

CRIMINAL LAW 2

2S, 24-25

Consolidated codal, case law, and commentary

Codal

Commentary

Case law

BOOK II

Title VII Crimes Against Persons

Chapter 1 Destruction of Life

ART. 246 *Parricide*

Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

Elements ♥

1. That a person is killed
2. The deceased is killed by the accused
3. That the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or legitimate spouse, of the accused.

Who are considered victims of parricide?

Victim (vis-a-vis the relationship to the accused)	Legitimate	Illegitimate	Remarks
Father	✓	✓	Includes biological father whether legitimate or

			illegitimate
Mother	✓	✓	Includes biological mother whether legitimate or illegitimate
Child [1]	✓	✓	Includes both legitimate and illegitimate children
Spouse [2]	✓	✗	Only a legally married spouse is covered
Ascendants	✓	✗	This excludes parents and children. Hence, you begin with the grandparent and grandchild.
Descendants	✓	✗	

[1] The child must be at least three days old. If younger than three days → infanticide (See Art. 255).

[2] The presumption of marriage applies, and the following may be considered evidence:

- Marriage certificate
- In the absence thereof, oral evidence of marriage

Annulment or nullity is not a prejudicial question in a criminal case for parricide.

- The nullity does not retroact to the date of the marriage, insofar as the penal laws are concerned (*Pimentel v. Pimentel*, G.R. 172060, Sep. 13, 2010).

Q: If a person wanted to kill a stranger but by mistake killed his own father, would it be parricide?

A: Yes. Art. 49 applies as regards the penalty (error in personae; maximum of the less severe felony).

Q: If a person killed another, not knowing that the latter was his son, will he be guilty of parricide?

A: Yes. The law does not require knowledge of the relationship between them

(See generally Art. 4(1)).

ART. 247

Death or physical injuries inflicted under exceptional circumstances.

Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of *destierro*.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.

Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article.

Requisites for the application of Art. 247:

1. That a **legally married person** or a **parent** surprises his spouse or his daughter (under 18 and living with him) in the act of committing sexual intercourse with another person.
2. That he or she kills **any or both of them** or inflicts upon any or both of them any **serious physical injury in the act or immediately thereafter**.
3. That he has not promoted or facilitated the prostitution of his wife or daughter, or that he or she has not consented to the infidelity of the other spouse.

“Legally married person” – Suggests that the wife and husband are both entitled to the benefits of Art. 247.

“Parent” – May include both legitimate and illegitimate.

“In the act of committing sexual intercourse” – Does not include merely sleeping on the same bed, or conversing on the bed (People v. Macal, G.R. 211602, Jan. 13, 2016), or after sexual intercourse.

- But it is enough that the circumstances show reasonably that the carnal act is being committed or has just been committed.
- Only flagrant adultery is considered. Hence, when a wife is being raped and the husband kills the rapist, the justifying circumstance of

defense of a relative—not Art. 247—applies.

“Immediately thereafter” – The discovery, escape, pursuit, and the killing must all form part of **one continuous act** (see People v. Abarca).

People v. Abarca, G.R. 74433, September 14, 1987



Under Art. 247(1), the following elements must concur:

1. That a legally married person surprises his spouse in the act of committing sexual intercourse with another person; and
2. That he kills any or both of them in the act or immediately thereafter.

The RPC does not say that the accused should commit the killing instantaneously. It only requires that the **death caused be the proximate result of the outrage overwhelming the accused**.

Art. 247 does not define and provide for a specific crime, but grants a privilege or benefit to the accused for the killing of another or the infliction of serious physical injuries under the circumstances therein mentioned.

Consequently, because inflicting death under exceptional circumstance is not a punishable act, it cannot be qualified by either aggravating or mitigating or other qualifying circumstance.

Q: In what cases is a person who committed parricide not to be punished with *reclusion perpetua* to death?

1. Parricide through negligence (Art. 365)
2. Committed by mistake (Art. 249)
3. Committed under exceptional circumstances (Art. 247)

ART. 248 ★ Murder

Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by

means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Elements ♥

1. That a person was killed. [1]
2. That the accused killed him.
3. That the killing was attended by any of the qualifying circumstances in Art. 248.
4. The killing is not parricide or infanticide.

[1] Not killing the victim does not consummate the crime. It either becomes attempted or frustrated. And in the absence of intent to kill → physical injuries.

Intent to kill

- To prove the felony of homicide or murder, there must be incontrovertible evidence, direct or circumstantial, that the victim has been deliberately killed (with malice).
- Such evidence may consist, among others, of:
 - The use of weapons
 - The nature, location and number of wounds sustained by the victim
 - The words uttered by the malefactors before the killing.
- If the victim dies because of a deliberate act of the malefactor, intent to kill is conclusively presumed.

Rules for the application of the qualifying circumstances

1. If one or more of the said circumstances are present, the others may be considered as generic aggravating.
2. When the other circumstances are absorbed or included in one qualifying circumstance, they cannot be considered as generic aggravating.
 - a. *Example:* If the killing is attended by treachery, abuse of superior strength, or with aid of armed men, and treachery is chosen to qualify the crime, the others are not generic aggravating circumstances because they are absorbed by treachery.

3. Any of the qualifying circumstances enumerated in Art. 248 must be alleged in the information.

Crim 1 review

Treachery

- 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.
- An unexpected and sudden attack which renders the victim unable and unprepared to put up a defense.
- This includes the killing of someone of tender age because there is no danger to the accused.

Taking advantage of superior strength

- This is present whenever there is a notorious inequality of forces between the victim and the aggressor.
- This means to purposely use excessive force out of proportion to the means of defense available to the victim, e.g.:
 - Attack by a man with a weapon upon an unarmed woman.
 - When the victim is wounded, weak, and unarmed and the assailants were armed.
 - When the accused chased, ganged up and killed the victim, and used weapons which rendered the victim defenseless.

With aid of armed men

- When the accused had companions who were armed when he committed the crime.
- The armed men must take part in the commission of the crime directly or indirectly and the accused must avail himself of their aid or rely upon them when the crime is committed.

Employing means to weaken the defense

- Examples are:
 - A person who suddenly throws a cloak over the head of his opponent and kills him.
 - One who suddenly casts sand or dirt upon the eyes of the victim and kills him.

Employing means or persons to insure or afford impunity

- When means or persons are employed by the accused who killed the deceased to prevent his being recognized, or to secure himself against detection and punishment.

In consideration of a price, reward, or promise

- The person who received the price or reward or who accepted a promise of price or reward would not have killed the victim were it not for that price, reward, or promise.
 - Such a person is a principal by direct participation.
- When this circumstance is proven, both the offeror and PDP are guilty of murder (implied conspiracy).

By means of fire, poison, explosion, etc.

- There should be an actual design to kill and that the use of fire, etc. should be **purposely adopted** as a means to that end (to kill).
 - This should be differentiated to arson as a means to conceal/destroy the body of the crime. In this case, arson and murder/homicide may be charged separately.
- Treachery and premeditation are inherent in murder by poison!**
 - Hence, they cannot be considered as a generic aggravating circumstance.

On the occasion of inundation, shipwreck, etc., of an earthquake, eruption of a volcano, epidemic, or any other public calamity

- Killing the person on the occasion of the said disasters, when taken advantage of by the defender qualifies the crime to murder.

Evident premeditation

- This exists when the execution of the criminal act is 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**.
- The following elements must concur:
 - The time when the offender has determined to commit the crime
 - An act manifestly indicating that the culprit has clung to his determination
 - A sufficient interval of time between the determination and the execution of the crime has lapsed to allow him to reflect upon the consequences of his act.

Cruelty

- When other injuries or wounds are inflicted deliberately by the offender, which are **not necessary** for the killing of the victim.

Outraging or scoffing at the person or corpse of the victim

- "Outraging"** – To commit an extremely vicious or deeply insulting act.
- "Scoffing"** – To jeer, and implies a showing of irreverence.
 - Disrespect

ART. 249 ★ Homicide

Any person who, not falling within the provisions of Article 246, shall kill another, without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

Homicide – The unlawful killing of any person, which is neither parricide, murder, nor infanticide.

Elements ♥

- That a person was killed;
- That the accused killed him **without any justifying circumstance**;
- That the accused had the **intention to kill**, which is presumed;
- That the killing was **not attended** by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

Intent to kill?	Victim is killed?	Felony
✓	✓	Consummated homicide [1]
✓	✗	Frustrated or attempted homicide [2]
✗	✓	Consummated homicide [3]
✗	✗	Physical injury [4]

[1] In homicide, the victim must be killed to consummate the crime.

[2] If the victim isn't killed, it is either attempted or frustrated homicide.

[3] Intent to kill is conclusively presumed when death resulted.

[4] In attempted or frustrated homicide, the offender must have the intent to kill the victim. If there is no intent to kill on the part of the offender, he is liable for physical injuries (Arts. 263-266).

- Intent to kill must be proved beyond reasonable doubt. It can be inferred from:
 - Weapon/s used; and
 - Wounds inflicted.

Murder vs. homicide

In the absence of clear proof of any circumstance that would qualify as

murder the killing of the deceased, the accused must be sentenced **only for homicide**.

Accidental homicide

This is the death of a person brought about by a lawful act performed with proper care and skill, and without homicidal intent.

- Example: A death of a boxer in a boxing bout cannot be homicide if the game is freely permitted by law, and all the rules of the game have been observed.
 - If rules have been violated (e.g. a foul blow) → homicide through negligence
 - If the foul blow had been intended to kill the opponent → intentional homicide

Corpus delicti

- The actual commission of the crime charged
- That a crime was actually perpetrated and does not refer to the body of the murdered person.

Two things consist the *corpus delicti*:

1. Criminal act; and
2. Defendant's agency in the commission of the act.

These must be proven by the prosecution.

	Murder	Homicide
Codal	Art. 248	Art. 249
Definition	The unlawful killing of a person with qualifying circumstances.	The unlawful killing of a person without any qualifying circumstances.
Qualifying circumstance	Includes treachery, abuse of superior strength, use of means that weaken defense, consideration of price/reward, means causing great waste, commission during a calamity, evident premeditation, or cruelty	None

Penalty	<i>Reclusion perpetua</i> to death	<i>Reclusion temporal</i>
---------	------------------------------------	---------------------------

ART. 250

Penalty for frustrated parricide, murder, or homicide

The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime or parricide, murder, or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provisions of Article 50.

The courts, considering the facts of the case, may likewise reduce by one degree the penalty which under Article 51 should be imposed for an attempt to commit any of such crimes.

For frustrated parricide, murder, or homicide:

- Courts can impose up to a penalty two degrees lower

For attempted parricide, murder, or homicide:

- Courts can impose up to a penalty three degrees lower

This rule is permissive.

ART. 251

Death caused in a tumultuous affray.

When, while several persons, not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it cannot be ascertained who actually killed the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by *prision mayor*.

If it cannot be determined who inflicted the serious physical injuries on the deceased, the penalty of *prision correccional* in its medium and maximum periods shall be imposed upon all those who shall have used violence upon the person of the victim.

Elements ♥

1. That there be several persons [1]
2. That they did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally

3. That these several persons quarreled and assaulted one another in a confused and tumultuous manner
4. That someone was killed in the course of the affray [2]
5. That it cannot be ascertained who actually killed the deceased [3]
6. That the person or persons who inflicted serious physical injuries or who used violence can be identified

[1] "Several persons" means more than two persons, but "tumultuous" implies more than four. Hence, this exists when at least four persons took part.

[2] The person killed need not be one of the participants in the affray.

[3] If the one who inflicted the fatal wound is known, the crime is homicide under Art. 249 against the one who inflicted the wound.

The following are **not** tumultuous affray:

1. When there are two identified groups of men who assaulted each other
2. When the quarrel is between two well-known groups
3. When the group of persons assaults a common or particular victim

In such cases, homicide is the felony.

Who are liable for death in a tumultuous affray?

1. The person/s who inflicted the serious physical injuries
2. If it is not known who inflicted the serious physical injuries on the deceased, all the persons who used violence upon the victim are liable.

ART. 252

Physical injuries inflicted in a tumultuous affray.

When in a tumultuous affray as referred to in the preceding article, only serious physical injuries are inflicted upon the participants thereof and the person responsible therefor cannot be identified, all those who appear to have used violence upon the person of the offended party shall suffer the penalty next lower in degree than that provided for the physical injuries so inflicted.

When the physical injuries inflicted are of a less serious nature and the person responsible therefor cannot be identified, all those who appear to have used any violence upon the person of the offended party shall be punished by *arresto mayor* from five to fifteen days.

Elements ♥

1. That there is a tumultuous affray as referred to in Art. 251
2. That a participant/s [1] thereof suffer serious [2] or less serious physical injuries
3. That the person responsible therefor cannot be identified
4. That all those who appear to have used violence upon the offended party are known

[1] The victim must be a participant in the affray. This is different from Art. 251.

[2] When a person dies and the perpetrator is unknown, Art. 251 applies.

Note that **only those who used violence are punished** because if the one who caused the physical injuries is known, he will be liable for the physical injuries actually committed (*See* Art. 263, et seq.).

Q: Are slight physical injuries included?

A: It's unclear. Perhaps, the legislature intended to exclude it because the penalty for slight physical injuries under Art. 266 is at most *arresto menor*, and the penalty one degree lower is public censure (*See* Scale, Art. 71).

ART. 253

Giving assistance to suicide.

Any person who shall assist another to commit suicide shall suffer the penalty of *prision mayor*, if such person lends his assistance to another to the extent of doing the killing himself, he shall suffer the penalty of *reclusion temporal*. However, if the suicide is not consummated, the penalty of *arresto mayor* in its medium and maximum periods shall be imposed.

Acts punished:

1. By assisting another to commit suicide, whether the suicide is consummated or not.
2. By lending his assistance to another to commit suicide to the extent of doing the killing himself.

