to cases where a more serious consequence not intended by the offender befalls the same person.
1. Error in personae → Art. 49
 2. Aberratio ictus → Art. 48
 3. Praeter intentionem → Mitigating circumstance

Read with Art. 46

ART. 50.

Penalty to be imposed upon principals of a frustrated crime.

The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.

ART. 51.

Penalty to be imposed upon principals of attempted crimes.

A penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

ART. 52.

Penalty to be imposed upon accomplices in consummated crime.

The penalty next lower in degree than that prescribed by law for the consummated shall be imposed upon the accomplices in the commission of a consummated felony.

ART. 53.

Penalty to be imposed upon accessories to the commission of a consummated felony.

The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the accessories to the commission of a consummated felony.

ART. 54.

Penalty to be imposed upon accomplices in a frustrated crime.

The penalty next lower in degree than prescribed by law for the frustrated felony shall be imposed upon the accomplices in the commission of a frustrated felony.

ART. 55.

Penalty to be imposed upon accessories of a frustrated crime.

The penalty lower by two degrees than that prescribed by law for the frustrated felony shall be imposed upon the accessories to the commission of a frustrated felony.

ART. 56.

Penalty to be imposed upon accomplices in an attempted crime.

The penalty next lower in degree than that prescribed by law for an attempt

to commit a felony shall be imposed upon the accomplices in an attempt to commit the felony.

ART 57.

Penalty to be imposed upon accessories of an attempted crime.

The penalty lower by two degrees than that prescribed by law for the attempted felony shall be imposed upon the accessories to the attempt to commit a felony.

0 → penalty prescribed to the principal in a consummated offense

X → degrees it must be lowered

	Consummated	Frustrated	Attempted
Principals	0	1	2
Accomplices	1	2	3
Accessories	2	3	4

Arts. 50-57 do not apply where the law expressly prescribes the penalty for a frustrated or attempted felony, or to be imposed upon accomplices or accessories.

Bases for the determination of the extent of penalty:

1. Stage of execution
2. Degree of participation
3. The qualifying circumstances

See Art. 60, there's an exemption.

ART. 58.

Additional penalty to be imposed upon certain accessories.

Those accessories falling within the terms of paragraphs 3 of Article 19 of this Code who should act with abuse of their public functions, shall suffer the additional penalty of absolute perpetual disqualification if the principal offender shall be guilty of a grave felony, and that of absolute temporary disqualification if he shall be guilty of a less grave felony.

Public officers who help the author of a crime by misusing their office and duties shall suffer the additional penalties of:

1. Absolute perpetual disqualification, if the principal offender is guilty of a grave felony.
2. Absolute temporary disqualification if the principal offender is guilty of less grave felony.

ART. 59.

Penalty to be imposed in case of failure to commit the crime because the means employed or the aims sought are impossible.

When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of *arresto mayor* or a fine from 200 to 500 pesos.

Penalty for an impossible crime

The penalty for impossible crime is *arresto mayor* or a fine ranging from P200 to P500, taking into consideration:

1. the social danger and
2. degree of criminality of the offender.

ART. 60.

Exception to the rules established in Articles 50 to 57.

The provisions contained in Articles 50 to 57, inclusive, of this Code shall not be applicable to cases in which the law expressly prescribes the penalty provided for a frustrated or attempted felony, or to be imposed upon accomplices or accessories.

In 2 cases, the RPC punishes an accomplice as a principal:

1. The ascendants, guardians, curators, teachers and any person who by abuse of authority or confidential relationship, shall cooperate as accomplices in the crimes of rape, acts of lasciviousness, seduction, corruption of minors, white slave trade or abduction (Art. 346)
2. One who furnished the place for the perpetration of the crime of slight illegal detention (Art. 268)

Cases where the accessories are punished with a penalty of 1 degree lower (instead of 2):

1. Knowingly using counterfeit seal, or forged signature, or stamp of the president.
2. Illegal possession and use of a false treasury or bank note.
3. Using a falsified document.
4. Using a falsified dispatch.

Read with Arts. 50-57

ART. 61. ★

Rules for graduating penalties.

For the purpose of graduating the penalties which, according to the provisions of Articles fifty to fifty-seven, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

1. When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degree shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in Article 71 of this Code.
2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.
3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale.
4. When the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and the two next following, which shall be taken from the penalty prescribed if possible; otherwise from the penalty immediately following in the above mentioned respective graduated scale.
5. When the law prescribes a penalty for a crime in some manner not specially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose the corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories.

Art. 61 provides for the rules to be observed in lowering the penalty by 1 or 2 degrees. The lower penalty shall be taken from the graduated scale in Art. 71.

Illustrations:

1. When the penalty is single and indivisible (reclusion perpetua).
 - a. One degree lower is reclusion temporal, e.g. kidnapping and failure to return a minor
2. Second rule:
 - a. When the penalty is composed of two indivisible penalties.
 - i. For parricide, the penalty is reclusion perpetua to death. Hence, the penalty immediately following the lesser of the penalties is reclusion temporal.
 - b. When the penalty is composed of one or more divisible penalties to be imposed to their full extent.
 - i. One divisible penalty to be imposed to its full extent is reclusion temporal; and two divisible penalties to be imposed to their full extent are prison correccional to prison mayor. Hence, reclusion temporal → prison mayor; and prison correccional to prison mayor → arresto mayor.
3. When the penalty is composed of one or two indivisible penalties and the maximum period of a divisible penalties.
 - a. The penalty for murder is reclusion temporal in its maximum period to reclusion perpetua. Thus, the penalty for murder consists of one indivisible penalty (reclusion perpetua) and one divisible penalty (reclusion temporal in its maximum period) → next lower is reclusion temporal medium to prison mayor maximum.
4. When the penalty is composed of several periods.
 - a. *“several”* – more than two periods/at least three periods.
 - b. E.g. reclusion temporal minimum to prison mayor medium → prison mayor minimum to prison correccional medium
5. “By analogy”

Pars. 4-5 simplified:

1. If the penalty prescribed by the RPC consists in three periods corresponding to different divisible penalties, the penalty next lower in degree is the penalty consisting in the three periods down in the scale.
2. If the penalty prescribed by the RPC consists in two periods, the penalty next lower in degree is the penalty consisting in two periods down in the scale.
3. If the penalty prescribed by the RPC consists in only one period, then the penalty next lower in degree is the next period down in the scale.

Qualifying circumstances are disregarded in the application of the rules for graduating penalties.