"If the suicide is not committed"

Act punished	Penalty
Assisting another to commit suicide and it is <i>not</i> consummated	<i>Arresto mayor</i> in its medium and maximum period
Lending assistance which consists of	<i>Reclusion temporal</i> → consummated

doing the killing himself and suicide is <i>not</i> consummated	Prision mayor Prision correccional
---	---------------------------------------

Suicide is not a crime in the Philippines.

Q: Is a pregnant person, who tried to commit suicide by means of poison, but instead of dying, the fetus in her womb was expelled, liable for abortion?

A: No. To incur criminal liability for the result not intended, one must be committing a felony (Art. 4[1]). An attempt to commit suicide isn't punishable by law (Art. 3). Hence, the woman isn't liable for abortion for expelling the fetus instead.

Euthanasia vs. assistance to suicide

Euthanasia – (a.k.a. mercy killing) The practice of painlessly putting to death a person suffering from some incurable disease.

Euthanasia is not lending assistance to suicide.

- In euthanasia, the person killed does not want to die. A doctor who resorts to mercy-killing of his patient may be liable for murder.

ART. 254

Discharge of firearms.

Any person who shall shoot at another with any firearm shall suffer the penalty of *prision correccional* in its minimum and medium periods, unless the facts of the case are such that the act can be held to constitute frustrated or attempted parricide, murder, homicide, or any other crime for which a higher penalty is prescribed by any of the articles of this Code.

Elements ♥

- That the offender discharges a firearm against or at another person.
- That the offender has no intention to kill that person. [1]

[1] If there's intent to kill, then the felony must be **classified as attempted or frustrated parricide, murder, or homicide.**

- The purpose of the discharge of the firearm must be to **intimidate or frighten** the offended party only.
- The distance of the shooter to the person infers the intent to kill (i.e. the farther they are, the less chance the intent to kill is present).

“Shall shoot at another” – If the firearm is not discharged at a person, there is no crime of discharge of firearm.

If in the illegal discharge of a firearm, the victim is wounded, then the felony is a complex crime of discharge of firearm with serious/less serious physical injuries.

- If there's slight physical injuries, the two should be charged separately (light felonies cannot be complexed).

The crime is discharge of firearm, even if the gun was not pointed at the offended party when it fired, **as long as it was initially aimed by the accused at or against the offended party.**

ART. 255

Infanticide.

The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

If the crime penalized in this article be committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of *prision mayor* in its medium and maximum periods, and if said crime be committed for the same purpose by the maternal grandparents or either of them, the penalty shall be *reclusion temporal*.

Elements ♥

- That a child was killed [1]
- That the deceased child was less than three days old
- That the accused killed the said child

[1] Since the crime consists in killing a child, the prosecution must prove that the mother gave birth to a living creature. The fetus must sustain an independent life.

Perpetrator	Penalty
Mother of the child for the purpose of concealing her dishonor	Prision mayor in its medium and maximum periods
Maternal grandparent/s for the purpose of concealing their dishonor	Reclusion temporal
Any person (including the mother and maternal grandparent/s without	Reclusion perpetua to death [1]

the purpose of concealment)

[1] This is the penalty imposed for parricide and murder.

“For the purpose of concealing ... dishonor”

- Is not an element of infanticide. It is a mitigating circumstance for the mother or the maternal grandparents who committed the felony.
- Reason for mitigating: We understand that the responsibility of the mother is mitigated when, right after giving birth to a baby born out of an illicit relationship, without time to reflect, excited and obfuscated solely by the fear of her dishonor being made public, she desires to erase the traces of her mistake.
- The accused mother must be of good reputation and good morals in order to avail this mitigating circumstance.

ART. 256

Intentional abortion.

Any person who shall intentionally cause an abortion shall suffer:

1. The penalty of *reclusion temporal*, if he shall use any violence upon the person of the pregnant woman.
2. The penalty of *prision mayor*, if, without using violence, he shall act without the consent of the woman.
3. The penalty of *prision correccional* in its medium and maximum periods, if the woman shall have consented.

Abortion – The willful killing of the fetus in the uterus, or the violent expulsion of the fetus from the maternal womb which results in the death of the fetus.

- Hence, if the abortion is intentional but the fetus does not die, it is *frustrated intentional abortion*.
- But if the abortion is not intended and the fetus does not die despite the violence intentionally exerted, the crime may only be physical injuries.

Fetus – Before the sixth month or before the term of viability (that is, capable of sustaining life).

- Nevertheless, as long as the fetus dies as a result of the violence or the drugs administered, the crime of abortion exists, even if the fetus is full term.

Elements ♥

1. There is a pregnant person
2. That violence is exerted, or drugs/beverages administered, or that the accused otherwise acts upon such pregnant person
3. That as a result of the use of violence or drugs or beverages upon her, or any other act of the accused, the fetus dies, either in the womb or after having been expelled therefrom
4. That the abortion is intended

Q: Who is liable?

A: The person who intentionally caused the abortion is liable under Art. 256. The woman is liable under Art. 258, if she consented (See Art. 253[3]).

In relation to infanticide, if the fetus could:

1. Sustain an independent life [1], after its separation from the womb; and
 2. Is killed;
- the crime is infanticide.

[1] This is the viability line.

ART. 257

Unintentional abortion.

The penalty of *prision correccional* in its minimum and medium periods shall be imposed upon any person who shall cause an abortion by violence, but unintentionally.

Elements ♥

1. There is a pregnant person
2. That violence [1] is used upon such pregnant woman without intending an abortion
3. That the violence is intentionally exerted
4. That as a result of the violence, the fetus dies, either in the womb or after having been expelled therefrom

[1] The use of the word violence means *actual physical force*.

Q: Is the accused liable for abortion even if he did not know that the woman was pregnant?

A: For the crime of abortion, even unintentional, to be committed, the

accused must have known of the pregnancy.

In relation to infanticide, it is necessary that the child be born alive and be viable.

If a child is expelled prematurely and is born alive but could not sustain an independent life, the offense is abortion.

- **No intention to cause abortion, no violence–no abortion of any kind.**

ART. 258

Abortion practiced by the woman herself or by her parents.

The penalty of *prision correccional* in its medium and maximum periods shall be imposed upon a woman who shall practice an abortion upon herself or shall consent that any other person should do so.

Any woman who shall commit this offense to conceal her dishonor shall suffer the penalty of *prision correccional* in its minimum and medium periods.

If this crime be committed by the parents of the pregnant woman or either of them, and they act with the consent of said woman for the purpose of concealing her dishonor, the offenders shall suffer the penalty of *prision correccional* in its medium and maximum periods.

Elements ♥

1. That there is a pregnant person who has suffered an abortion
2. That the abortion is intended
3. That the abortion is caused by–
 - a. The pregnant person
 - b. Any other person with her consent
 - c. Any of her parents, with her consent, for the purpose of concealing her dishonor

Situations covered by Art. 258

1. Abortion committed (1) by the woman upon herself or (2) by any other person with her consent.
 - Penalty: Prision correccional in med-max period
 - The other person is liable under Art. 256
2. Abortion by the woman to conceal her dishonor.
 - Penalty: Prision correccional in min-med period
 - A mitigating circumstance, essentially

3. Abortion by any of the parents of the woman with the latter's consent to conceal her dishonor.

- Penalty: Prision correccional in med-max period
- But if the purpose of concealing dishonor is absent, parents will be liable under Art. 256

ART. 259

Abortion practiced by a physician or midwife and dispensing of abortives.

The penalties provided in Article 256 shall be imposed in its maximum period, respectively, upon any physician or midwife who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same.

Any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer *arresto mayor* and a fine not exceeding One hundred thousand pesos (P100,000).

Elements (par. 1) ♥

1. That there is a pregnant woman who has suffered an abortion
2. That the abortion is intended
3. That the offender, who is a physician or midwife, causes, or assists in causing, the abortion
4. That said physician or midwife takes advantage of his scientific knowledge or skill

Elements (par. 2) ♥

1. That the offender is a pharmacist (RPh)
2. That there is no proper prescription from a physician
3. That the offender dispenses any abortive

If the offender is a physician (MD) or midwife (RM)

Offense	Penalty
If violence is used upon the pregnant woman	Reclusion temporal
No violence, but without the woman's consent	Prision mayor in its maximum period
If the woman consented	Prision correccional in its maximum period

Q: Is it necessary that the pharmacist knows that the abortive would be used to cause an abortion?

A: The codal does not require it. The act constituting the offense is dispensing abortive without proper prescription from a physician. It is not necessary that the abortive be actually used.

We're skipping duels (Arts. 260-261)!

Chapter 2 Physical Injuries

ART. 262 Mutilation. 🍆

The penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction.

Any other intentional mutilation shall be punished by *prision mayor* in its medium and maximum periods. [1]

[1] This penalty becomes *reclusion perpetua* when the victim is under 12 years of age (RA 7610, §10).

Mutilation – The lopping or the clipping off of some part of the body.

There are **two kinds** of mutilation:

1. Intentionally mutilating another by depriving him, totally or partially, some essential organ for reproduction
2. Lopping or clipping off any part of the body of the victim, other than the essential organ for reproduction (mayhem)

Elements (par. 1) ♥

1. That there be a castration of organs necessary for generation (e.g. penis or ovarium) [1]
2. That the mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction

[1] If by reason of an injury or attack, a person is deprived of the organs of generation, the act, although voluntary, not being intentional to that end (i.e., castration), it would not come under this article. It would be physical injuries.

- Vasectomy is not mutilation (See Aguirre v. SOJ, G.R. 170723, Mar. 3, 2008).

ART. 263 ★ Serious physical injuries.

Any person who shall wound, beat, or assault another, shall be guilty of the crime of serious physical injuries and shall suffer:

1. The penalty of *prision mayor*, if in consequence of the physical injuries inflicted, the injured person shall become **insane, imbecile, impotent, or blind**;
2. The penalty of *prision correccional* in its medium and maximum periods, if in consequence of the physical injuries inflicted, the person injured shall have lost the use of **speech** or the power to **hear** or to **smell**, or shall have **lost an eye**, a **hand**, a **foot**, an **arm**, or a **leg**, or shall have **lost use** of any such member, or shall have become **incapacitated** for the **work** in which he was theretofore habitually engaged;
3. The penalty of *prision correccional* in its minimum and medium periods, if in consequence of the physical injuries inflicted, the person injured shall have become **deformed**, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been **ill** or **incapacitated** for the performance of **work** in which he was habitually engaged for a period of **more than ninety days**;
4. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if the physical injuries inflicted shall have been caused the **illness** or **incapacity for labor** of the injured party for **more than thirty days**.

If the offense shall have been committed against any of the persons enumerated in Article 246, or with attendance of any of the circumstances mentioned in Article 248, the case covered by subdivision 1 of this article shall be punished by *reclusion temporal* in its medium and maximum periods, the case covered by number 2 by *prision correccional* in its maximum period to *prision mayor* in its minimum period, the case covered by subdivision number 3 by *prision correccional* in its medium and maximum periods, and the case covered by subdivision 4 by *prision correccional* in its minimum and medium periods.

The provisions of the preceding paragraph shall not be applicable to a parent who shall inflict physical injuries upon his child by excessive chastisement.

The serious physical injuries

Par. no.	Injury	Penalty	Penalty + Aggravating
----------	--------	---------	-----------------------

1	Insane, imbecile, impotent, or blind	<i>Prision mayor</i>	<i>Reclusion temporal</i> (medium & maximum periods)
2	Lost use of speech, hearing, or smell; lost an eye, hand, foot, arm, or leg; lost use of any such member; incapacitated for habitual work	<i>Prision correccional</i> (medium & maximum periods)	<i>Prision correccional</i> (maximum) to <i>prision mayor</i> (minimum)
3	Deformed, lost another body part or its use; ill/incapacitated for habitual work for more than 90 days	<i>Prision correccional</i> (minimum & medium periods)	<i>Prision correccional</i> (medium & maximum periods)
4	Ill/incapacitated for labor for more than 30 days	<i>Arresto mayor</i> (maximum) to <i>prision correccional</i> (minimum)	<i>Prision correccional</i> (minimum & medium periods)
	Parent inflicting excessive chastisement on a child	Whatever applicable penalty for the injury.	No aggravating.

Ground rules:

1. There must be no intent to kill.
 - a. If there is, the accused may be liable for frustrated/attempted murder, parricide, or homicide.
 - b. But in killing and physical injuries, the offender inflicts physical injuries (though attempted homicide may not result in any injury).
2. This may be committed by reckless imprudence, or by simple imprudence or negligence.
3. Medical attendance is not important in serious physical injuries.
 - a. What is required is illness or incapacity for labor, not medical assistance.
 - b. When the category of the offense deepens on the period of illness/incapacity for labor, there must be evidence of the length of that period. Otherwise, the offense is only slight

- physical injuries.
4. There's no incapacity if the victim could still engage in his work although less effectively than before.
 5. If the offense is committed against any of the persons in Art. 246 (Parricide) or with any of the qualifying circumstances in Art. 248 (Murder), the law provides higher penalties.
 - a. The relationship and qualifying circumstances are aggravating.

¶1: Injured person becomes insane, imbecile, impotent or blind

Impotence – Inability to copulate (a.k.a sterility).

- Essentially, the loss of power to procreate.

Blindness – Must be complete (both eyes, not mere weakness of vision)

- If partial, go to par. 2.

If the victim is a child under 12 years old, the penalty is *reclusion perpetua* (§10, RA 7610).

- Age is deemed an aggravating circumstance.

Compared with mutilation (Art. 262)

- The mutilation must have been caused purposely and deliberately to lop or clip off an essential reproductive organ. This “special intention” is absent in physical injuries.

¶2: Injured person loses use of speech or power to hear or smell or loses an eye, hand, foot, arm or leg, or loses any use of any such member or becomes incapacitated for work in which he was habitually engaged

Loss of power to hear – Must be of both ears.

- If only one ear, go to par. 3.

Loss of hand or incapacity for usual work – Must be permanent.

These body parts:

1. Eye
2. Hand
3. Foot
4. Arm
5. Leg

are **principal members** of the body.