ART. 62. ★*Effects of the attendance of mitigating or aggravating circumstances and of habitual delinquency.*

Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:

1. Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty.
 - a. When the commission of the crime, advantage was taken by the offender of his public position, the penalty to be imposed shall be in its maximum regardless of mitigating circumstances.
The maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group.
An organized/syndicated crime group means a group of two or more persons collaborating, confederating or mutually helping one another for the purposes of gain in the commission of any crime.
2. The same rule shall apply with respect to any aggravating circumstances inherent in the crime to such a degree that it must of necessity accompany the commission thereof.
3. Aggravating or mitigating circumstances which arise from the moral attributes of the offender, or from his private relations with the offended party, or from any other personal cause, shall only serve to aggravate or mitigate the liability of the principals, accomplices, and accessories as to whom such circumstances are attendant.
4. The circumstances which consist in the material execution of the act, or in the means employed to accomplish it, shall serve to aggravate or mitigate the liability of those persons only who had knowledge of them at the time of the execution of the act or their cooperation therein.
5. Habitual delinquency shall have the following effects:
 - a. Upon a third conviction, the culprit shall be sentenced to a penalty provided by law for the last crime of which he be found guilty and to the additional penalty of prison correccional in its medium and maximum periods.
 - b. Upon a fourth conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prison mayor in its minimum and medium periods; and
 - c. Upon a fifth or additional conviction, the culprit shall be sentenced to the penalty provided for the last crime of which

he be found guilty and to the additional penalty of prison mayor in its maximum period to reclusion temporal in its minimum period.

Notwithstanding the provisions of this article, the total of the two penalties to be imposed upon the offender, in conformity herewith, shall in no case exceed 30 years.

For the purposes of this article, a person shall be deemed to be habitual delinquent, if within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, *robo, hurto, estafa, or falsificacion*, he is found guilty of any of said crimes a third time or oftener.

Effect of the attendance of aggravating or mitigating circumstances or of habitual delinquency:

1. A.C. have the effect of increasing the penalty without exceeding the maximum provided by law.
2. M.C. have the effect of diminishing the penalty.
3. H.D. has the effect of increasing the penalty (because recidivism [an A.C.] is generally implied in H.D.) and imposition of an additional penalty.

¶1 – A.C. which (1) a crime in itself and (2) included by the law in defining a crime are disregarded.

1. Which in themselves constitute a crime:

- a. “By means of fire” (par. 12) – not aggravating in arson
- b. “Derailment of a locomotive” (par. 12) – not aggravating in damages and obstruction to means of communication

2. Which are included by law in defining a crime:

- a. Dwelling – not aggravating in robbery with force upon things
- b. Abuse of confidence – not aggravating in qualified theft with grave abuse of confidence
- c. Use of poison – not aggravating in murder by means of poison

Maximum penalty shall be imposed:

1. When advantage was taken by the offender of his public position
2. If the offense was committed by an organized/syndicated crime group

¶2 – A.C. which is inherent in the crime is disregarded

Same rule as par. 1, e.g.:

- Evident premeditation is inherent in robbery and theft.

¶3 – Circumstances which arise from the (1) moral attributes, (2) private relations with the offended party, or (3) from any other personal cause of the offender serve to mitigate/aggravate the liability of the offender to whom such circumstances are attendant.

1. Moral attributes of the offender:
 - a. A and B killed C. A acted with evident premeditation, while B with passion and obfuscation. A will aggravate, while B will mitigate because the states of their minds are different.
2. From his private relations with the offended party:
 - a. A and C inflicted slight P.I. on B. A is the son of B, while C is the father of B. The alternative circumstance of relationship as aggravating applies to A only because he is a lower descendant than B (anak ni B). Relationship is mitigating to C as he is a higher ascendant than B (tatay ni B).
3. From any other personal cause.
 - a. A and B committed a crime. A was under 16 and B was a recidivist.

¶4 – The circumstances which consist (1) in the material execution of the act, or (2) in the means employed to accomplish it, shall serve to aggravate or mitigate the liability of those persons only who had knowledge of them at the time of the execution of the act or their cooperation therein

1. Material execution of the act:
 - a. A (as principal by induction), B and C agreed to kill D. B and C killed D with treachery, which mode of committing the offense had not been previously agreed upon with A. A was not present when B and C killed D. Treachery will only be appreciated against B and C.
2. Means to accomplish the crime:
 - a. A ordered B to kill C. B invited C to eat with him. B mixed poison with the food of C, who died after eating. A did not know that B used poison to kill C. Only B will be aggravated by means of poison.

¶5 – Habitual delinquency

Definition: A person is a habitual delinquent if within a period of 10 years from the date of his last release or last conviction of the crimes of serious/less serious physical injuries, robbery, theft, estafa, or falsification, he is found guilty of any of said crimes a third time or oftener.

Requisites:

1. That the offender had been convicted of the crimes of serious/less serious physical injuries, robbery, theft, estafa, or falsification.
2. That after conviction or after serving his sentence, he again committed, and, within 10 years from his release or first conviction, he was again convicted of any of the said crimes for the second time.
3. That after his conviction of, or after serving sentence for, the second offense, he again committed, and, within 10 years from his last release or last conviction, he was again convicted of any of said offenses, the third time or oftener.

Computation of the 10-year period – The defendant's last conviction or last release is the starting point from which the ten-year period should be counted.

ART. 63.

Rules for the application of indivisible penalties.

In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Outline of the rules:

1. When the penalty is single indivisible → apply outright (disregard

AC/MC)

2. When the penalty is composed of two indivisible penalties:
 - a. 1 AC → greater
 - b. 0 AC/MC → lesser
 - c. + MC, 0 AC → lesser
 - d. + MC, + AC → court may offset one another (the moral value, not numerical weight, must prevail!)

Example:

1. Single indivisible: Kidnapping and failure to return a minor and rape, the penalty is reclusion perpetua.
2. Two indivisible: Reclusion perpetua to death, as imposed in:
 - a. Parricide
 - b. Robbery with homicide
 - c. Kidnapping and S.I.D.
 - d. Rape with use of deadly weapon or by 2 or more persons

When the penalty is composed of 2 **indivisible** penalties, the penalty cannot be lowered by 1 degree, no matter MCs present.

- Hence, when parricide (reclusion perpetua to death) is attended by MC, the lowest penalty to be imposed is reclusion perpetua.

Exception: When a privileged MC under Art. 68 or 69 is present, the penalty may be lowered by 1 or 2 degrees.

Divisible

ART. 64. ★

Rules for the application of penalties which contain three periods.

In cases in which the penalties prescribed by law contains three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provision of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.
2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.
3. When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.
4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.

5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.
6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.
7. Within the limits of each period, the court shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime.

Applicability: Only when the penalty has three periods–

1. Reclusion temporal
2. Prision mayor
3. Prision correccional
4. Arresto mayor
5. Arresto menor

Outline of the rules:

1. 0 AC, 0 MC → medium period
2. + MC → minimum period
3. + AC → maximum period
4. + MC, + AC → court may offset according to relative weight
5. >2 MC, 0 AC → penalty next lower, in the period applicable
6. Penalty shall not exceed maximum allowed, regardless of ACs
7. Court can determine the extent of the penalty within the limits of each period according to the number and nature of AC and MC and greater/lesser extent of the evil produced by the crime.

Art. 64 does not apply to:

1. Indivisible penalties
2. Penalties prescribed by SPL
3. Fines

AC/MC are not considered in–

1. When the penalty is single and indivisible (Art. 63).
2. Felonies through culpa (Art. 365)
3. Penalty to be imposed upon a Muslim/non-Christian
4. Penalty is only a fine imposed by an ordinance
5. When the penalties are prescribed by SPL

ART. 65.

Rules in cases in which the penalty is not composed of three periods.

In cases in which the penalty prescribed by the law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of the three portions.

Meaning of the rule:

1. Compute and determine the 3 periods of the entire penalty.
2. The time included in the penalty prescribed should be divided into three equal portions, after subtracting the minimum (eliminate the one day) from the maximum of the penalty.
3. The minimum of the minimum period should be the minimum of the given penalty (including the one day).
4. The quotient should be added to the minimum prescribed (eliminate the one day) and the total will represent the maximum of the minimum period.
 - a. Take the maximum of the minimum period, add one day and make it the minimum of the medium period; then add the quotient to the minimum (eliminate the one day) of the medium period and the total will represent the maximum of the medium period.
 - b. Take the maximum of the medium period, add one day and make it the minimum of the maximum period; then add the quotient to the minimum (eliminate the one day) of the maximum period and the total will represent the maximum of the maximum period.

ART. 66.

Imposition of fines.

In imposing fines the courts may fix any amount within the limits established by law; in fixing the amount in each case attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit.

Rules on fines:

1. The court can fix any amount of the fine within the limits of the law.
2. The court must consider–
 - a. Presence of AC/MC; and
 - b. The wealth and means of the culprit.

If the law didn't provide for a minimum fine, the determination of the amount is left to the sound discretion of the court, provided that it shall not

exceed the maximum authorized by law.

Position and standing of the accused are considered aggravating in gambling.

Penalty for 'incomplete' accident

ART. 67.

Penalty to be imposed when not all the requisites of exemption of the fourth circumstance of Article 12 are present.

When all the conditions required in circumstance number 4 of Article 12 of this Code to exempt from criminal liability are not present, the penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon the culprit, if he shall have been guilty of a grave felony, and *arresto mayor* in its minimum and medium periods, if of a less grave felony.

Art. 12(4) is the **exempting circumstance of accident**, which has the following requisites:

1. That the act be lawful
2. Performed with due care
3. Injury caused by mere accident (unforeseen event)
4. No fault/intention to cause the injury.

Grave → Arresto mayor maximum to prision correccional minimum

Less grave → Arresto mayor minimum to medium

- Reckless imprudence → If act is executed without taking those precautions or measures which the most common prudence would require
- Simple imprudence → If there is a mere lack of precaution in those cases where either the threatened harm is not imminent or the danger not openly visible (see Art. 365, RPC).

ART. 68.

Penalty to be imposed upon a person under eighteen years of age.

Repealed (see discussion on MACR in the midterms coverage).

If the court finds that the CICL has not complied with the conditions of his rehabilitation program, he shall be brought before the court for execution of judgment.

- If the CICL has reached 18 under suspended sentence, the court shall determine whether to discharge him, order execution of sentence, or extend the suspended sentence for a certain period or until 21 (§40, RA 9344)

The penalty to be imposed on the CICL shall be the penalty next lower than that prescribed by law, minority being a privileged MC.

Privileged mitigating-incomplete justifying/exempting

ART. 69.

Penalty to be imposed when the crime committed is not wholly excusable.

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

The court has the discretion to impose one or two degrees lower than that prescribed by law for the offense, considering the number and nature of the incomplete justifying/exempting circumstances.

But when the majority of the requisites of self-defense, and 2 MC (0 AC) are present, the penalty is 3 degrees lower.

Three-fold rule, etc.

ART. 70. ★

Successive service of sentences.

When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit; otherwise, the following rules shall be observed:

In the imposition of the penalties, the order of their respective severity shall be followed so that they may be executed successively or as nearly as may be possible, should a pardon have been granted as to the penalty or penalties first imposed, or should they have been served out.

For the purpose of applying the provisions of the next preceding paragraph the respective severity of the penalties shall be determined in accordance with the following scale:

1. Death
2. Reclusion perpetua
3. Reclusion temporal
4. Prision mayor
5. Prision correccional
6. Arresto mayor
7. Arresto menor
8. Destierro
9. Perpetual absolute disqualification
10. Temporary absolute disqualification.
11. Suspension from public office, the right to vote and be voted for, the right to follow profession or calling, and
12. Public censure.

Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum of those imposed equals the said maximum period.

Such maximum period shall in no case exceed forty years.

In applying the provisions of this rule the duration of perpetual penalties (*pena perpetua*) shall be computed at thirty years.

Outline of rules:

1. **General rule:** When the culprit has to serve 2 or more penalties, he shall simultaneously serve them **if the nature of the penalties permit**.
2. Otherwise, the order of their respective severity shall be followed as in the code.

Penalties which can be simultaneously served are:

1. Perpetual absolute disqualification
2. Perpetual special disqualification
3. Temporary absolute disqualification
4. Temporary special disqualification
5. Suspension
6. Destierro
7. Public censure
8. Fine and bond to keep the peace
9. Civil interdiction
10. Confiscation and payment of cost

They, except destierro, can be served simultaneously with imprisonment.

Three-fold rule

- The maximum duration of the convict's sentence shall not be more

than three times the length of the time corresponding to the most severe of the penalties imposed upon him.

- *The three-fold should not exceed 40 years.*
- If the sum total of all the penalties does not exceed the most severe times 3, the three-fold rule does not apply.
- This applies even if the penalties were imposed for different crimes, at different times, and under separate informations.
- Only penalties which have not yet been served out can be served simultaneously.
- If the sentence is indeterminate, the maximum term is to be considered.
- Subsidiary imprisonment forms part of the penalty.
 - *Art. 39: No subsidiary penalty after prision correccional.*
- The rule is applied in connection with the service of the sentences imposed.

Systems of penalty:

1. Material accumulation system (¶1-3, Art. 70)
2. Juridical accumulation system (three-fold rule)
3. Absorption system (Art. 48)

ART. 71. ★

Graduated scales.

In the cases in which the law prescribes a penalty lower or higher by one or more degrees than another given penalty, the rules prescribed in Article 61 shall be observed in graduating such penalty.

The lower or higher penalty shall be taken from the graduated scale in which is comprised the given penalty.

The courts, in applying such lower or higher penalty, shall observe the following graduated scales:

SCALE NO. 1

- ~~1. Death~~
2. Reclusion perpetua
3. Reclusion temporal
4. Prision mayor
5. Prision correccional
6. Arresto mayor
7. Destierro
8. Arresto menor
9. Public censure
10. Fine

SCALE NO. 2

1. Perpetual absolute disqualification
2. Temporary absolute disqualification
3. Suspension from public office, the right to vote and be voted for, and the right to follow a profession or calling
4. Public censure
5. Fine

Because the death penalty may not be imposed, felonies providing for a penalty of death effectively gets downgraded one degree lower, e.g., a person convicted of attempted rape gets 2 degrees lower from reclusion perpetua and not death (prision mayor).

- **Scale 1** → personal
- **Scale 2** → deprivation of political rights

⚠ *In Art. 71, destierro is ahead of arresto menor.*

- Destierro may be imposed by the first-level courts.
- It may also be imposed when it is the penalty next lower and the circumstances require the imposition of a penalty one degree lower.
- In Arts. 25 and 71, it is above arresto menor (correctional); in Art. 70, it is below arresto menor.