¶13: Injured person becomes deformed, or loses any other member of the body, or the use therefor, or becomes ill or incapacitated for the performance of the work for he was habitually engaged for more than 90 days

“Deformed” – Physical ugliness, permanent, and definite abnormality. It must be conspicuous and visible.

- Scars that are usually covered by clothes are not deformities. They’re not conspicuous and visible.
- Loss of three incisors (front teeth) is a deformity, but losing one is not.
 - Deformity by loss of teeth refers to injury which cannot be repaired naturally (apart from children’s milk teeth, of course, which can be replaced naturally).
 - But the loss of one tooth which impaired appearance is a deformity.

“Any other part of his body” – Any other body part apart from the eye, hand, foot, arm, or leg.

- Hence, a finger is not a principal member, **unless the loss of several fingers constitute loss of the hand’s function**. In which case, par. 2 is applicable.
- A front tooth is a member of the body.
 - Hence, the loss of a front tooth due to a fist blow is a serious physical injury under par. 3.

Loss of both outer ears constitutes deformity.

- But if such loss led to the loss of the power to hear, par. 2 is applicable.

Loss of index and middle fingers is either a deformity or loss of a member—not a principal one—of his body or use of same.

“Illness” – There is illness for a certain period of time when the wound inflicted did not heal within that period.

- There need not be medical attention—just illness or incapacity.

Q: In determining incapacity, must the injured party have an avocation at the time of the injury?

A: Yes. The offended party must have an avocation or work at the time of the injury.

- Work includes studies or preparation for a profession.
- Incapacity for a certain kind of work only, but not for all, is a serious physical injury under par. 2 or 3.
- The incapacity must show that the injury must render the victim incapable of working in the fields which was the occupation in which at the time he had been habitually engaged.

¶14: Injured person becomes ill or incapacitated for labor for more than 30 days

The incapacity here is for *any* labor.

- Must be total
- Lessening of inefficiency due to the injury is not incapacity

Injury requiring hospitalization for >30 days is serious physical injuries.

Qualified serious physical injuries

Higher penalty is imposed when—

- The offense is committed against any of the persons enumerated in parricide (Art. 246), or
- The offense is committed with any of the qualifying circumstances in murder (Art. 248).

If the person doesn’t die → physical injuries

But if intent to kill is present → any of the manslaughter

ART. 264

Administering injurious substances or beverages.

The penalties established by the next preceding article shall be applicable in the respective case upon any person who, without intent to kill, shall inflict upon another any serious physical injury, by knowingly administering to him any injurious substances or beverages or by taking advantage of his weakness of mind or credulity.

Elements ♥

1. That the offender inflicted upon another any serious physical injury [1].
2. That it was done by knowingly administering [2] to him any injurious substances or beverages or by taking advantage of his weakness of mind or credulity.
3. That he had no intent to kill. [3]

[1] If the injuries are less serious or slight, this does not apply.

[2] If the accused didn’t know of the injurious nature of the substances he administered, he is not liable under this article.

[3] If the offender had any intention to kill, the crime would be **frustrated murder**—the substance is poison (a qualifying circumstance).

ART. 265

Less serious physical injuries.

Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for **ten (10) days or more**, or shall **require medical attendance** for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*.

Whenever less serious physical injuries shall have been inflicted with the manifest intent to insult or offend the injured person, or under circumstances adding **ignominy** to the offense, in addition to the penalty of *arresto mayor*, a fine not exceeding Fifty thousand pesos (P50,000) shall be imposed.

Any less serious physical injuries inflicted upon the offender's parents, ascendants, guardians, curators, teachers, or persons of rank, or persons in authority, shall be punished by *prision correccional* in its minimum and medium periods, **provided that in the case of persons in authority, the deed does not constitute the crime of assault upon such persons.**

“Or shall require medical attendance for the same period” – May refer to actual medical attendance. There must be proof as to the period of the required medical attendance.

It is **only slight physical injury** when there's no medical attendance or incapacity for labor.

- This is true even if the injuries were cured, but without medical attendance, say in 20 days.

Par. 1

‘Matters to be noted’

1. The offended party is incapacitated for labor for 10 days or more (not beyond 30 days), or needs medical attendance for the same period (10 days or more).
2. The physical injuries must not be under Art. 263/264.

Pars. 2-3

Qualified less serious physical injuries

1. A fine not exceeding P50,000 in addition to *arresto mayor* shall be

imposed when–

- a. There is a manifest intent to insult or offend the victim, or
 - b. There are circumstances adding ignominy to the offense.
2. A higher penalty is imposed when the victim is–
 - a. The offender's parents, ascendants, guardians, curators, or teachers; or
 - b. Persons of rank, or in authority, provided the crime is not direct assault.

ART. 266

Slight physical injuries.

The crime of slight physical injuries shall be punished:

1. By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party for **labor** from one (1) to nine (9) days, or shall require medical attendance during the same period;
2. By *arresto menor* or a fine not exceeding Forty thousand pesos (P40,000) and censure when the offender has caused physical injuries which **do not prevent** the offended party from engaging in his habitual work nor require medical attendance;
3. By *arresto menor* in its minimum period or a fine not exceeding Five thousand pesos (P5,000) when the offender shall **ill-treat another by deed** without causing any injury.

The three kinds of slight physical injuries

1. Incapacitating – Injuries that incapacitate the offended party for labor from one (1) to nine (9) days or require medical attendance within the same period.
2. Nonincapacitating – Injuries that do not prevent the offended party from engaging in habitual work nor require medical attendance.
 - a. Example: Contusion on the face or black eye produced by fistic blow.
3. Ill-treatment – Acts of physical maltreatment without causing actual injury.
 - a. Example: Any physical violence which does not produce injury, such as slapping the face of the offended party, without causing dishonor.

Chapter 3 Rape

ART. 266-A ★

Rape, when and how committed.

Rape is committed–

1. By a person who shall have carnal knowledge of another person under any of the following circumstances:
 - a. Through force, threat or intimidation;
 - b. When the offended party is deprived of reason or is otherwise unconscious;
 - c. By means of fraudulent machinations or grave abuse of authority;
 - d. When the offended party is under sixteen (16) years of age or is demented, even though none of the circumstances mentioned above be present: *Provided*, That there shall be no criminal liability on the part of a person having carnal knowledge of another person under sixteen (16) years of age when the age difference between the parties is not more than three (3) years, and the sexual act in question is proven to be consensual, non-abusive, and non-exploitative: *Provided, further*, That if the victim is under thirteen (13) years of age, this exception shall not apply.

As used in this Act, non-abusive shall mean the absence of undue influence, intimidation, fraudulent machinations, coercion, threat, physical, sexual, psychological, or mental injury or maltreatment, either with intention or through neglect, during the conduct of sexual activities with the child victim. On the other hand, non-exploitative shall mean there is no actual or attempted act or acts of unfairly taking advantage of the child's position of vulnerability, differential power, or trust during the conduct of sexual activities.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

Elements ♥**Par. 1: Rape by sexual intercourse**

1. Carnal knowledge
2. Accomplished under any of the following circumstances:
 - a. Using force, threat, or intimidation
 - b. Victim is deprived of reason or unconscious
 - c. By means of fraudulent machinations or grave abuse of

- authority
- d. The victim is under 16 years*

Par. 2: Rape by sexual assault

1. Sexual assault
2. Committed by any of the following means:
 - a. Insertion of penis into another person's mouth or anal orifice
 - b. Insertion of any instrument or object into another's genital or anal orifice
3. Accomplished under any of the following circumstances:
 - a. Using force, threat, or intimidation
 - b. Victim is deprived of reason or unconscious
 - c. By means of fraudulent machinations or grave abuse of authority
 - d. The victim is under 16 years*

¶1: Rape by sexual intercourse

“Carnal knowledge” – The contact of the male penis with the woman's vagina.

- Penetration, even partial, is necessary under **par. 1**. The slightest penetration is enough.
 - The penis must not merely stroke the external surface of the female sexual organ.
- The **labia majora** must be entered for rape to be committed.
- A broken hymen is not an essential element of rape.
- Exact date of the sexual assault is not an essential element of rape. What should be proven is the fact of the penetration.

Only one of the four circumstances mentioned in par. 1 is sufficient.

- When force or intimidation is proven, it is not necessary that the woman be unconscious during the rape.

⚠ *If there is no penetration and only acts of lewdness are performed, the crime may be rape through sexual assault (if, i.e., oral sex), or acts of lasciviousness under Art. 336.*

¶2: Rape by sexual assault

Par. 2 contemplates a situation where:

- Any part of the human body, other than the penis, is inserted into the vagina or anal orifice of another person
- Any instrument or object is inserted into the vagina or anal orifice of another person

- The anal orifice is penetrated by the penis.

Par. 2 includes acts that gratify sexual desire (e.g., cunnilingus, felatio, sodomy, etc.)

As to counts of rape

People v. Aaron, G.R. 136300-02, September 24, 2002

The three penetrations occurred during one continuing act of rape in which Aaron was motivated by a single criminal intent.

- **Single criminal intent = One count of rape**

People v. Lucena, G.R. 190632, February 26, 2014

The three penetrations occurred five minutes after each other wherein the accused would rest after satiating his lust upon his victim, and after regaining strength, he would rape the survivor again.

- Hence, he decided to commit those separate acts upon the survivor not by a single, but by several criminal intent.
- **Multiple criminal intent = Multiple counts of rape**

The four circumstances

In general, these circumstances vitiate the victim's consent into the sexual intercourse/act.

- This is because rape is essentially sexual intercourse *sans* consent.

(1) Force and intimidation

- **Force** – Must be sufficient to consummate the culprit's purpose of copulating with the woman.
 - The force or violence necessary is a relative term, depending on the age, size and strength of the parties, and their relation to each other.
 - Resistance, when futile, does not amount to consent.
 - But **silence** may amount to **tacit consent**.
- **Intimidation** – It is enough that it produces fear; fear that if the victim does not yield to the bestial demands of the accused, something would happen.
- **Moral ascendancy or influence** may **substitute** for the element of **force or intimidation**.
 - This is usually applied in incestuous rape.

(2) Offended party deprived of reason or otherwise unconscious

- In this circumstance, the victim has no will.

- Rape of a mental retardate
- Rape of an asleep person
- Rape of a lethargic person due to an sickness
- Rape of an unconscious and extremely intoxicated person
- Rape of a person high with narcotics, potions, etc.
- Those suffering from mental abnormality, deficiency, or retardation.

(4) Demented and age

- A person who has dementia, characterized by emotional apathy, madness, or insanity.
- Mental age is considered.

Stages of execution

1. Consummated – Partial or slight penetration is enough.
2. Frustrated – None.
 - a. DV: In rape, it's either in or out.
3. Attempted – There must be an intent on the part of the accused to have carnal knowledge of the woman against her will.
 - a. The intent to line with the victim distinguishes attempted rape from acts of lasciviousness.
 - i. The direct overt acts of the offender establish the intent to lie.
 - ii. The intent to penetrate is manifest only through the showing of the penis capable of consummating the sexual act, touching the external genitalia of the female.
 - iii. Acts of lasciviousness is necessarily included in the crime of rape.

ART. 266-B ★ Penalties.

Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to **death**.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to **death**.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to **death**.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be **death**.

The **death penalty** shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is **under eighteen** (18) years of age and the **offender** is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the **third civil degree**, or the **common law spouse** of the parent of the victim.
2. When the victim is **under the custody** of the police or military authorities or any law enforcement or penal institution.
3. When the rape is committed **in full view** of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.
4. When the victim is a **religious** engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime.
5. When the victim is a child **below seven** (7) years old.
6. When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (**HIV**)/Acquired Immune Deficiency Syndrome (**AIDS**) or any other sexually transmissible disease and the virus or diseases is transmitted to the victim.
7. When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender **took advantage of his position** to facilitate the commission of the crime.
8. When by reason or on the occasion of the rape, the victim has suffered **permanent physical mutilation or disability**.
9. When the offender knew of the **pregnancy** of the offended party at the time of the commission of the crime.
10. When the offender knew of the **mental disability, emotional disorder and/or physical handicap** of the **offended party** at the time of the commission of the crime.

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

Whenever the rape is committed with the use of a **deadly** weapon or by **two or more persons**, the penalty shall be *prision mayor* to *reclusion temporal*.

When the **rape is attempted** and a **homicide** is committed by reason or on the occasion thereof, the penalty shall be *reclusion temporal* to *reclusion perpetua*.

When by reason or on the occasion of the **rape, homicide** is committed, the penalty shall be *reclusion perpetua*.

Reclusion temporal shall also be imposed if the rape is committed by any of the ten aggravating/qualifying circumstances mentioned in this article.

Where conspiracy is an important concept

Gang rape/multiple perpetrator rape - Multiple rape by two or more offenders, e.g.,:

- While A was having sexual intercourse with the victim, H was threatening her with a gun. And when H was lying with the victim, A was threatening her with a gun (*People v. Alfaro, G.R. 136742-43, Sep. 30, 2003*).
- Four accused raped the victim, and having **conspired** with the others to rape her, is responsible not only for the rape committed personally by him, but also for those committed by the others.
 - There's a conspiracy, and the perpetrators were principals by direct participation and indispensable cooperation (*People v. Villa, G.R. L-591, Jun. 30, 1948*).

SCCs

There are two **special complex crimes** (SCCs) punished by Art. 266-B:

1. Attempted rape with homicide
2. Rape with homicide

In both cases, the **primary intention** must be **rape**. The homicide must be committed "**by reason of**" or "**on occasion of**" the rape.

- It is immaterial that the person killed is someone other than the victim of the rape.
- "**Homicide**" - Generic sense and includes murder and physical injuries.

Table of penalties

Par. 1 - Rape by sexual intercourse

Circumstance	Penalty
None (simple rape)	RP
Rape committed- <ol style="list-style-type: none"> 1. Using a deadly weapon, or 2. Two or more offenders (gang rape) 	RP-death
Victim becomes insane	RP-death

Attempted rape with homicide (SCC)	RP–death
Rape with homicide (SCC)	Death
Rape by sexual intercourse with any of the following qualifying circumstances– <ol style="list-style-type: none"> 1. Victim a minor, and perpetrator is a relative within the 3rd civil degree 2. Victim under the custody of the police, military, or penal institution 3. Victim was rape in full view of any relative within the 3rd civil degree 4. Victim is a religious 5. Victim is below 7 y/o 6. Offender knew he has HIV/AIDS or STD, and transmitted it to the victim 7. Offender is a uniformed personnel, when he took advantage of his position 8. Victim suffered permanent physical mutilation or disability 9. Victim was pregnant 10. Victim has a disability 	Death

Par. 2 – Rape by sexual assault

Circumstance	Penalty
None (simple rape)	PM
Rape committed– <ol style="list-style-type: none"> 3. Using a deadly weapon, or 4. Two or more offenders (gang rape) 	PM-RT
Victim becomes insane	RT
Attempted rape with homicide (SCC)	RT-RP
Rape with homicide (SCC)	RP
Rape by sexual intercourse with any of the following qualifying circumstances– <ol style="list-style-type: none"> 1. Victim a minor, and perpetrator is a relative within the 3rd civil degree 2. Victim under the custody of the police, military, or penal institution 3. Victim was rape in full view of any relative 	RT

within the 3rd civil degree <ol style="list-style-type: none"> 4. Victim is a religious 5. Victim is below 7 y/o 6. Offender knew he has HIV/AIDS or STD, and transmitted it to the victim 7. Offender is a uniformed personnel, when he took advantage of his position 8. Victim suffered permanent physical mutilation or disability 9. Victim was pregnant 10. Victim has a disability 	
--	--

ART. 266-C

Effect of pardon.

The subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed.

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: *Provided*, That the crime shall not be extinguished or the penalty shall not be abated if the marriage be void *ab initio*.

Effect of marriage between the victim and rapist:

1. Extinguishes the penal action
2. Abates the penalty

Nevertheless, these benefits **only apply to the now-husband**, and not to his co-conspirators, accomplices, and accessories (in instances where there are multiple rapes).

Marital rape – The act of the man penetrating his wife without her consent or against her will.

- Forgiveness by the wife extinguishes the criminal action and the penalty.
- But, if the marriage is declared void *ab initio*, no extinguishment will occur.

ART. 266-D

Presumptions.

Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as

to render him/her incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A.

People v. ZZZ, G.R. 266706, June 26, 2024

In rape cases committed through force, threat, or intimidation, it is sufficient that such force, threat, or intimidation existed and was **compelling enough to prevent a woman from asserting her will**.

The existence of such force, threat, or intimidation is determined **from the perspective of the victim** given, among other considerations, the circumstances of the rape, her relationship to the assailant, her state of mind, and the disparity in the assailant and the victim's physical strength.

In relation to force, threat and intimidation (circumstance 1)

- Tenacious resistance is **not required**, and **neither** is a determined and persistent physical struggle on the victim **necessary**.

Principles in assessing the credibility of witnesses in rape cases

1. An accusation for rape can be made with facility, is difficult to prove, but more difficult for the person accused, though innocent, to disprove.
2. The testimony of the complainant must be scrutinized with extreme caution.
3. The evidence for the prosecution must stand or fall on its own merits.

Title X Crimes Against Property

Chapter 1 Robbery in General

ART. 293 ★

Who are guilty of robbery.

Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

Elements, in general ♥

1. A personal property belonging to another
2. Unlawful taking of that property
3. With intent to gain
4. Using:
 - a. violence against or intimidation of any person [1], or
 - b. force upon anything [2]

[1] Robbery with violence or intimidation is covered under Arts. 294, 297, and 298.

[2] Robbery with force upon things (Arts. 299 and 302).

Element 1 – Personal property belonging to another

- It must be personal property.
 - If real property is occupied/usurped → Usurpation (Art. 312).
- It must not belong to the offender.
 - Thus, one who took his own property from the depository is not guilty of robbery.

Sy v. Gutierrez, G.R. 171579, November 14, 2012

The taking should not be under a claim of ownership. Thus, one who takes the **property openly and avowedly under claim of title offered in good faith** is not guilty of robbery, even **though the claim of ownership is untenable**.

Element 2 – Unlawful taking

- If the taking was lawful and the unlawful misappropriation was subsequent to such taking → Estafa (Art. 315) or malversation.
- Taking means depriving the offended party of ownership of the thing taken **with the character of permanency**.
- **In violence or intimidation**: The taking is complete (consummated) when the robber acquires possession of the property, even if for a short time, or even if he has no opportunity to dispose of the same.
- **In force upon things**: After the robber had taken material possession of the thing, with intent to appropriate the same.

Element 3 – Intent to gain

- An internal act which can be established through the overt acts of the offender.
 - Animus lucrandi may be presumed from the furtive (secretive) taking of the useful property.
- **Without intent to gain** → **Grave coercion** (if violence is used)
- Intent to gain (element 3) and personal property belonging to

another (element 1) must concur.

- Not robbery: A taking with to gain, but the property turned out to be his.
- Not robbery: A taking of a thing which he believed to be his, but isn't. Here, there is no intent to gain.

Element 4.1 – Violence or intimidation

- The violence must be directed toward the offended party, not the thing taken.
 - **Violence** – Force upon the offended party which causes injuries.
 - **Intimidation** – When it causes fear or fright of the victim. It need not be a threat of bodily harm.
- The violence or intimidation must be present before the taking of personal property is complete.
 - If *after* taking → 2 crimes: theft (Art. 308), and slight physical injuries (Art. 266) or grave threats (Art. 282(2)).
 - Exception: The SCCs in Art. 294 (e.g., rape, homicide, etc.). In this case, the violence may be used after and the felony will still be robbery.
 - It also does not matter if there's been **some delay** between the intimidation and the taking.

Element 4.2 – Force upon things

- Either through breaking or entering.
 - Entrance into the building must be effected by any of the means under Arts. 299 and 302.
- Entrance into a building is not necessary when the robbery is committed by:
 - Breaking wardrobes, chests, or any other kind of locked or sealed furniture or receptacle inside an inhabited house, public building, or church (Art. 299[b])
 - By taking such furniture or objects away to be broken or forced open outside (Art. 299[b])
 - By breaking any wardrobe, chest, or any sealed or closed furniture or receptacle (Art. 302(4))
 - Removing a closed or sealed receptacle even if the same be broken elsewhere (Art. 302(5))
- Hence, the following are not robbery for lacking this element:
 - Removing by force the tires of a car parked on the street
 - Introducing one's hand through a hole to reach for something

⚠ *When elements of both violence or intimidation and force upon things are present, the crime is a complex one. Hence, applying Art. 48, the penalty is that of robbery with violence or intimidation in its maximum period.*

Section 1

Robbery with violence against or intimidation of persons

ART. 294 ★

Robbery with violence against or intimidation of persons – Penalties.

Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson;
2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, when by reason or on the occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted;
3. The penalty of *reclusion temporal*, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted;
4. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivision 3 and 4 of said Article 263;
5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.

The crime defined in this article is a special complex crime.

“On the occasion” or “by reason” – The homicide or serious physical injuries must be committed *in the course of* or *because of* the robbery.

- It doesn't matter if the homicide, etc. be committed before or after the taking.
- Homicide is said to have been committed by reason of or on the occasion of robbery if it is committed:
 - To facilitate the robbery or escape of the culprit
 - To preserve the possession by the culprit of the loot
 - To eliminate witnesses to the commission of the crime
- What is essential is that there be a **direct relation and intimate connection** between the robbery and the other complexed crime.
- Hence, the **original design must comprehend robbery** and homicide or the killing was merely incidental.

¶1: Robbery with homicide

“Homicide” – Understood in its generic sense to include parricide and murder.

- The multiple murders and homicide are merged in the composite, integrated whole that is robbery with homicide.
 - Regardless of the number of victims, there is only one count of robbery with homicide.
- It is immaterial that the offenders also had a desire to avenge grievances against the person killed. It's still robbery with homicide.
- The homicide may precede the robbery or may occur after the robbery.

What makes the crime of robbery with violence is the killing or injuring of a person, with intent to gain.

It need not be committed inside a building (not an element).

An intent to take personal property belonging to another with intent to gain must precede the killing.

- In other words, robbery must be the original criminal design.
- If the idea of taking occurred after the killing, then there are two separate crimes.

As to the victim of the homicide, it is not relevant in paragraph 1.

- The law does not require that the person killed is the owner of the property taken.
- If a victim dies and the other was inflicted mortal wounds (but did not die), the crime is still robbery with homicide (absorption rule).
 - The number of victims doesn't matter, so long as someone died on occasion or by reason of the robbery.

When homicide is not proved, the crime is only robbery.

- Consequently, when robbery is not proved, the crime is only homicide.

Q: In robbery with homicide, must the person charged as accessory have knowledge of the commission of both robbery and homicide?

A: Yes. If not, only robbery must be charged. There's no conspiracy between the principal and accessory.

- However, all who participated in the robbery as principals are principals in the robbery with homicide (conspiracy).

¶2: Robbery with rape

Like in par. 1, the intent to take personal property of another with intent to

gain must precede the rape.

- The original criminal design must be robbery.
 - Rape must not be their primary objective.
 - Hence, if rape is the primary objective, and robbed the place subsequently, the two are separate offenses.
- Even if the rape was committed in another place, it is still robbery with rape. The robbery must only be accompanied by rape, or mutilation, etc.
 - But if the rape is committed in a house other than where the robbery was committed, the rape becomes a separate felony.
- When the taking of personal property of a woman is an independent act following defendant's failure to consummate the rape (i.e. tried to rape and failed, so robbed instead), there are two distinct crimes: rape and theft.
 - Here, intent to gain must still be proven. If the rapist just took personal properties as a “war trophy,” there's no intent to gain. The crime could just be rape and unjust vexation (separately).

There is no such crime as robbery with attempted rape.

- It's neither an SCC, nor may it be complexed under Art. 48.

Like in par. 1, the number of rapes committed will not increase the penalty.

- There is no law providing that the additional rape/s or homicide/s should be considered as aggravating circumstances.
 - The enumeration in Art. 14 is exclusive.

Q: If rape and homicide coexist in the commission of robbery, what is the crime?

A: In *People v. Timple*, G.R. Nos. 100391-92, September 26, 1994 [Per J. Feliciano, Third Division], the court affirmed the lower court's decision that the crime was robbery with homicide, with the rape as an aggravating circumstance.

- **The doctrinal value is dubious**, because the enumeration in Art. 14 is exclusive.

¶3: Robbery with serious physical injuries

The serious physical injuries under this paragraph is that in Art. 263(2), which are:

1. Deformity
2. Lost of any other member of the body, or its use
3. Victim becomes ill or incapacitated for the performance of the work for he was habitually engaged for more than 90 days

¶4: Robbery with unnecessary violence or intimidation

The violence need not result in serious physical injuries. All that is required is that the violence be unnecessary for the commission of the robbery.

- Therefore, when the violence is necessary, par. 4 is inapplicable.

The physical injuries here must be inflicted “in the course of its [robbery] execution.”

⚠ *The robber who suffered serious physical injuries here is not a victim.*

Hence, the requisites are:

1. A serious physical injury in Art. 263(3) and (4) is inflicted
2. Upon any person not responsible for the commission of the robbery

¶5: Simple robbery

When the injury inflicted can only qualify as less serious physical injuries or slight physical injuries, or only intimidation is used, par. 5 applies.

Violence is present even if the physical force employed by the offender merely consists in pushing the victim.

Ablaza v. People, G.R. 217722, September 26, 2018

The simple robbery under par. 5 may cover physical injuries not included in pars. 1 to 4.

- Thus, when less serious physical injuries or slight physical injuries are inflicted upon the offended party on the occasion of a robbery, the accused may be prosecuted for and convicted of robbery under par. 5.

Hence, mere snatching-and nothing more-is theft and not robbery due to the absence of the fourth element of violence or intimidation.

- Due to the suddenness of the grabbing of the necklace, it would not produce fear or duress in the victim's mind as to deprive her of the exercise of her will.

Robbery with intimidation (Art. 294)	Grave threats (Art. 282)
Purpose is to obtain gain	
Gain is immediate	Gain is not immediate

Actual and immediate intimidation	Conditional or future intimidation (not immediate)
Intimidation is personal	Intimidation may be through an intermediary (a third person)
Intimidation is directed to the offended party only	Intimidation may refer to the person, honor or property of the victim, or his family

Robbery with violence (Art. 294)	Grave coercion (Art. 286)
Violence is used by the offender	
Has intent to gain	No intent to gain <ul style="list-style-type: none"> • Intention may be to compel another to do something against his will

Robbery	Bribery
Transaction is consummated by force or intimidation	Transaction is mutual and voluntary
Deprived of property by force or intimidation <ul style="list-style-type: none"> • A policeman who caught a person committing a crime, but nevertheless threatens him with imprisonment and thereafter obtains money from the said person (US v. Flores) • Police officer who confiscated a driver's license of a driver to figure in an accident, and demanded money for its return (Flores v. People) 	Parts with his property voluntarily <ul style="list-style-type: none"> • Giving the fish caught by a dynamite fisher to the authorities to avoid prosecution for illegal fishing. <ul style="list-style-type: none"> ◦ He actually committed the crime.

Qualified robbery

ART. 295

Robbery with physical injuries, committed in an uninhabited place and by a band, or with the use of firearm on a street, road or alley.

If the offenses mentioned in subdivisions three, four, and five of the next preceding article shall have been committed in an uninhabited place or by a band or by attacking a moving train, street car, motor vehicle or airship, or by entering the passengers' compartments in a train or, in any manner, taking the passengers thereof by surprise in the respective conveyances, or on a street, road, highway, or ally, and the intimidation is made with the use of a firearm, the offender shall be punished by the maximum period of the proper penalties.