Comparing Arts. 25, 70 and 71:

1. Art. 25 is the classification of penalties—*principal and accessory*. And principal is further subdivided into capital, afflictive, correctional, and light.
2. Art. 70 classifies the penalties according to *severity*, for the purposes of successive service.
3. Art. 71 provides the scale on how to graduate the penalties by degrees as per Art. 61.

ART. 72.

Preference in the payment of civil liabilities.

The civil liabilities of a person found guilty of two or more offenses shall be satisfied by following the chronological order of the dates of the final judgments rendered against him, beginning with the first in order of time.

Service of ...

- Criminal liability → severity (Art. 70)
- Civil liability → chronological

Accessory penalties deemed imposed

ART. 73.

Presumption in regard to the imposition of accessory penalties.

Whenever the courts shall impose a penalty which by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43, 44, and 45 of this Code, it must also be understood that the accessory penalties are also imposed upon the convict.

Accessory penalties in Arts. 40-45 are deemed imposed, even if the court's decision does not explicitly state so.

⚠ *This only refers to accessory penalties. Subsidiary imprisonment, if any, must be provided in the fallo.*

ART. 74.

Penalty higher than reclusion perpetua in certain cases.

In cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, if such higher penalty should be that of death, the same penalty and the accessory penalties of Article 40, shall be considered as the next higher penalty.

What situation is contemplated here?

- Suppose that an employee stole mail with diamonds worth P250,000. This is simple theft punishable by reclusion temporal. But the item stolen being a mail matter, the crime is qualified theft and punished by the penalty two degrees higher.
- Hence, reclusion perpetua + 2 degrees = death

Can death be imposed? *No.*

- The penalty must be the one provided by law (reclusion temporal) and the accessory penalty of death, if not executed, in Art. 40.
- This is because death may only be imposed if it is specifically imposed by the law as a penalty for a given crime.

Graduation of fines

ART. 75.

Increasing or reducing the penalty of fine by one or more degrees.

Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced, respectively, for each degree, by one-fourth of the maximum amount prescribed by law, without

however, changing the minimum.

The same rules shall be observed with regard to fines that do not consist of a fixed amount, but are made proportional.

Sample computation:

The law provides for a fine of P1,000 to P10,000.

- 1/4 of P10,000 = P2,500
- One degree higher → P1,000 to P12,500
- Two degrees higher → P1,000 to P15,000
- One degree lower → P1,000 to P7,500
- Two degrees lower → P1,000 to P5,000

⚠ *When the law does not fix a minimum, the determination of the amount of fine is left to the court, without exceeding the maximum.*

Fine with a minimum vs. without:

1. When there's a minimum, the court can't change that.
2. When there's no minimum, the court has discretion, but the fine should not exceed the maximum.
3. When the law provides both minimum and maximum, the court can impose a fine higher than the maximum.

ART. 76. ★

Legal period of duration of divisible penalties.

The legal period of duration of divisible penalties shall be considered as divided into three parts, forming three periods, the minimum, the medium, and the maximum, in the manner shown in the following table.

Penalties	Time included in the penalty in its entirety	Time included in its minimum period	Time included in its medium period	Time included in its maximum period
Reclusion temporal	From 12 years and 1 day to 20 years	From 12 years and 1 day to 14 years and 8 months	From 14 years, 8 months and 1 day to 17 years and 4 months	From 17 years, 4 months and 1 day to 20 years

Prision mayor, absolute disqualification and temporary disqualification	From 6 years and 1 day to 12 years	From 6 years and 1 day to 8 years	From 8 years and 1 day to 10 years	From 10 years and 1 day to 12 years
Prision correccional, suspension, and destierro	From 6 months and 1 day to 6 years	From 6 months and 1 day to 2 years and 4 months	From 2 years, 4 months and 1 day to 4 years and 2 months	From 4 years, 2 months and 1 day to 6 years
Arresto mayor	From 1 month and 1 day to 6 months	From 1 to 2 months	From 2 months and 1 day to 4 months	From 4 months and 1 day to 6 months
Arresto menor	From 1 to 30 days	From 1 to 10 days	From 11 to 20 days	From 21 to 30 days

Rules:

1. When the prescribed penalty does not have three periods, it has to be divided into three equal portions (Art. 65) so Art. 64 can be applied.
2. When the penalty prescribed is any of the divisible penalties in Art. 25, its three periods, **except those of arresto mayor**, are the three equal portions of the divisible penalty.
3. The duration of each the periods of the divisible penalties in the table is not controlling when the penalty prescribed is composed of three periods corresponding to different divisible penalties.

ART. 77.

When the penalty is a complex one composed of three distinct penalties.

In cases in which the law prescribes a penalty composed of three distinct penalties, each one shall form a period; the lightest of them shall be the minimum, the next the medium, and the most severe the maximum period.

Whenever the penalty prescribed does not have one of the forms specially provided for in this Code, the periods shall be distributed, applying by analogy the prescribed rules.

Complex penalty – Penalty prescribed by law composed of three distinct penalties, each forming a period.

- *Example:* Reclusion temporal to death (Art. 114)
 - Maximum: death
 - Medium: reclusion perpetua
 - Minimum: reclusion temporal
- *By analogy:* Prision mayor to death (Art. 114, par. 3)
 - Maximum: Death
 - Medium: Reclusion perpetua
 - Minimum: Prision mayor and reclusion temporal
- *By analogy:* Reclusion temporal medium to reclusion perpetua
 - Maximum: Reclusion perpetua
 - Medium: Reclusion temporal maximum
 - Minimum: Reclusion temporal medium

ART. 78.

When and how a penalty is to be executed.

No penalty shall be executed except by virtue of a final judgment.

A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.

In addition to the provisions of the law, the special regulations prescribed for the government of the institutions in which the penalties are to be suffered shall be observed with respect to the character of the work to be performed, the time of its performance, and other incidents connected therewith, the relations of the convicts among themselves and other persons, the relief which they may receive, and their diet.

The regulations shall make provision for the separation of the sexes in different institutions, or at least into different departments, and also for the correction and reform of the convicts.

Absolute rule: Only final judgment can be executed.

- The accused can still appeal within 15 days from the decision of the trial court, unless the right to appeal has been waived, in which case, the decision becomes immediately final.
- If the judgment did not provide for subsidiary imprisonment in case of insolvency, the accused cannot be required to suffer the same in case of inability to pay the fine.

Insanity after conviction/during service

ART. 79.

Suspension of the execution and service of the penalties in case of insanity.

When a convict shall become insane or imbecile after final sentence has been pronounced, the execution of the said sentence shall be suspended only with regard to the personal penalty, the provisions of the second paragraph of circumstance Number 1 of Article 12 being observed in the corresponding cases.

If at any time the convict shall recover his reason, his sentence shall be executed, unless the penalty shall have prescribed in accordance with the provisions of this Code.

The respective provisions of this section shall also be observed if the insanity or imbecility occurs while the convict is serving his sentence.

Rules:

1. Insanity after final sentence → execution of sentence is suspended insofar as the personal penalty is affected
2. After recovery, he shall execute the sentence, unless the penalty has prescribed.
3. Insanity during service of sentence → same rules apply
4. Payment of civil liability will not be suspended
 - a. A guardian ad litem may be appointed to satisfy the civil liability.