This aggravating circumstance **applies** to Art. 294(3-5) [SCC of serious physical injury and simple robber] when its is committed–

1. In an uninhabited place
2. By a band
3. By attacking a moving locomotive and airship
4. By entering the passengers' cabin
5. In a street, road, highway or alley *and* the intimidation used a gun

This aggravating circumstance is **not applicable** in:

1. Robbery with homicide
2. Robbery with rape, or intentional mutilation, or arson
3. Robbery with serious physical injury that leads to insanity, imbecility, impotency or blindness.

This is, of course, without prejudice to the applicability of the proper aggravating circumstance in Art. 14 (e.g., by a band, uninhabited place).

- This, however, can be offset as this is a generic–not a qualifying–aggravating circumstance.

ART. 296

Definition of a band and penalty incurred by the members thereof.

When **more than three armed malefactors** take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an **unlicensed firearm**, the penalty to be imposed upon all the malefactors shall be the **maximum** period of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm.

Any member of a band who is **present at the commission** of a robbery by the band, shall be punished as a **principal** of any of the **assaults** committed by the band, **unless it be shown that he attempted to prevent the same.**

Cl. 1: Band

Requisites for liability for the acts of the other members of the band

1. He was a member of the band
2. He was present in the robbery by that band
3. Other members of the band committed an assault
4. He did not attempt to prevent the assault

A robbery is committed “by a band” when **at least four robbers** partake.

When the robbery was not committed by a band, the robber who did not take part in the assault is not liable for that assault.

- In case there are three robbers, two raped someone and the other guarded the owner of the house, the first two will be charged of rape only, while the last was robbery only.
- **Exception: Conspiracy.**
 - When there is conspiracy, notwithstanding their participation and number, no member of the group may disclaim responsibility for any act of violence perpetrated during the robbery.
 - Proof of conspiracy is not necessary when at least four armed persons committed robbery.

⚠ **Art. 296 is not applicable to a principal by inducement who was not present at the commission of the robbery, if the agreement were only to commit robbery.**

Cl. 2: Unlicensed firearm

Anyone who uses an unlicensed firearm will aggravate the penalty for all the malefactors to its maximum period

- This is without prejudice to the filing of a case under RA 10591 (Comprehensive Firearms and Ammunition Regulation Act).

ART. 297 ★

Attempted and frustrated robbery committed under certain circumstances.

When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by *reclusion temporal* in its maximum period to *reclusion perpetua*, unless the homicide committed shall deserve a higher penalty under the provisions of this code.

Things to note:

1. Homicide is still in its generic sense
2. The penalty is the same when it's attempted or frustrated robbery
3. When there is no overt act of robbery and only a killing occurred, this provision is inapplicable and separate charges must instead be considered (e.g., murder, frustrated murder)
4. Art. 296 (by a band) may be applied here
5. Same rules as above, only one crime of attempted/frustrated robbery with homicide may be filed despite another victim being inflicted slight physical injuries

a. *N.B.: Slight physical injuries cannot be complexed!*

"Unless the homicide committed shall deserve a higher penalty"

- Hence, if the killing is qualified by treachery or relationship, the penalty imposed must be that for murder and parricide, respectively.
 - The nomenclature of the crime is still the same, and only the penalty is modified.

Art. 48 in robberies

So far, we've discussed special complex crimes, where the application of Art. 48 is precluded.

However, Art. 48 may be applicable in robbery:

1. Attempted/frustrated robbery with serious physical injuries
 - a. As this is *not* under Art. 297, which only contemplated homicide.
2. Robbery with frustrated/attempted homicide

ART. 298

Execution of deeds by means of violence or intimidation.

Any person who, with intent to defraud another, by means of violence or intimidation, shall compel him to sign, execute, or deliver any public instrument or document, shall be held guilty of robbery and punished by the penalties respectively prescribed in this Chapter.

Elements ♥

1. Intent to defraud
2. Offender compels victim to sign, execute or deliver any public instrument or document
3. By means of violence or intimidation

"Shall be held guilty of robbery and punished by the penalties respectively

prescribed in this chapter"

- If death resulted, the crime becomes robbery with homicide (Art. 294[1])
- If the execution of deeds was frustrated but the person died, it's attempted execution of deeds by means of violence or intimidation with homicide (Art. 297)

This felony applies even if the document is a private or commercial document.

⚠ Art. 298 does not apply if the document is not void.

- In this case, it's **not even grave coercion** due to the lack of intent to gain.
- If anything, it's under **physical injuries**, or **grave threats** if only intimidation was used.

Execution of deeds by violence or intimidation	Coercion
The offended party does not have an obligation to sign, execute or deliver the document	The offended party has an obligation to sign, execute or deliver the document
Violence or intimidation is used	

Section 2 Robbery by the use of force upon things.

It is committed–

1. The offender entered a house or building
2. He broke a wardrobe, chest, or any other kind of locked, closed, or sealed furniture in the house or building, or he took it away to be opened outside.

Two kinds:

1. Robbery in an inhabited house or public building or edifice devoted to religious worship
2. Robbery in an uninhabited place or in a private building

Essential requisite: That the offender **should enter** the building or dependency where the object to be taken is found.

ART. 299 ★

Robbery in an inhabited house or public building or edifice devoted to worship.

Any armed person who shall commit robbery in an uninhabited house or public building or edifice devoted to religious worship shall be punished by reclusion temporal, if the value of the property taken shall exceed Fifty thousand pesos (P50,000), and if-

- (a) The malefactors shall enter the house or building in which the robbery is committed, by any of the following means:
1. Through an opening not intended for entrance or egress;
 2. By breaking any wall, roof, or floor or breaking any door or window;
 3. By using false keys, picklocks, or similar tools;
 4. By using any fictitious name or pretending the exercise of public authority.

Or if-

- (b) The robbery be committed under any of the following circumstances:
1. By breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle;
 2. By taking such furniture or objects away to be broken or forced open outside the place of the robbery.

When the offenders do not carry arms and the value of the property taken exceeds Fifty thousand pesos (P50,000), the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed Fifty thousand pesos (P50,000).

When said offenders do not carry arms and the value taken does not exceed Fifty thousand pesos (P50,000), they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period.

If the robbery be committed in one of the dependencies of an inhabited house, public building, or building dedicated to religious worship, the penalties next lower in degree than those prescribed in this article shall be imposed.

Subdivision A**Elements ♥**

1. Offender entered:
 - a. An inhabited place,
 - b. Public building, or
 - c. Edifice devoted to religious service

2. Entrance was-
 - a. Through an opening not intended for entrance or egress
 - b. By breaking any wall, roof, floor, or door or window
 - c. By using false keys, picklocks or similar tools
 - d. By using fictitious name or pretending the exercise of public authority
3. Once inside the building, offender took personal property belonging to another with intent to gain

Element 1 (entrance) requires:

- That the offender's entire body must be inside the building
- The circumstance of the entrance must be proven
- In entering, the offender must have an intent to take personal property
 - If this is lacking → trespass to dwelling

Art. 301 defines what are inhabited house, public building and edifice dedicated to religious worship.

ART. 301

What is an inhabited house, public building, or building dedicated to religious worship and their dependencies.

Inhabited house means any shelter, ship, or vessel constituting the dwelling of one or more persons, even though the inhabitants thereof shall temporarily be absent therefrom when the robbery is committed.

All interior courts, corrals, warehouses, granaries, barns, coach-houses, stables, or other departments or enclosed places contiguous to the building or edifice, having an interior entrance connected therewith and which form part of the whole, shall be deemed **dependencies** of an inhabited house, public building, or building dedicated to religious worship.

Orchards and other lands used for cultivation or production are not included in the terms of the next preceding paragraph, even if closed, contiguous to the building, and having direct connection therewith.

The term "**public building**" includes every building owned by the Government or belonging to a private persons but used or rented by the Government, although temporarily unoccupied by the same.

Element 2 requires proof of entrance in any of the means enumerated.

- Any of the four means is enough.
- Breaking – As a means of entering the building. The force must be

actual (no. 2).

- The wall must be an outside wall.
- The door must be an outside door.
 - Except: Door of a condominium unit (and similar structures), where each unit is a separate entity.
- False keys – Genuine keys stolen from the owner.
 - It must be stolen and not taken by force or intimidation.
 - Else, it becomes simple robbery
 - The false key must open a door to enter the building
 - It is only theft when the false key is used to open the wardrobe or locked receptacle or drawer or inside door.
- The use of a fictitious name or pretending to exercise authority must be the efficient cause of the opening by the offended party of the door of his house to the accused.

Subdivision B

Elements ♥

1. Offender is inside a dwelling house, public building, or edifice devoted to religious worship, regardless of the circumstances under which he entered it
2. Offender takes a personal property belonging to another, with intent to gain, under any of the following circumstances:
 - a. Breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle
 - b. Taking such furniture or objects away to be broken or forced open outside the place of the robbery [1]

[1] It is not necessary that it is actually opened. The accused must only have an intent to open it to consummate the crime.

Illustrative example: A person who opens by force a certain locked or sealed receptacle which has been confided into his custody and takes the money therein is guilty of estafa.

- Not robbery, because the accused does not commit the act in the house of the offended party nor does he take the receptacle out of the house.

It is theft, however, when the locked receptacle is found on the side of the street and it is forcibly opened and the contents thereof are taken.

⚠ *A robber may bear arms while committing the robbery with force upon things. However, he must not use it to intimidate people—else, it becomes under Art. 294.*

ART. 300 ★

Robbery in an uninhabited place and by a band.

The robbery committed in the next preceding article, if committed in an uninhabited place and by a band, shall be punished by the maximum period of the penalty provided therefor.

This is a qualifying circumstance, which is applied when:

1. A robbery under Art. 299 is committed
2. In an uninhabited place
3. By a band

⚠ *The two qualifications must concur!*

Distinguish:

1. To be qualified, robbery with force and intimidation must be committed in an uninhabited place or by a band.
 - a. “Or.”
2. Robbery with force upon things requires the concurrence of the two circumstances.

ART. 302 ★

Robbery in an uninhabited place or in a private building.

Any robbery committed in an uninhabited place [1] or in a building other than those mentioned in the first paragraph of Article 299, if the value of the property taken exceeds Fifty thousand pesos (P50,000), shall be punished by *prision correccional* in its medium and maximum periods, provided that any of the following circumstances is present:

1. If the entrance has been effected through any opening not intended for entrance or egress;
2. If any wall, roof, floor, or outside door or window has been broken;
3. If the entrance has been effected through the use of false keys, picklocks, or other similar tools;
4. If any door, wardrobe, chest, or any sealed or closed furniture or receptacle has been broken;
5. If any closed or sealed receptacle, as mentioned in the preceding paragraph, has been removed, even if the same be broken open elsewhere.

When the value of the property taken does not exceed Fifty thousand pesos (P50,000), the penalty next lower in degree shall be imposed.

In cases specified in Articles 294, 295, 297, 299, 300, and 302 of this Code, when the property taken is mail matter or large cattle, the offender shall suffer penalties next higher in degree than those provided in said articles.

[1] Uninhabited building, due to a mistake in translation.

Elements ♥

1. Offender entered an uninhabited place or a building which was not a dwelling house, not a public building, or not an edifice devoted to religious worship
2. Any of the following circumstances was present:
 - a. Entrance was effected through an opening not intended for entrance or egress
 - b. A wall, roof, floor or outside door or window was broken
 - c. The entrance was through false keys, picklocks or other similar tools
 - d. A door, wardrobe, chest, or any sealed or closed furniture or receptacle was broken
 - e. A closed or sealed receptacle was removed, even if the same be broken elsewhere
3. With intent to gain, the offender took therefrom personal property belonging to another

Paragraphs 4 and 5 do not require that the offender must have entered the uninhabited building through an opening not intended for entrance or egress.

Supreme Court: Breaking of padlock is use of force upon things (*Estioca v. People, G.R. 173876, June 27, 2008*)

- Reyes: This ruling doesn't seem to be justified by any of the paragraphs of Art. 302.

This article does not include entrance via fictitious name or pretending the exercise of public authority.

- Because the place is uninhabited.

The **receptacle** must be **closed or sealed**.

- In comparison, Art. 299 provides either locked or sealed.
- There must be breaking of a receptacle to constitute robbery
- There must be at least an intention to open said receptacle by force

When is a robbery in a store punishable under Art. 299 or 302?

1. If the store is used as a dwelling → Art. 299 (inhabited house)

2. If the store is not used as a dwelling → Art. 302 (uninhabited building)
3. If the store is located on the ground floor of the house belonging to the owner, having an interior entrance and connected → Art. 299 (inhabited; dependency)

ART. 303

Robbery of cereals, fruits, or firewood in an uninhabited place or private building.

In the cases enumerated in Article 299 and 302, when the robbery consists in the taking of cereals, fruits, or firewood, the culprit shall suffer the penalty next lower in degree than that prescribed in said articles.

⚠ *This only applies in robbery with force upon things.*

Cereals – Seedling which is the immediate product of the soil.

- Example: Palay should be kept as a seedling, and not as food to qualify under Art. 303.

ART. 304

Possession of picklocks or similar tools.

Any person who shall, without lawful cause, have in his possession picklocks or similar tools specially adopted to the commission of the crime of robbery, shall be punished by *arresto mayor* in its maximum period to *prision correccional* in its minimum period.

The same penalty shall be imposed upon any person who shall make such tools. If the offender be a locksmith, he shall suffer the penalty of *prision correccional* in its medium and maximum period.

Elements ♥

1. The offender possesses picklocks or similar tools
2. Such picklocks are specially adapted for robbery [1]
3. Offender has no lawful cause to possess such picklocks

[1] It suffices that the picklocks are actually used to commit robbery.

ART. 305

False keys.



The term “false keys” shall be deemed to include:

1. The tools mentioned in the next preceding article;
2. Genuine keys stolen from the owner;
3. Any keys other than those intended by the owner for use in the lock forcibly opened by the offender.

This is not a penal provision. Possession of items 2 and 3 are not punishable.

Mga tulisan

Chapter 2 Brigandage

ART. 306

Who are brigands – Penalty.



When more than three armed persons from a band of robbers for the purpose of committing robbery in the highway, or kidnapping persons for the purpose of extortion or to obtain ransom or for any other purpose to be attained by means of force and violence, they shall be deemed highway robbers or brigands.

Persons found guilty of this offense shall be punished by *prision mayor* in its medium period to *reclusion temporal* in its minimum period, if the act or acts committed by them are not punishable by higher penalties, in which case, they shall suffer higher penalties.

If any of the arms carried by any of said persons be an unlicensed firearm, it shall be presumed that said persons are highway robbers or brigands, and in case of conviction, the penalty shall be imposed in the maximum period.

Elements ♥

1. There is an organization of at least 4 armed persons forming a band of robbers
2. Purpose of the band is any of the ones enumerated in Art. 306
3. They went upon the highway or roamed upon the country for that purpose
4. The accused is a member of such band

There is brigandage when–

1. There be at least 4 armed persons

2. Formed a band of robbers
3. Whose purpose is **any** of the following:
 - a. To commit robbery in the highway
 - b. To kidnap persons to extort or obtain ransom
 - c. To attain by force and violence any other purpose

“If the act or acts committed by them are ... punishable by higher penalties in which case, they shall suffer such high penalties”

- E.g., if the brigands committed robbery with homicide with a demand for ransom, which is penalized with higher penalty, they shall be prosecuted for robbery with homicide and the penalty for the crime actually committed shall be imposed on them.

Brigandage	Robbery by a band
Purpose is: <ol style="list-style-type: none"> 1. To commit robbery in the highway 2. To kidnap persons to extort or obtain ransom 3. To attain by force and violence any other purpose 	Only to commit robbery, not necessarily in the highway
Indiscriminate highway robbery	Particular robbery
Mere formation of a band for any of the purposes mentioned is sufficient	Necessary that the band actually committed robbery, as mere conspiracy to commit robbery is not punishable

ART. 307

Aiding and abetting a band of brigands.

Any person knowingly and in any manner aiding, abetting, or protecting a band of brigands as described in the next preceding article, or giving them information of the movements of the police or other peace officers of the Government, or acquiring or receiving the property taken by such brigands, such be punished by *prision correccional* in its medium period to *prision mayor* in its minimum period.

It shall be presumed that the person performing any of the acts provided in this article has performed them knowingly, **unless the contrary is proven.**

Elements ♥

1. There is a band of brigands
2. The offender knows the band to be of brigands
3. The offender does any of the following acts:
 - a. Aids, abets or protects such band of brigands
 - b. Gives them information of the movements of the police or other peace officers of the government
 - c. Acquires or receives the property taken by such brigands

Chapter 3 Theft

Theft – Committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

⚠ *Theft is not a continuing offense!*

ART. 308 ★

Who are liable for theft.

Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and
3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

Elements of simple theft ♥

1. There be taking of personal property
2. Property belongs to another
3. With intent to gain
4. Without the consent of the owner
5. Taking be accomplished without the use of violence against or

intimidation of persons or force upon things

Ablaza (*supra* art. 294)

In snatching, the fourth element of robbery with violence or intimidation is not present. Hence, the accused can only be guilty of theft.

Element 1: Taking

- "Taking" does not include asportation or carrying away, or to take away the thing.
- Taking is consummated when the culprits were able to take possession of the thing taken by them.
 - Mere possession is enough!
- The taking must be done with the intention of making himself the owner of the thing taken.
 - Hence, the thing must be under his control.

Theft vs. estafa

- In general, estafa (under **par. 1(b)**) requires juridical possession, while theft requires material possession at most.
- He who takes away the property pledged by him to another, without the latter's consent, commits estafa, for he is the owner of the thing taken by him.

Valenzuela v. People, G.R. 160188, June 21, 2007

Theft is already "produced" upon the "taking of personal property of another without the latter's consent."

Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage.

Therefore, under Art. 308, theft cannot have a frustrated stage. It can only be attempted or consummated.

Element 2: Property belongs to another

- Hence, as long as the property taken **does not belong to the accused**, it is immaterial whether said offender stole it from the owner, a mere possessor, or even a thief of the property.
- But selling the share of a partner or joint owner is **not theft**.
 - Because you are co-owners.
- Stealing a thing not actually delivered to you is theft.

- This is because delivery is a condition precedent for ownership. Prior to delivery, the thing wasn't owned by you yet.
- Similarly, ownership is not transferred before goods are weighed or measured.

Element 3: Intent to gain

- Presumed by the unlawful taking of personal property belonging to another.
 - However: If a person takes a personal property from another believing it to be his own, the presumption of intent to gain is rebutted.
 - This rule is similar to robbery (see *Sy v. Gutierrez*)
 - It must be a *good faith* belief that you own said property/thing
 - Example: A claim over the disputed property is a *bona fide* belief/claim of ownership.
- Intent to gain is also present even if the accused did not take the property for his own use.
- There is also intent to gain in deriving the satisfaction of taking revenge, and the pleasure of seeing one's enemies being harassed.
- Actual or real gain is not necessary.
 - It is enough that the accused was actuated by the desire or intent to gain.

Element 4: Taking without the consent of the owner

- Consent – Freely given by the owner.
 - This is not the mere lack of opposition from the taking.
 - Hence, even if the owner knew the taking, but he did not consent to it, the accused is still liable for theft.

Element 5: Without violence or intimidation, or force upon things

- In theft, intimidation or violence must be applied only after the taking is completed.
 - If the violence used post-facto resulted in homicide, rape, intentional mutilation, or serious physical injuries in Art. 263 (pars. 1-2) → special complex crime of robbery
- It is theft when violence is for a reason entirely foreign to the fact of the taking.
 - The violence or intimidation must be for the taking.
- It is theft if the force upon things is employed not to enter a building.
 - Example: Accused entered the building, but used force in removing the toilet bowl, which he stole.
 - **Exception:** When the force was used to break open a furniture, chest or other locked or sealed receptacle, or taken to be opened outside.

Presumption of theft – When a person has in possession part of the recently stolen property, he is presumed to be the thief of all.

- It is required that the property be recently stolen.
- This presumption applies only when all the goods were lost at the same time, in the same place, and on the same occasion.

Par. 1: Finder of lost property

- Lost – Generic sense, which includes stolen property.
- This is not limited to actual finder.
 - I.e., if the finder transferred it to another, and the latter failed to deliver it to the authorities or the owner.
- The law does not require knowledge of the owner of the lost property.
- Intent to gain is inferred from the deliberate failure to deliver the lost property to the proper person.

Par 3: Hunting, fishing or gathering fruits, etc., in enclosed estate

Elements ♥

1. There be an enclosed estate or a field where trespass is forbidden or which belongs to another
2. Offender enters the same
3. Offender hunts or fishes upon the same or gathers fruits, cereals or other forest or farm products in the estate or field
4. Without the consent of the owner

The fishes must not be in the fishpond or fishery.

- If fishes are taken from fishpond/fishery → **qualified theft!**

ART. 309

Penalties.

Any person guilty of theft shall be punished by:

1. The penalty of *prisión mayor* in its minimum and medium periods, if the value of the thing stolen is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million two hundred thousand pesos (P2,200,000); but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one (1) year for each additional One million pesos (P1,000,000), but the total of the penalty which may be imposed shall not exceed twenty (20) years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prisión mayor* or *reclusion temporal*, as the case may be.

2. The penalty of *prisión correccional* in its medium and maximum periods, if the value of the thing stolen is more than Six hundred thousand pesos (P600,000) but does not exceed One million two hundred thousand pesos (P1,200,000).
3. The penalty of *prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (P20,000) but does not exceed Six hundred thousand pesos (P600,000).
4. *Arresto mayor* in its medium period to *prisión correccional* in its minimum period, if the value of the property stolen is over Five thousand pesos (P5,000) but does not exceed Twenty thousand pesos (P20,000).
5. *Arresto mayor* to its full extent, if such value is over Five hundred pesos (P500) but does not exceed Five thousand pesos (P5,000).
6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed Five hundred pesos (P500).
7. *Arresto menor* or a fine not exceeding Twenty thousand pesos (P20,000), if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed Five hundred pesos (P500). If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.
8. *Arresto menor* in its minimum period or a fine of not exceeding Five thousand pesos (P5,000), when the value of the thing stolen is not over Five hundred pesos (P500), and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

Value of stolen thing	Penalty	Notes
>P1.2 million to P2 million	Prision mayor, minimum and medium	If P2,000,001 – P2,999,999: Prison mayor maximum Add 1 year for each additional P1 million (i.e. P3 million ...) Total penalty shall not exceed 20 years.
>P600,000 to P1.2 million	Prision correccional medium and maximum	
>P20,000 to P600,000	Prision correccional minimum and medium	

>P5,000 to P20,000	Arresto mayor medium to prision correccional minimum	
>P500 to P5,000	Arresto mayor in its full extent	
0 to P500	Arresto mayor in its minimum and medium	
0 to P500	Arresto menor or a fine >P20,000	Theft under Art. 308(3) If the value exceeds P500, apply the rules above.
0 to P500	Arresto menor minimum or a fine >P5,000	The offender acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

The **basis of the penalty** in theft is:

1. Value of the thing stolen
2. Value and also the nature of the property taken
3. Circumstance or causes that impelled the culprit to commit the crime

In the absence of an estimate of the value of the stolen property, the courts may either apply the minimum penalty or fix the value of the property taken.

ART. 310 ★
Qualified theft.

The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of a fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

Elements ♥

1. There is taking of personal property
2. The said property belongs to another
3. Taking be done with intent to gain
4. Taking done without the owner's consent
5. That it be accomplished without the use of violence or intimidation against persons, nor force upon things
6. That it be done with grave abuse of confidence

Theft is qualified–

1. If the theft is committed by a domestic servant
 - a. When the offender is a domestic servant, it is not necessary to show that he committed the crime with grave abuse of confidence.
2. If the theft is committed with grave abuse of confidence ★
 - a. There must be a proof of relation, by reason of dependence, guardianship, or vigilance, between the accused and the offended party that has created a high degree of confidence between them, which the accused abused.
 - b. Theft by one who had access to the place where the stolen property is kept is qualified theft.
 - i. Use of safe combination learned by a confidential clerk is a grave abuse of confidence
 - ii. Taking money in his possession by receiving teller of bank is qualified theft.
 - iii. It is also qualified theft through falsification of a commercial document is a bank teller forged the signature of the bank manager and deposited it to another's account.
3. If the property stolen is a motor vehicle, mail matter or a large cattle
 - a. Qualified theft of a mail matter applies, even if the offender is not a postal employee.
4. If the property stolen consists of coconuts taken from the premises of a plantation 🥥
 - a. It is qualified theft, even if the stolen coconuts are still on the tree or fallen on the ground.
 - b. What is important is that the place of theft is in the plantation.
5. If the property stolen is fish taken from a fishpond or fishery 🐟
 - a. "Fish" must be construed in a generic sense, including other aquatic animals.
6. If the property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance

ART. 311

Theft of the property of the National Library and National Museum.

If the property stolen be any property of the National Library or of the National Museum, the penalty shall be *arresto mayor* or a fine ranging from Forty thousand pesos (P40,000) to One hundred thousand pesos (P100,000), or both, unless a higher penalty should be provided under other provisions of this Code, in which case, the offender shall be punished by such higher penalty.

"The offender shall be punished by such higher penalty" –But if the crime is committed with grave abuse of confidence, the penalty for qualified theft shall be imposed.

Chapter 4 Usurpation

ART. 312

Occupation of real property or usurpation of real rights in property.

Any person who, by means of violence against or intimidation of persons, shall take possession of any real property or shall usurp any real rights in property belonging to another, in addition to the penalty incurred for the acts of violence executed by him, shall be punished by a fine from fifty (50) to one hundred (100) *per centum* for the gain which he shall have obtained, but not less than Fifteen thousand pesos (P15,000).

If the value of the gain cannot be ascertained, a fine from Forty thousand pesos (P40,000) to One hundred thousand pesos (P100,000) shall be imposed.

Elements ♥

1. Offender takes possession of any real property or usurps any real rights in property [1]
2. The real property or real rights belong to another
3. The violence against or intimidation of persons is used by the offender in occupying real property or usurping real rights in property [2]
4. There is intent to gain [3]

[1] There are two acts punished in Art. 312:

- Taking possession of any real property
- Usurping any real rights in property

[2] Lack of this → only civil liability

[3] Lack of this → coercion.

The violence or intimidation must be the means used in occupying the real property or usurping the real right belonging to another.

- Hence, there is no violation of Art. 312 when the violence/intimidation took place subsequent to the entry into the property.

Usurpation	Theft/robbery
Occupation or usurpation	Taking
Real property or real right is occupied or usurped, respectively	Personal property is taken
Intent to gain	

ART. 313

Altering boundaries or landmarks.

Any person who shall alter the boundary marks or monuments of towns, provinces, or estates, or any other marks intended to designate the boundaries of the same, shall be punished by *arresto menor* or a fine not exceeding Twenty thousand pesos (P20,000) or both.

Elements ♥

- There be boundary marks or monuments of towns, provinces, or estates, or any other marks intended to designate the boundaries of the same.
- The offender alters said boundary marks.

“Alter” – General and indefinite meaning.

- E.g., destruction, taking it to another place, removing.

Intent to gain is not necessary under Art. 313.

Chapter 5 Fraudulent Insolvency

ART. 314

Fraudulent insolvency.

Any person who shall abscond with his property to the prejudice of his creditors, shall suffer the penalty of *prision mayor* if he be a merchant, and the penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period, if he be not a merchant.

Elements ♥

- Offender is a debtor [1]
- He absconds with his property [2]
- There be prejudice to his creditors [3]

[1] That is, the offender has obligations due and payable.