Effects of insanity–

1. During commission of crime → Exempted (Art. 12(1))
2. During trial → Trial suspended until accused recovers
3. At the time of final judgment → Sentence suspended
4. During service → Sentence suspended

ART. 80 – Repealed by RA 9344.

ARTS. 81-85 – Inoperative by RA 9346.

ART. 86.

Reclusion perpetua, reclusion temporal, prision mayor, prision correccional and arresto mayor.

The penalties of *reclusion perpetua, reclusion temporal, prision mayor, prision correccional and arresto mayor* shall be executed and served in the places and penal establishments provided by the Administrative Code in force or which may be provided by law in the future.

ART. 87.
Destierro.

Any person sentenced to destierro shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall not be more than 250 and not less than 25 kilometers from the place designated.

Destierro is imposed:

1. When death/serious physical injuries is caused or are inflicted under exceptional circumstances (Art. 247)
2. When a person fails to give bond for good behavior (Art. 284)
3. As a penalty for the concubine in the crime of concubinage (Art. 334)
4. When after lowering the penalty by degrees, destierro is the proper penalty.

ART. 88.
Arresto menor.

The penalty of arresto menor shall be served in the municipal jail, or in the house of the defendant himself under the surveillance of an officer of the law, when the court so provides in its decision, taking into consideration the health of the offender and other reasons which may seem satisfactory to it.

Arresto menor (1-30 days) may be served in:

1. Municipal jail, or
2. House of the convict under the surveillance of an officer of the law

Grounds: The health of the offender and other reasons satisfactory to the court.

“When the court so provides in its decision” – The court’s judgment must explicitly allow the service of arresto menor in the house. Otherwise, he goes to the municipal jail.

Community Service Act 2019, RA 11362

ART. 88a.
Community Service.

The court in the discretion may, in lieu of service in jail, require that the penalties of arresto menor and arresto mayor may be served by the

defendant by rendering community service in the place where the crime was committed, under such terms as the court shall determine, taking into consideration the gravity of offense and the circumstances of the case, which shall be under the supervision of a probation officer: Provided, That the court will prepare an order imposing the community service, specifying the number of hours to be worked and the period within which to complete the service. The order is then referred to the assigned probation officer who shall have responsibility of the defendant.

The defendant shall likewise be required to undergo rehabilitative counseling under the social welfare and development office of the city or municipality concerned with the assistance of the Department of Social Welfare and Development (DSWD). In requiring community service, the court shall consider the welfare of the society and the reasonable probability that the person sentenced shall not violate the law while rendering a public service.

Community service shall consist of any actual physical activity which inculcates civic consciousness, and is intended towards the improvement of a public work or promotion of a public service.

If the defendant violates the terms of the community service, the court shall order his/her re-arrest and the defendant shall serve the full term of the penalty, as the case may be, in jail, or in the house of the defendant as provided under Article 88. However, if the defendant has fully complied with the terms of the community service, the court shall order the release of the defendant unless detained for some other offenses.

The privilege of rendering community service in lieu of service in jail shall be availed of only once.

The community service must observe the following guidelines:

1. It must be served in the place where the crime was committed
2. The number of hours ordered by the courts must be completed within the period likewise prescribed by the courts
3. The person sentenced must undergo rehabilitative counselling under the Social Welfare and Development Officer of the city or municipality where the crime was committed
4. The person rendering community service must be under the supervision of a probation officer

The courts must consider the following in the discretionary exercise of imposing community service:

1. The terms must be commensurate to the gravity of the offense and the circumstances of the case
2. The welfare that the service will bring to society

3. The reasonable probability that the person sentenced shall not violate the law while rendering the service
 - If the convict violates the terms of the community service, he shall serve the full term of his penalty in jail, or be placed on house arrest if the penalty is arresto menor.
 - If he completes the terms of the community service, the court shall order his release, unless detained for another offense.

EXTINCTION OF CRIMINAL LIABILITY

ART. 89. ★

How criminal liability is totally extinguished.

Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
2. By service of the sentence;
3. By amnesty, which completely extinguishes the penalty and all its effects;
4. By absolute pardon;
5. By prescription of the crime;
6. By prescription of the penalty;
7. By the marriage of the offended woman, as provided in Article 344 of this Code.

⚠ *Extinction of criminal liability ≠ extinction of civil liability (see Arts. 100, et seq.).*

- Extinction of liability is a ground for a motion to quash (Rule 117, §3(g), Rules of Crim. Proc.).
- Cf: Arts. 11-12, extinction arises after the commission of the offense.

¶1: By death of the convict

The death of the convict, whether before or after final judgment, extinguishes criminal liability, because one of the juridical conditions of penalty is that it's personal.

“Final judgment” – Judgment beyond recall.

Effect of death on civil liability:

1. If accused died before final judgment → Civil liabilities extinguished

2. If accused died after final judgment → Civil liabilities remain

Effects of the death pending appeal on his criminal and civil liabilities:

General rule: Death pending appeal of his conviction extinguishes his criminal and civil liabilities based solely on the offense committed.

Exception: If the civil liability is predicated on a source of obligation other than a delict, e.g. law, contracts, quasi-contracts, and quasi-delicts.

⚠ **Death of the offended party does not extinguish the criminal liability! In a criminal case, the state is the *real* offended party.**

¶2: By service of sentence

Crime is a debt incurred by the offender as a consequence of his wrongful act, and the penalty is but the amount of his debt. When payment is made, the debt is extinguished.

- Service of sentence does not extinguish civil liability.

¶3: By amnesty

Amnesty – Act of the sovereign power granting oblivion or a general pardon for a past offense, and is rarely, if ever, exercised in favor of a single individual, and is usually exerted in behalf of certain classes of persons, who are subject to trial but have not yet been convicted.

- Amnesty extinguishes the penalty and all its effects.
- Amnesty may be granted before or after conviction.
- Amnesty does not extinguish civil liability.

¶4: By pardon

Pardon – An act of grace proceeding from the power entrusted with the execution of the laws which exempts the individual on whom it is bestowed from the punishment the law inflicts for the crime he has committed.

- a. Absolute
- b. Conditional

Pardon vs. amnesty

	Pardon	Amnesty
Crimes covered	Any crime	Political offenses (blanket)
When extended	After conviction by final judgment	Anytime (before/after prosecution)

Nature	Looks forward and exempts the offender from punishment (but restoration of civil and political rights must be explicitly stated)	Looks back and abolishes the offense itself
Effect on recidivism	No effect, still a recidivist	Not a recidivist anymore because the offense has been abolished
Civil liability	Not extinguished	
How offered	Must be pleaded and proven as it's a private act	A public act, and so the courts may take judicial notice of it

¶5-6: By prescription of crime and penalty

By prescription, the state loses the right to prosecute the crime, or to demand the service of the penalty imposed.

Prescription of the crime – Forfeiture or loss of the right of the state to prosecute the offender after the lapse of a certain time.

Prescription of the penalty – Forfeiture of the right of the government to execute the final sentence after the lapse of a certain time.

Conditions:

1. Final judgment
2. Period of time prescribed by law for its enforcement has elapsed.

¶7: By marriage of the offended woman

Marriage of the offender with the offended woman after the commission of the crimes of seduction, abduction, or acts of lasciviousness must be contracted by the offender in good faith.

Final discharge of the probationer

This operates to restore to him all civil rights lost or suspended as a result of his conviction and to totally extinguish his criminal liability as to the offense for which probation was granted (RA 10707).

ART. 90. ★

Prescription of crimes.

Crimes punishable by death, reclusion perpetua or reclusion temporal shall prescribe in twenty years.

Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years.

The crime of libel or other similar offenses shall prescribe in one year.

The offenses of oral defamation and slander by deed shall prescribe in six months.

Light offenses prescribe in two months.

When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in the first, second, and third paragraphs of this article.

Penalty/crimes	Prescriptive period
Reclusion perpetua and reclusion temporal	20 years
Prision mayor, perpetual/temporary absolute/special disqualification	15 years
Prision correccional, suspension, and destierro	10 years
Arresto mayor	5 years
Libel and similar offenses	1 year
Oral defamation and slander by deed	6 months
Arresto menor	2 months

Prescription for special penal laws (Act No. 3326)

Penalty/crimes	Prescriptive period
-----------------------	----------------------------

Only by a fine or by imprisonment for not more than 1 month, or both	1 year
Imprisonment for more than 1 month, but less than 2 years	4 years
Imprisonment for more than 2 years but less than 6 years	8 years
Imprisonment by more than 6 years	12 years
Offenses under the NIRC	5 years
Violations of municipal ordinances	2 months
Violations of the regulations/conditions of certificate of convenience by the [NTC]	2 months

ART. 91. ★*Computation of prescription of offenses.*

The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

Outline:

1. The period of prescription commences to run from the day on which the crime is discovered by the offended party, the authorities, or their agents.
2. It is interrupted by the filing of the complaint or information.
3. It commences to run again when the proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to him.
4. Prescription does not run when the offender is absent from the Philippines.

Romualdez v. Marcelo, G.R. 165510-33, Jul. 28, 2006

The RPC provision that tolls the running of the prescriptive period (Art. 91) does not apply to RA 3019 or Act No. 3326.

ART. 92. ★*When and how penalties prescribe.*

The penalties imposed by final sentence prescribe as follows:

1. Death and reclusion perpetua, in twenty years;
2. Other afflictive penalties, in fifteen years;
3. Correctional penalties, in ten years, with the exception of the penalty of arresto mayor, which prescribes in five years; and
4. Light penalties, in one year.

Penalties	Prescription
Death and reclusion perpetua	20 years
Other afflictive penalties	15 years
Correctional penalties, except arresto mayor	10 years
Arresto mayor	5 years
Light penalties	1 year

ART. 93. ★*Computation of the prescription of penalties.*

The period of prescription of penalties shall commence to run from the date when the culprit should evade the service of his sentence, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government has no extradition treaty, or should commit another crime before the expiration of the period of prescription.

Outline:

1. The period of prescription of *penalties* commences to run from the date the culprit evades the sentence.
2. It is interrupted if:

- a. The defendant surrenders
- b. Be captured
- c. Goes to a foreign country which the Philippines has no extradition treaty
- d. Commits another crime before the period expires

ART. 94.*Partial extinction of criminal liability.*

Criminal liability is extinguished partially:

1. By conditional pardon;
2. By commutation of sentence; and
3. For good conduct allowances which the culprit may earn while he is serving his sentence.

Conditional pardon – Exemption of an individual, within certain limits or conditions, from the punishment which the law inflicts for the offense he had committed.

- *Usual condition:* He shall not again violate any of the penal laws of the Philippines.

Commutation of sentence – Reduction of the duration of a prison sentence of a prisoner.

- Essentially it's the president changing the decision of the court insofar as the penalty is concerned.

Automatic commutations:

1. When the convict sentenced to death is over 70 years old (Art. 83).
2. When the Supreme Court en banc fails to muster a majority to affirm the sentence of death.

Good conduct time allowance – Allowances for good conduct are deductions from the term of the sentence for good behavior, and TSM.

- See Art. 29, which refers to the reduction of full time or % of the preventive imprisonment from the term of the sentence (crediting).
- Art. 98 also allows special time allowance for loyalty.

Parole – Conditional release of an offender from a correctional institution after serving the minimum of his prison term.

- It suspends the sentence of the convicts, subject to terms (it's not a pardon).
- Violation of the parole conditions will allow the BPP to rearrest the convict. A second conviction is not necessary for a rearrest.

“Without eligibility for parole” – Used when the circumstances are present to

warrant the imposition of death (which cannot be imposed) → “reclusion perpetua without eligibility for parole.”

- It merely emphasizes that the supposed penalty was death.
- Doesn't really matter because reclusion perpetua is indivisible (and has no minimum for which a parole may be applied).

*Conditional pardon***ART. 95.***Obligation incurred by any person granted conditional pardon.*

Any person who has been granted conditional pardon shall incur the obligation of complying strictly with the conditions imposed therein, otherwise, his non-compliance with any of the conditions specified shall result in the revocation of the pardon and the provisions of Article 159 shall be applied to him.

Outline of the provisions:

1. He must strictly comply with the conditions imposed in the pardon
2. Failure to comply with the conditions shall result in the revocation of the pardon (see *Torres*).
3. He becomes liable under Art. 159.

The condition of pardon only lasts for the unserved portion of the sentence.

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.

Aspect	Parole	Conditional Pardon
Governing Law	Granted under the Indeterminate Sentence Law.	Granted under the Administrative Code.

Authority Granting It	Granted by the Board of Pardons and Parole.	Granted by the Chief Executive.
When It Can Be Granted	After the prisoner has served the minimum penalty.	Can be given any time after final judgment.
Violation Consequences	<ul style="list-style-type: none">- Convict cannot be prosecuted under Article 159 of the Revised Penal Code.- Convict can be rearrested and reincarcerated to serve the unserved portion of the original penalty.	<ul style="list-style-type: none">- Convict may be prosecuted under Article 159 of the Revised Penal Code.- Convict can be rearrested or reincarcerated by the Chief Executive.

Torres v. Gonzales, G.R. 76872, July 23, 1987



In proceeding against a convict who has been conditionally pardoned and who is alleged to have breached the conditions of his pardon, the president has 2 options: §61(i) of the Revised Administrative Code, or under Art. 159, RPC.

- The choice of the president is her executive prerogative and not subject to judicial scrutiny.

Commutation

ART. 96.

Effect of commutation of sentence.

The commutation of the original sentence for another of a different length and nature shall have the legal effect of substituting the latter in the place of the former.

ART. 97. ★

Allowance for good conduct.

The good conduct of any offender qualified for credit for preventive imprisonment pursuant to Article 29 of the Code, or of any convicted prisoner in any penal institution, rehabilitation or detention center or any other local jail shall entitle him to the following deductions from the period of his sentence:

1. During the first two years of imprisonment, he shall be allowed a

deduction of twenty days for each month of good behavior during detention;

2. During the third to the fifth year, inclusive, of his imprisonment, he shall be allowed a reduction of twenty-three days for each month of good behavior during detention;
3. During the following years until the tenth year, inclusive, of his imprisonment, he shall be allowed a deduction of twenty-five days for each month of good behavior during detention;
4. During the eleventh and successive years of his imprisonment, he shall be allowed a deduction of thirty days for each month of good behavior during detention; and
5. At any time during the period of imprisonment, he shall be allowed another deduction of fifteen days, in addition to the numbers one to four hereof, for each month of study, teaching or mentoring service time rendered.