[2] Real property may be involved.

[3] Actual prejudice is required. The person prejudiced must be the creditor.

Chapter 6 Swindling and Other Deceits

ART. 315 ★

Swindling (estafa).

Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (P2,000,000); but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over One million two hundred thousand pesos (P1,200,000.00) but does not exceed Two million four hundred thousand pesos (P2,400,000).

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (P40,000): Provided, That in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:
 - a. Altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration.
 - b. By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.
 - c. By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person.
2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
 - a. By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.
 - b. By altering the quality, fineness or weight of anything pertaining to his art or business.
 - c. By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.
 - d. By postdating a check, or issuing a check in payment of any obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from the receipt of the notice from the bank and/or the payee or holder that check has been dishonored

for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act.

Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) hereof shall be punished by:

1st. The penalty of *reclusion temporal* in its maximum period, if the amount of fraud is over Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be *reclusion perpetua*.

2nd. The penalty of *reclusion temporal* in its minimum and medium periods, if the amount of the fraud is over Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).

3rd. The penalty of *prision mayor* in its maximum period, if the amount of the fraud is over One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).

4th. The penalty of *prision mayor* in its medium period, if such amount is over Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

5th. By *prision mayor* in its minimum period, if such amount does not exceed Forty thousand pesos (P40,000).

3. Through any of the following fraudulent means:
 - a. By inducing another, by means of deceit, to sign any document.
 - b. By resorting to some fraudulent practice to insure success in a gambling game.
 - c. By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers.

Elements, in general ♥

1. The accused defrauded another—
 - a. By abuse of confidence, or
 - b. By means or deceit
2. Damage or prejudice capable of pecuniary estimation is caused to the

offended party or a third person.

As Art. 315 is worded, **fraudulent intent** is a necessary element of estafa.

Estafa is committed–

1. With unfaithfulness or abuse of confidence
2. By means of false pretenses or fraudulent acts
3. Through fraudulent means

(1) Estafa by abuse of confidence

With unfaithfulness or abuse of confidence, namely:

- a. **Altering the substance, quantity, or quality** of anything of value which the offender shall deliver by virtue of an obligation to do so, even such obligation be based on an immoral or illegal consideration.
- b. By **misappropriating or converting**, to the prejudice of another, money, goods, or any other personal property **received** by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by **denying having received** such money, goods, or other property.
- c. By taking **undue advantage of the signature** of the offended party **in blank**, and by **writing any document** above such signature in blank, to the prejudice of the offended party or any third person.

(1a) By altering the substance, quantity, or quality...

Elements ♥

1. Offender has an onerous obligation to deliver something of value
2. Offender alters its substance, quantity, or quality
3. Damage or prejudice is caused to another

Note that this refers only to an onerous obligation. Hence, if the thing delivered had not been fully or partially paid, the person making the delivery is not liable for estafa.

Estafa may arise if the thing to be delivered is not a subject of lawful commerce, such as illegal drugs.

(1b) By misappropriating, converting, or denying ...

Elements ♥

1. Money, goods, or other personal property be received by the

offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same

2. There be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt
3. Such misappropriation or conversion or denial is to the prejudice of another
4. There is demand made by the offended party to the offender.
 - a. This element is unnecessary when there is evidence of misappropriation of the goods (i.e., that demand is useless).

Element 1 refers to transactions transferring juridical possession of the thing to the accused.

- **Juridical possession** – A possession which gives the transferee a right over the thing which the transferee may set up even against the owner.
 - Which includes quasi-contracts, or a contract of bailment (e.g., contract of deposit, contract of commodatum).
- The thing must also be “received,” not taken–**the latter is theft.**

However, No. 1b does not apply when the contract between the accused and the victim has the effect of transferring to the accused ownership–not merely juridical possession–of the thing received.

- Hence, in a contract of sale where ownership is conveyed upon execution of the contract, and the debtor failed to pay, the latter cannot be held liable for estafa.
 - In this case, there can only be civil liability.

Element 2 may be done in three ways:

1. By **misappropriating** the thing received
2. By **converting** the thing received
3. By **denying** the thing received

Misappropriating – To own, to take something for one’s own benefit. It presupposes that the thing has been devoted to a purpose different from that agreed upon.

Converting – The act of using or disposing of another’s property as if it were one’s own.

Denying – A borrowed a ring from B. B asked A to return the ring, but A denied having received it, A is guilty of estafa.

- This is where the fourth element–demand–is necessary. How can you get a denial if there’s no demand?

Element 3 refers to “the prejudice of another”–not necessarily of the owner of the property.

- Whenever damages are caused as a consequence of the appropriation or conversion, the act constitutes the crime of estafa.
- A co-owner/partner is liable for estafa if he received it and later misappropriated it.
 - But a co-owner is not liable, except when he misappropriated the thing which has become the exclusive property of the other after the termination of the co-ownership.

Element 4, the requirement of a demand, only applies for abuse of confidence.

- Demand need not be formal, as it may be verbal.
- It is not necessary for estafa with **abuse of confidence** because the thing has been received under a lawful transaction.
 - And in estafa by means of **deceit**, demand is not necessary because the offender obtained the thing wrongfully from the beginning.

(1c) By taking undue advantage of the signature...

Elements ♥

1. The paper with the signature of the offended party be in blank
2. The offended party should have delivered it to the offender
3. Above the signature of the offended party, a document is written by the offender without authority to do so
4. The document so written creates a liability of, or causes damage to, the offended party or any third person

If the blank paper with a **signature has been stolen**, the crime is not estafa. The requirement under 1c is that the offended party deliver said blank paper to the accused.

- The crime may be **falsification**.

Estafa with abuse of confidence	Theft
Juridical possession	Material possession
Receives the thing	Takes the thing
Owner does not expect immediate return of the thing delivered to the accused <ul style="list-style-type: none"> • Exception: A domestic servant who was asked by his employer to deliver something to a third person 	The owner expects an immediate return of the thing to him

and instead of doing so, misappropriated the thing. This is qualified theft (*Martido v. People*, G.R. 179061, July 13, 2009).

Estafa with abuse of confidence	Malversation
Offenders are entrusted with funds or property	
Continuing offense	
Funds or property are private	Funds or property are public
Offender is a private individual who is not accountable for public funds or property	Offender is usually a public officer accountable for public funds or property
Committed by misappropriating, converting or denying having received money, goods or personal property	Committed by misappropriating or consenting, or, through abandonment or negligence, permitting any other person to take public funds or property

The estafa in Arts. 315(2) and 315(3) are collectively called estafa by means of deceit. It is committed either by false pretense, fraudulent act [1], or fraudulent means.

Elements of estafa by means of deceit ♥

1. That there must be a false pretense, fraudulent act or fraudulent means.
2. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud.
3. That the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means.
4. The offended party suffered damage as a result thereof.

[1] 2a-2c – false pretenses; 2d – fraudulent acts

(2) By means of false pretenses or fraudulent acts

By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

- (a) By using **fictitious name**, or **falsely pretending to possess** power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.
- (b) By **altering the quality, fineness or weight** of anything pertaining to his art or business.
- (c) By **pretending to have bribed any Government employee**, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.
- (d) By **postdating a check**, or **issuing a check in payment of an obligation** when the offender **had no funds in the bank**, or his funds deposited therein were **not sufficient** to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent acts.

Part 1: False pretenses

- The deceit consists in the use of deceitful words.

(2a) By using fictitious names, etc.

There are **three ways** of committing estafa under this:

1. By using a fictitious name
2. By falsely pretending to possess: (a) power, (b) influence, (c) qualifications, (d) property, (e) credit, (f) agency, (g) business or imaginary transactions
3. By means of other similar deceptions

Element 1 – The indispensable requirement for Art. 315(2a) is that the deceit or false pretense must be the efficient cause or primary consideration which induced the offended party to part with his money or property.

Fictitious names – A person uses a name other than his real name.

- E.g., after finding a pawnshop ticket in another's name, and, using the name of that other person, redeemed the jewelry mentioned therein.

Falsely pretending to possess–

1. Power
 - a. Pretending to be a magician endowed with power to discover hidden treasures
 - b. Falsely pretending to an ignorant person that a certain paper

will coin paper and silver moneys

2. Influence
 - a. Falsely pretending to an immigrant that he has influence in Malacañang and the Bureau of Immigration, and said representation caused the victim to give him money for the alleged services (fraudulent lobbyist)
3. Qualifications
 - a. In pretending to be a lawyer to represent the defendant in a civil case, the accused succeeded in obtaining from the latter the title deeds of his land
 - i. In this case, the basis of the penalty was the value of the paper, not the land.
4. Property
 - a. Purchasing things and pretending he had sufficient funds to pay in cash the value of said materials when in truth, he had no money
 - b. Pretending to be the owner of a lot and collecting money for a supposed sale of such property
 - c. A creditor who deceived his debtor is liable for estafa under this
5. Credit
 - a. Stating and representing to creditors that they possess credit, business and means with which to pay for certain items
6. Agency
 - a. Falsely pretending to a bank that he was sent by the depositor to get them, and succeeding in obtaining the thing deposited
7. Business
 - a. The accused deceiving the victim into investing money by falsely claiming to own a lucrative business, using fake documents to appear credible, but in reality, no such business existed

Element 2 – The false pretense, etc. must exist **prior to** or **simultaneous with** the execution of the fraud.

- Hence, the accused must not possess such power, influence, qualifications, etc., on or before the commission of the fraud.
- This is a temporal aspect.

Element 3 must mean that the victim must be deprived of his property by any of the false pretenses mentioned in (2a).

- Put it in another way, the offender must be able to obtain something from the victim because of the false pretense.
- If not for the false pretense, the offended party would not have lost such a thing.

Estafa by means of other similar deceptions – Deceits not covered by any of

those specifically mentioned in (2a), but similar to any of them, may give rise to estafa by means of other similar deceits.

(2b) By altering the quality, fineness or weight

- **Illustration:** The accused, a jeweler, sells the victim a gold necklace, claiming it is 24-karat gold. However, the accused secretly mixes it with inferior metals, making it only 10-karat gold, while charging the victim the price of pure gold. When the victim later has it appraised, they discover the fraud.
- The Consumer Act punishes fraudulent manipulation of any scale, balance, weight or measure.

(2c) By pretending to have given bribe

- This is committed by any person who would ask money from another for the alleged purpose of bribing a government employee, when in truth and in fact, the offender intended to convert the money to his own personal use and benefit.
- Example: A person who obtains money from another by falsely pretending that with that money, he will bribe the doctor in charge of the physical examination of the offended party so as to declare him unfit for service in the army is guilty of estafa under (2c).
 - *If the accused really gives the money to the doctor, the crime is corruption of public officer.*

“Without prejudice to the action for calumny” – The offender may be held liable for defamation which the government employee allegedly bribed may deem proper to bring against the offender.

Part 2: Fraudulent acts

- The deceit consists principally in deceitful **acts**, which must be performed prior to or simultaneously with the commission of the fraud.

2d – Estafa by postdating a check or issuing a check in payment of an obligation

Elements ♥

1. Offender postdated a check, or issued a check in payment of an obligation
2. Such postdating or issuing was done when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check.

Element 1 requires that the check should not be postdated or issued in payment of a preexisting obligation.

- Hence, the issuance of a check in payment of a debt prior to the issuance of the bad check is not estafa.

- The offender must have obtained the gain or thing because of the check.
- When the accused did not have to assure the payee that the checks would be sufficiently funded on maturity, there is no estafa.
- When the check is issued not for the purpose of paying for an obligation (e.g., as a PN), there is no estafa.
- When the check is issued by a guarantor, there is no estafa.

Element 2 does not require that the drawer should know that he has insufficient funds.

- The mere fact that the drawer had insufficient or no funds in the bank to cover the checks is sufficient to make him liable for estafa.

Prima facie evidence of deceit – The failure of the drawer to deposit the amount necessary to cover his check within 3 days from receipt of notice from the bank and/or payee or holder that the check has been dishonored.

- Hence, liability for estafa is extinguished when the drawer has been able to deposit the amount necessary within 3 days from receipt of the notice.
- Because this is a prima facie presumption, this may be rebutted by good faith defense.
 - Good faith – May be demonstrated by a debtor's offer to arrange a payment scheme with his creditor (People v. Ojeda, G.R. 104238-58), or when the debtor, before maturity of the check, asked his creditor not to present the check for collection (People v. Villapando, G.R. No. 33224, September 4, 1931).
- DAUD (drawn against uncleared deposits) does not expose the drawer to possible prosecution for estafa and BP 22, while DAIF (drawn against insufficient funds) does.
- Estafa by issuing bad checks is a continuing crime.

(3) Through any of the following fraudulent means

Through any of the following fraudulent means:

- a. By **inducing another**, by means of deceit, **to sign** any document.
- b. By resorting to some fraudulent practice to **insure success in a gambling game**.
- c. By **removing, concealing or destroying**, in whole or in part, any court record, office files, **document**, or any other papers.

(3a) By inducing another, by means of deceit, to sign any document

Elements ♥

1. The offender induced the offended party to sign a document
2. Deceit is employed to make him sign the document

3. The offended party personally signed the document
4. Prejudiced be caused

Element 1 requires inducement.

- Hence, if the offended party is willing and ready from the beginning to sign the document and there is deceit as to the content of the document (i.e., it's different as to what was previously agreed), there is no estafa. This is falsification.

Element 2 requires the employment of deceit.

- There must be misrepresentation, or statements tending to mislead the complainant as to the character of the document executed by him.

(3b) By resorting to some fraudulent practice to insure success in gambling

Examples:

1. Switching of a nonlethal gaff in cockfighting, preventing the cock from inflicting mortal wounds to its opponent.
2. During a high-stakes poker game, the accused secretly uses marked cards to identify their opponents' hands and ensure their own victory. Unaware of the deception, the victim continues betting and loses a large sum of money. When the fraud is later discovered, it is revealed that the accused manipulated the game to guarantee their winnings, constituting estafa.
3. The accused operates an online gambling website and invites the victim to play a digital slot machine, claiming it offers fair odds and high payouts. However, the accused secretly rigs the algorithm so that the victim can never win significant amounts. The victim continues depositing money, believing they have a chance, until they realize the game is unfairly programmed to make them lose.