An appeal by the accused shall not deprive him of entitlement to the above allowances for good conduct.

Guinto v. DOJ, G.R. 249027, April 3, 2024



Any convicted prisoner is entitled to GCTA as long as the prisoner is in any penal institution, rehabilitation or detention center, or any other local jail.

GCTA deductions:

1. Years 1 and 2 – 20 days for each month
2. Years 3-5 – 23 days for each month
3. Years 6-10 – 25 days for each month
4. Years 11 onwards – 30 days

Disqualified from availing GCTA:

1. Recidivists
2. Habitual delinquents
3. Escapees
4. Accused who failed to surrender voluntarily for the execution of sentence

Loyalty

ART. 98.

Special time allowance for loyalty.

A deduction of one-fifth of the period of his sentence shall be granted to any prisoner who, having evaded his preventive imprisonment or the service of

his sentence under the circumstances mentioned in Article 158 of this Code, gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the passing away of the calamity or catastrophe referred to in said article. A deduction of two-fifths of the period of his sentence shall be granted in case said prisoner chose to stay in the place of his confinement notwithstanding the existence of a calamity or catastrophe enumerated in Article 158 of this Code.

This Article shall apply to any prisoner whether undergoing preventive imprisonment or serving sentence.

What is special time allowance for loyalty of prisoner?

It is a deduction in the period of the sentence of a prisoner who, having evaded the service of his sentence during a calamity/catastrophe (see Art. 158), gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the end of the calamity, or who chose to stay in the place of confinement notwithstanding the calamity.

- $\frac{1}{5}$ reduction for those who return after 48 hours
- $\frac{1}{5}$ reduction for those who stay

The deduction is reckoned from the period of the original sentence imposed.

Art. 158 provides an increase in penalty by $\frac{1}{5}$ for those who don't return.

- Such increase should not exceed 6 months.

ART. 99.

Who grants time allowances.

Whenever lawfully justified, the Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology and/or the Warden of a provincial, district, municipal or city jail shall grant allowances for good conduct. Such allowances once granted shall not be revoked.

The GCTA is not an automatic right.

Once granted, the GCTA cannot be revoked.

CIVIL LIABILITY

ART. 100.

Civil liability of a person guilty of felony.

Every person criminally liable for a felony is also civilly liable.

Dual character of crime

1. Against the state (social injury)
2. Against the offended party (personal injury)

Damages that may be recovered in criminal cases

1. Crimes against property – Damages based on the price of the thing and its special sentimental value to the injured party may be recovered, if the thing itself cannot be restored.
2. Crimes against persons – Damages may be collected from medical costs, and loss of earning capacity.
3. Moral damages, in cases of physical injuries brought by crimes against chastity.
4. Exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances.

The civil aspect of a criminal case is deemed instituted upon filing of the charges, **except:**

1. When the offended party waives the civil aspect
2. When the offended party reserves the right to independently pursue it
3. When the offended party has already instituted it, in which case, it must be suspended.

General rule: Acquittal extinguishes civil liability.

Exceptions:

1. When the acquittal was based on reasonable doubt
2. When acquittal was due to-
 - a. Insanity/imbecility (Art. 12(1))
 - b. Minority (Art. 12(2-3))
 - c. Irresistible force (Art. 12(5))
 - d. Uncontrollable fear (Art. 12(6))
3. When the decision of the court explicitly provides for civil liability
4. When the civil liability arises from other obligations (not just from the delict)
5. When there is an independent civil action (*see* Arts. 31-34, NCC)

Prejudicial questions – One which arises in a case, the resolution of which is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal.

- In this case, the prejudicial question must be resolved first before the criminal case (*see Pulido v. People*, vis-a-vis bigamy, which held that the validity of a second marriage is a prejudicial question).

ART. 101.*Rules regarding civil liability in certain cases.*

The exemption from criminal liability established in subdivisions 1, 2, 3, 5, and 6 of Article 12 and in subdivision 4 of Article 11 of this Code does not include exemption from civil liability, which shall be enforced subject to the following rules:

First. In cases of subdivisions 1, 2, and 3 of Article 12, the civil liability for acts committed by an imbecile or insane person, and by a person under [fifteen] years of age, or by one over fifteen but under eighteen years of age, who has acted without discernment, shall devolve upon those having such a person under their legal authority or control, unless it appears that there was no fault or negligence on their part.

Should there be no person having such insane, imbecile, or minor under his authority, legal guardianship, or control, or if such person be insolvent, said insane, imbecile, or minor shall respond with their own property, excepting property exempt from execution, in accordance with the civil law.

Second. In cases falling within subdivision 4 of Article 11, the persons for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which they may have received.

The courts shall determine, in their sound discretion, the proportionate amount for which each one shall be liable.

When the respective shares cannot be equitably determined, even approximately, or when the liability also attaches to the Government, or to the majority of the inhabitants of the town, and, in all events, whenever the damage has been caused with the consent of the authorities or their agents, indemnification shall be made in the manner prescribed by special laws or regulations.

Third. In cases falling within subdivisions 5 and 6 of Article 12, the persons using violence or causing fear shall be primarily liable and secondarily, or, if there be no such persons, those doing the act shall be liable, saving always to the latter that part of their property exempt from execution.

General rule: There is civil liability in the exempting circumstances of imbecility, insanity, minority, irresistible force, and uncontrollable fear.

For imbecility, insanity, and minority:

1. Civil liability shall devolve upon the person having legal capacity or control over them.

a. Exception: If they are not at fault or negligent.

2. For all other cases (insolvency of the parents, and person no control over the imbecile/insane/minor), the culprit's property shall be executed, except those which are exempt from execution.

For a minor aged 15-18, with discernment:

1. Father
2. Mother
3. Guardian (*PD 603*).

For the exempting circumstance of irresistible force and uncontrollable fear:

1. The persons using violence or causing the fear are primarily liable.
2. If there are no such persons, those doing the act shall be liable secondarily.

For the justifying circumstance of avoidance of a greater evil or injury:

1. The person benefited by the prevention of the evil or injury

ART. 102.*Subsidiary civil liability of innkeepers, tavernkeepers, and proprietors of establishments.*

In default of the persons criminally liable, innkeepers, tavern keepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees.

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

¶1: Civil liability for crimes**Elements:**

1. That the innkeeper, tavern keeper or proprietor of establishment or his employee committed a violation for municipal ordinance or some general or special police regulation.
2. That a crime is committed in such an inn, tavern or establishment.

3. That the person criminally liable is insolvent.
 - a. This implies that the person who committed the crime must be tried first, convicted and found to be insolvent.

¶12: Civil liability for loss of goods

Elements:

1. The guests notified in advance the innkeeper or the person representing him of the deposit of their goods within the inn or house.
2. The guests followed the directions of the innkeeper or his representative with respect to the care of and vigilance over such goods.
3. Such goods of the guests lodging therein were taken by robbery with force upon things or theft committed within the inn or house.

There is no liability under ¶12 when the robbery was committed through violence or intimidation.

- **Except:** When said robbery was committed by the innkeeper's employees.

ART. 103.

Subsidiary civil liability of other persons.

The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

Elements:

1. The employer, teacher, person, or corporation is engaged in any kind of industry.
2. Any of their servants, pupils, workmen, apprentices, or employees commits a felony while in the discharge of his duties.
3. The said employee is insolvent and has not satisfied his civil liability.

"Industry" – Enterprise as a means for profit and livelihood. Nonprofits are not included.

ART. 104.

What is included in civil liability.

The civil liability established in Articles, 100, 101, 102, and 103 of this Code includes:

1. Restitution;
2. Reparation of the damage caused;
3. Indemnification for consequential damages.

- Restitution – To restore the thing.
- Reparation – To repair the damage caused by unlawful act.
- Indemnification – Indemnifying the offended party of all the consequential damages he has sustained due to the commission of the crime.

Civil liabilities vs. pecuniary liabilities

Aspect	Civil Liabilities Art. 104	Pecuniary Liabilities Art. 38
Common elements	Both include: <ol style="list-style-type: none"> 1. Reparation of the damage caused 2. Indemnification for consequential damages 	
Restitution	Includes restitution, where the unlawfully taken property is returned to its owner.	Does not include restitution, as pecuniary liabilities involve payment out of the offender's property.
Additional components	Does not include fines or costs of proceedings.	Includes: (a) Fines (b) Costs of proceedings.

ART. 105.

Restitution, how made.

The restitution of the thing itself must be made whenever possible, with allowance for any deterioration, or diminution of value as determined by the court.

The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person, who may be liable to him.

This provision is not applicable in cases in which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery.

“The restitution of the thing itself must be made whenever possible” – Return of the very thing taken, if possible. If not, payment of the value (reparation).

- Even if the property stolen was acquired by a third person by purchase, without knowing that it had been stolen. Such property shall be returned. Otherwise, anti-fencing laws.

Does not apply when (par. 3), e.g. –

1. When sale is authorized, the property cannot be recovered.
2. Innocent purchasers for the value of property covered by a Torrens Title cannot be required to return the same to its owner who has been unlawfully deprived of it.

ART. 106.

Reparation, how made.

The court shall determine the amount of damage, taking into consideration the price of the thing, whenever possible, and its special sentimental value to the injured party, and reparation shall be made accordingly.

Reparation will be ordered by the court if restitution is not possible.

- Civil damages are limited to those caused by and flowing from the commission of the crime.

Moral damages – May be received in the following and analogous cases:

- Crime resulting in physical injuries
- Seduction, abduction, rape or acts of lasciviousness, adultery, or concubinage.
- Illegal or arbitrary detention or arrest
- Illegal search
- Libel, slander, or other forms of defamation.
- Malicious prosecution.

Exemplary damages – Imposed for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

- May be given when one or more aggravating circumstances are present.

ART. 107.

Indemnification, what is included.

Indemnification for consequential damages shall include not only those caused the injured party, but also those suffered by his family or by a third person by reason of the crime.

In general –

- Indemnity – Crimes against persons
- Reparation – Crimes against property

Net earning capacity = Life expectancy x (Gross annual income – Living expenses)

- Life expectancy = $\frac{2}{3}$ x (80 – age at death)
- In the absence of proof, living expenses are assumed to be half of the gross annual income.

Examples of civil indemnities:

1. For crimes where the death penalty may be imposed: P100,000
2. Rape with homicide: P100,000
3. Rape by sexual assault: P30,000

Temperate damages – May be awarded by the court when some pecuniary loss was suffered but its amount cannot be proved with certainty.

- More than nominal, but less than compensatory.

Damages are subject to an interest of 6% p.a.

Civil liability is not part of the punishment.

ART. 108.

Obligation to make restoration, reparation for damages, or indemnification for consequential damages and action to demand the same, upon whom it devolves.

The obligation to make restoration or reparation for damages and indemnification for consequential damages devolves upon the heirs of the person liable.

The action to demand restoration, reparation, and indemnification likewise descends to the heirs of the person injured.

- The heirs of the person liable has no obligation if restoration is not

- possible and the deceased left no property.
- Civil liability is possible only when the offender dies after final judgment.

ART. 109.

Share of each person civilly liable.

If there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond.

The person with greater participation in the commission of the crime should have a greater share in the civil liability than those who played a minor role, or those who merely profited from its effects.

People v. Tampus, G.R. 181084, June 16, 2009

The proportion of this individual liability must be graduated not only according to the nature of the crime committed and the circumstances attending it, but also the degree and nature of participation of the individual offender.

- The courts have the competence to determine the exact participation of the principal, accomplice, and accessory in the commission of the crime relative to the other classes.

ART. 110.

Several and subsidiary liability of principals, accomplices, and accessories of felony, preference in payment.

Notwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally (in solidum) among themselves for their quotas, and subsidiarily for those of the other persons liable.

The subsidiary liability shall be enforced, first against the property of the principals; next, against that of the accomplices, and, lastly, against that of the accessories.

Whenever the liability in solidum or the subsidiary liability has been enforced, the person by whom payment has been made shall have a right of action against the others for the amount of their respective shares.

This refers to the prioritization of executing the property of the principal, accomplice, and accessories.

- When there are principals and accessories in the commission of the crime, the principals are solidarily liable of their quota and subsidiarily liable for representing the quota of their accessories.
- The accomplices are jointly and severally liable for the portion adjudged against them and are subsidiarily liable for the portion of their principal in case of the latter's insolvency.

ART. 111.

Obligation to make restitution in a certain case.

Any person who has participated gratuitously in the proceeds of a felony shall be bound to make restitution in an amount equivalent to the extent of such participation.

“Participated gratuitously” – An innocent person who has participated in the proceeds of a felony through the liberality of the offender.

- He should not have paid for the stolen property, else → Art. 105 (restitution).

The person who participated gratuitously–

1. Is not criminally liable
2. Must not be an accessory

ART. 112.

Extinction of civil liability.

Civil liability established in Articles 100, 101, 102, and 103 of this Code shall be extinguished in the same manner as other obligations, in accordance with the provisions of the Civil Law.

Civil liability may arise from:

1. Crime (delicts)
2. Breach of contract (culpa contractual)
3. Tortious act (culpa aquiliana)

Civil liability is extinguished:

1. By payment of performance
2. By the loss of the thing due
3. By the condonation or remission of the debt
4. By the confusion or merger of the rights of the creditor and debtor

5. By compensation
6. By novation

Force majeure – Offender is still civilly liable if the stolen property got lost by reason of force majeure.

- In other words, force majeure does not wipe out civil liability.

ART. 113.

Obligation to satisfy civil liability.

Except in case of extinction of his civil liability as provided in the next preceding article, the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact that he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon, commutation of sentence or any other reasons.

The following do not extinguish civil liability:

1. Service of the sentence
2. Amnesty
3. Pardon
4. Commutation of sentence
5. Probation (as held in *Budlong v. Apalisok*).