(3c) By removing, concealing or destroying documents

Elements ♥

1. There be court record, office files, documents or any other papers
2. Offender removed, concealed, or destroyed any of them
3. Offender has an intent to defraud another

The **lack** of **element 3**—the intent to defraud—makes the felony **malicious mischief**.

Examples:

1. Concealing – A person concealed a document evidencing a deposit of a sum of money, which came into his possession when he offered to collect the deposit.
2. Destroying – Destruction of PNs given back to the maker to be

replaced with a new one to renew the loan, without making a new PN is estafa. The destruction dispossessed the creditor of the evidence of a debt.

Estafa by removing, concealing or destroying documents

Infidelity in the custody of documents (Art. 226)

Involves the removal, concealment, and destruction of documents or papers

Offender is a private person, or even a public officer *not entrusted* with the documents

Offender is a public officer

Intent to defraud

Intent to defraud is not required

Final notes

Deceit and abuse of confidence may coexist.

- But if there is neither deceit nor abuse of confidence, there is no estafa. If there is damage, there is only civil liability.

The **element of damage/prejudice** may consist in:

1. The offended party being deprived of money or property
2. Disturbance in his property rights
3. Temporary prejudice

Note that the **prejudice must be capable of pecuniary estimation**.

Payment made subsequent to the commission of estafa does not extinguish criminal liability, nor does it relieve the offender of the penalty.

- Neither does the issuance of PNs extinguish criminal liability.
- Criminal liability is only extinguished under the provisions of Art. 89.

Penalties for estafa, except for (2d)

Value of damage	Penalty
Over P4.4 million	PM (max) + 1 year for every P2 million Penalty not to exceed 20 years (RT)
P2.4-P4.4 million	PC (max)-PM (min)

P1.2-P2.4 million	PC (min-med)
P40,000-P1.2 million	AM (max)-PC (min)
0-P40,000	AM (med-max)

Penalties for estafa by postdating or issuing a check (2d)

Value of damage	Penalty
Over P8.8 million	RP
P4.4-P8.8 million	RT (max)
P2.4-P4.4 million	RT (min-med)
P1.2-P2.4 million	PM (max)
P40,000-P1.2 million	PM (med)
0-P40,000	PM (min)

ART. 316

Other forms of swindling.

The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

1. Any person who, pretending to be the owner of any real property, shall convey, sell, encumber, or mortgage the same;
2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded;
3. The owner of any personal property who shall wrongfully take it from its lawful possessor, to the prejudice of the latter or any third person;
4. Any person who, to the prejudice of another, shall execute any fictitious contract;
5. Any person who shall accept any compensation given him under the belief that it was in payment of services rendered or labor performed by him, when in fact he did not actually perform such services or labor;
6. Any person who, while being a surety in a bond given in a criminal or civil action, without express authority from the court or before the cancelation of his bond or before being relieved from the obligation contracted by him, shall sell, mortgage, or, in any manner, encumber

the real property or properties with which he guaranteed the fulfillment of such obligation.

ART. 317

Swindling of a minor.

Any person who, taking advantage of the inexperience or emotions or feelings of a minor to his detriment, shall induce him to assume any obligation or to give any release or execute a transfer of any property right in consideration of some loan of money, credit, or other personal property, whether the loan clearly appears in the document or is shown in any other form, shall suffer the penalty of *arresto mayor* and a fine or a sum ranging from 10 to 50 percent of the value of the obligation contracted by the minor.

ART. 318

Other deceits.

The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of *arresto menor* or a fine not exceeding Forty thousand pesos (P40,000).

Chapter 7
Chattel Mortgage

ART. 319

Removal, sale or pledge of mortgaged property.

The penalty of *arresto mayor* or a fine amounting to twice the value of the property shall be imposed upon:

1. Any person who shall knowingly remove any personal property mortgaged under the Chattel Mortgage Law to any province or city other than the one in which it was located at the time of the execution of the mortgage, without the written consent of the mortgagee or his executors, administrators, or assigns.
2. Any mortgagor who shall sell or pledge personal property already pledged, or any part thereof, under the terms of the Chattel Mortgage

Law, without the consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds of the province where such property is located.

Chapter 8 Arson and Other Crimes Involving Destruction

ART. 320 ★ Destructive arson.



The penalty of *reclusion perpetua* to death shall be imposed upon any person who shall burn:

1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, or committed on several or different occasions;
2. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to governmental function or business, private transaction, commerce, trade workshop, meetings and conferences, or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings, public conveyance or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not.
3. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.
4. Any building, factory, warehouse, installation, and any appurtenances thereto, which are devoted to the service of public utilities.
5. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

Irrespective of the application of the above enumerated qualifying circumstances, the penalty of *reclusion perpetua* to death shall likewise be imposed when the arson is perpetrated or committed by two (2) or more persons or by a group of persons, regardless of whether their purpose is merely to burn or destroy a building or the burning merely constitutes an overt act in the commission of another violation of the law.

The penalty of *reclusion perpetua* to death shall also be imposed upon any

person who shall burn:

1. Any arsenal, shipyard, storehouse, or military power or fireworks factory, ordinance, storehouse, archives, or general museum of the Government.
2. In an inhabited place, any storehouse or factory of inflammable or explosive materials.

If as a consequence of the commission of any of the acts penalized under this Article, death results, the mandatory penalty of death shall be imposed.

Destructive arson – Malicious burning of structures, both public and private, hotels, buildings, edifices, trains, vessels, aircraft, factories, and other military, government or commercial establishments by any person or group of persons.

Arson – Malicious destruction of property by fire

Three kinds:

1. Simple arson (§1, PD 1613)
2. Destructive arson (Art. 320, as amended)
3. Other cases of arson (§3, PD 1613)

As to stages of execution:

1. Attempted – Placing rags soaked in gasoline beside the wooden wall of the building and lighting a match, but was caught and wasn't able to light the match.
2. Frustrated – Accused is able to light or set the rags on fire but the fire was put out *before* any part of the building was burned.
3. Consummated – Any charring of the building is sufficient.
 - a. Setting fire to the contents of a building constitutes consummated arson even if no part of the building was burned.

Destructive arson (Art. 320)	Simple arson (PD 1613)
Covers malicious burning of structures, both public and private, hotels, buildings, edifices, locomotives, aircraft, factories, and other military, government or commercial establishments	Covers dwellings, houses, government buildings, farms, mills, plantations, railways, bus stations, airports, wharves and other industrial establishments
Characterized as heinous crimes <ul style="list-style-type: none"> • Which is why the death 	Contemplates crimes with less significant social, economic, political

penalty is here

and national security implications

People v. Baluntong, G.R. 182061, March 15, 2010

In cases where both burning and death occur, the intent of the malefactor must be ascertained.

1. If the main objective is to burn but death results by reason or on occasion of the arson → arson only, and the resulting homicide is absorbed.
2. If the main objective is to kill someone and fire is used as means to accomplish the killing → murder
3. If the objective is to kill someone and arson is used to cover up the killing → homicide/murder and arson, separately

ART. 324

Crimes involving destruction.

Any person who shall cause destruction by means of explosion, discharge of electric current, inundation, sinking or stranding of a vessel, intentional damaging of the engine of said vessel, taking up the rails from a railway track, maliciously changing railway signals for the safety of moving trains, destroying telegraph wires and telegraph posts, or those of any other system, and, in general by using any other agency or means of destructions as effective as those enumerated, shall be punished by *reclusion temporal* if the commission has endangered the safety of any person; otherwise, the penalty of prison mayor shall be imposed.

Elements ♥

1. The offender causes destruction
2. The destruction is caused by any of the following means:
 - a. Explosion
 - b. Discharge of electric current
 - c. Inundation, sinking or stranding of a vessel, or intentional damaging of the engine of said vessel
 - d. Taking up rails from a railway track
 - e. Maliciously changing railway signals for the safety of moving trains
 - f. Destroying telegraph wires and telegraph posts, or those of any other system
 - g. Using any other agency or means of destruction as effective of those above enumerated

Chapter 9 Malicious Mischief

ART. 327 ★

Who are liable for malicious mischief.

Any person who shall deliberately cause to the property of another any damage not falling within the terms of the next preceding chapter, shall be guilty of malicious mischief.

Elements ♥

1. Offender deliberately caused damage [1] to the property of another
2. Such act is neither arson nor other crimes involving destruction
3. The act be committed merely for the sake of damaging it
 - a. e.g, hate, revenge, other evil motives, mere pleasure of destroying.

Lacking malice → only civil liability (tort)

With intent to gain → theft (Art. 308, par. 2)

[1] Damage must not result from a crime.

Qualified malicious mischief

ART. 328

Special cases of malicious mischief.

Any person who shall cause damage to obstruct the performance of public functions, or using any poisonous or corrosive substance; or spreading any infection or contagion among cattle; or who causes damage to the property of the National Museum or National Library, or to any archive or registry, waterworks, road, promenade, or any other thing used in common by the public shall be punished:

1. By *prision correccional* in its minimum and medium periods, if the value of the damage caused exceeds Two hundred thousand pesos (P200,000);
2. By *arresto mayor*, if such value does not exceed the above-mentioned amount but is over Forty thousand pesos (P40,000); and
3. By *arresto menor*, if such value does not exceed Forty thousand pesos (P40,000).

Qualified malicious mischief

The special cases of malicious mischief are:

1. Causing damage to obstruct the performance of public functions
2. Using any poisonous or corrosive substance [1]
3. Spreading any infection or contagion among cattle
4. Causing damage to the property of the National Museum or National Library, or to any archive or registry, waterworks, road, promenade, or any other thing used in common by the public.

[1] Do not confuse this with Art. 264 (administering injurious substance). Here, the intent must be to destroy property, and not to cause injury to persons.

Qualified malicious mischief	Sedition
Intent to obstruct the performance of public functions	
No uprising	There is a public tumultuous uprising

ART. 329 Other mischiefs.

The mischiefs not included in the next preceding article shall be punished:

1. By *arresto mayor* in its medium and maximum periods, if the value of the damage caused exceeds Two hundred thousand pesos (P200,000).
2. By *arresto mayor* in its minimum and medium periods, if such value is over Forty thousand pesos (P40,000) but does not exceed Two hundred thousand pesos (P200,000); and
3. By *arresto menor* or fine of not less than the value of the damage caused and not more than Forty thousand pesos (P40,000), if the amount involved does not exceed Forty thousand pesos (P40,000) or cannot be estimated.

Mischiefs not included in Art. 328 are punished according to the value of the damage caused.

- If value is not determined → *arresto menor* or fine >P40,000.

ART. 330 Damage and obstruction to means of communication.

The penalty of *prision correccional* in its medium and maximum period shall be imposed upon any person who shall damage any railway, telegraph or

telephone lines.

If the damage shall result in any derailment of cars, collision, or other accident, the penalty of *prision mayor* shall be imposed, without prejudice to the criminal liability of the offender for the other consequences of his criminal act.

For the purpose of the provisions of this article, the electric wires, traction cables, signal system, and other things pertaining to railways, shall be deemed to constitute an integral part of a railway system.

In par. 2, the derailment must not be purposely sought by the offender.

- It must have resulted from the damage to the railway.

⚠ *This article is not applicable to telephone or telegraph lines that do not pertain to railways.*

Q: What crime is committed if as a result of the damage caused to the railway, certain passengers are killed?

A: It depends.

- a. If there is intent to kill → Murder (Art. 248(3): derailment)
- b. If there is no intent to kill → Complex crime of damage and obstruction to means of communication with homicide.

ART. 331

Destroying or damaging statutes, public monuments, or paintings.

Any person who shall destroy or damage statutes or any other useful or ornamental **public monument** shall suffer the penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period.

Any person who shall destroy or damage any useful or ornamental **painting** of a public nature shall suffer the penalty of *arresto menor* or a fine not exceeding Forty thousand pesos (P40,000), or both such fine and imprisonment, in the discretion of the court.

Two acts are punished:

1. Destroying statutes or public monument
2. Destroying paintings

DV: Regardless of the ownership of the monument or painting, what is essential is that it's made available to the public to qualify under this.

Chapter 10
Exemption from Criminal Liability in Crimes Against Property

ART. 332 ★

Persons exempt from criminal liability.

No criminal, but only civil liability, shall result from the commission of the crime of theft, swindling or malicious mischief committed or caused mutually by the following persons:

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;
2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and
3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

The exemption established by this article shall not be applicable to strangers participating in the commission of the crime.

Felonies covered by the exemption:

1. Theft
 - a. Simple theft (Art. 308)
 - b. Qualified theft (Art. 310)
 - c. Theft of the property of the National Library and National Museum (Art. 311)
2. Estafa
 - a. Estafa (Art. 315)
 - b. Other forms of swindling (Art. 316)
 - c. Swindling of a minor (Art. 317)
 - d. Other deceptions (Art. 318)
3. Malicious mischief
 - a. Malicious mischief (Art. 327)
 - b. Qualified malicious mischief (Art. 328)
 - c. Other mischiefs (Art. 329)
 - d. Damage and obstruction to means of communication (Art. 330)
 - e. Destroying or damaging statutes, public monuments or paintings (Art. 331)

Persons exempted from criminal liability:

1. Spouses, ascendants and descendants, or relatives by affinity in the same line (direct line, and direct line by affinity [e.g., mother-in-law])
2. Widowed spouse

- a. Qualification: Property must be inherited by the widowed spouse, and before said property is passed on to a third party
3. Brothers and sisters, and siblings-in-law
 - a. Qualification: They should be living together

Levels of analysis:

1. What is the felony committed? Is it covered?
2. What is the relationship between the offended party and accused?