

**Jurisdiction**

**Definition**

- Criminal jurisdiction is the authority to hear and try a particular offense and impose the punishment for it.
- It includes the authority of the court to execute its decision since such is an essential aspect of jurisdiction and is the most important part of litigation.

**Elements**

1. The nature of the offense and/or penalty attached
2. Commission of the offense within the territorial jurisdiction of the court

**Requisites for valid exercise**

1. Jurisdiction over the subject matter
2. Jurisdiction over the territory where the offense was committed
3. Jurisdiction over the person of the accused

**Determination of jurisdiction:**

1. Nature of the offense
2. Penalty attached
3. Allegations in the complaint/information
4. Law in force at the time of the commission of the offense

*Over the subject matter*

- Only those expressly conferred by the Constitution and statutes and those necessarily implied to make the express effective
- Determined at the time of the institution of the action
- Once vested, jurisdiction cannot be withdrawn or defeated by a subsequent valid amendment of the information
- In any case, the jurisdiction is determined by the allegations of complaint or information

*Over the person of the accused*

- **General rule:** Jurisdiction over the person of the accused is acquired either by his arrest or voluntary appearance in court
- Voluntary submission may either be through:
  - Pleading to the merits of the case (e.g., appearing during arraignment, filing a motion to quash)
  - Posting bail
- It is deemed waived by the accused when he files any pleading seeking an affirmative relief
- **Except:**
  - Filing of a motion to quash a complaint on the ground of lack of jurisdiction over the person of the accused
  - Filing of a motion to quash a warrant of arrest

- A criminal case should be instituted and tried in the place where the offense was committed or any of its essential ingredients took place
- Exceptions:
  - The Supreme Court may order a change of venue to avoid a miscarriage of justice
  - When the law otherwise provides (e.g., Sandiganbayan)
  - Where an offense is committed in a train, aircraft, or other public or private vehicle in the course of its trip, the criminal action shall be instituted and tried in the court of any municipality or territory where such train, aircraft, or other vehicle passed during its trip, including the place of its departure and arrival
  - Where an offense is committed on board a vessel in the course of its voyage, the criminal action shall be instituted and tried in the court of the first port of entry or of any municipality or territory where the vessel passed during such voyage, subject to the generally accepted principles of international law
  - Crimes committed outside the Philippines but punishable under Article 2 of the Revised Penal Code shall be cognizable by the court where the criminal action is first filed
- It is determined by the allegations in the complaint or information.

**Principle of adherence to jurisdiction or continuing jurisdiction**

- After its jurisdiction is attached, this jurisdiction cannot be ousted by subsequent events (*Mendoza v. COMELEC*).
- **General rule:** Where a court has already obtained and is exercising jurisdiction over a controversy, its jurisdiction to proceed to the final determination of the cause is *not affected* by new legislation placing jurisdiction over such proceedings in another tribunal.
  - **Exceptions:**
    - The statute expressly provides, or
    - Is construed to the effect that it is intended to operate on actions pending before its enactment (*Palana v. People*).

**Subject matter jurisdiction**

Supreme Court	
Exclusive	Petitions for certiorari, prohibition, and mandamus against <ul style="list-style-type: none"><li>- Court of Appeals (CA)</li></ul>

<sup>1</sup> It is the hornbook doctrine that jurisdiction to try a criminal action is determined by the law in force at the time of the institution of the action and not during the arraignment of the accused.

	<ul style="list-style-type: none"> <li>- Commission on Elections</li> <li>- Commission on Audit</li> <li>- Sandiganbayan (SB)</li> <li>- Court of Tax Appeals (CTA)</li> </ul>
Concurrent	<p><i>With CA</i></p> <ul style="list-style-type: none"> <li>- Certiorari, prohibition, and mandamus against the Regional Trial Courts and lower courts</li> </ul> <p><i>With CA and RTC</i></p> <ul style="list-style-type: none"> <li>- Petition for <i>habeas corpus</i></li> <li>- Certiorari, prohibition, and mandamus against the lower courts or bodies</li> </ul> <p><i>With RTC</i></p> <ul style="list-style-type: none"> <li>- Actions affecting ambassadors and other public ministers or consul</li> </ul>
Appellate	<p><i>Via notice of appeal</i></p> <ul style="list-style-type: none"> <li>- From RTC or SB when the penalty imposed is <i>reclusion perpetua</i> or life imprisonment and those involving other offenses which, although not punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion</li> </ul> <p><i>Via appeal by certiorari (Rule 45)</i></p> <ul style="list-style-type: none"> <li>- Appeals from the CA</li> <li>- Appeals from the CTA</li> <li>- Appeals from the SB on pure questions of law, except cases where the penalty imposed is death, <i>reclusion perpetua</i>, or life imprisonment</li> <li>- Appeals from the RTC exercising original jurisdiction on pure questions of law</li> </ul>
Court of Appeals	
Exclusive	Actions for annulment of judgments of RTC
Concurrent	<i>See above</i>
Appellate	<p><i>Via ordinary appeal (NoA/RoA)</i></p> <ul style="list-style-type: none"> <li>- Appeals from RTC, except those appealable to the Supreme Court</li> <li>- Appeals from decisions and final orders of the Family Courts</li> </ul> <p><i>Via petition for review</i></p> <ul style="list-style-type: none"> <li>- Appeals from RTC in cases decided in its appellate jurisdiction (Rule 42 in relation to Rule 122, § 3 (b))</li> </ul>
Sandiganbayan	
Exclusive	Violation of RA 3019, RA 1379, and RPC, ch. II, § 2, tit. VII; and other offenses committed by public officials and employees <u>in relation to their office</u> , and private individuals charged as co-principals,

	<p>accomplices and accessories including those employed in GOCCs, where one or more of the accused are <u>officials occupying</u> the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:</p> <ul style="list-style-type: none"> <li>- Officials of the executive branch classified as Grade "27" or higher, specifically including: <ul style="list-style-type: none"> <li>- Provincial governors, vice-governors, members of the Sangguniang Panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads</li> <li>- City mayors, vice-mayors, members of the Sangguniang Panlungsod, city treasurers, assessors, engineers, and other city department heads</li> <li>- Officials of the diplomatic service occupying the position of consul and higher; Philippine army and air force colonels, naval captains, and all officers of higher rank;</li> <li>- Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;</li> <li>- City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;</li> <li>- Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations</li> </ul> </li> <li>- Members of Congress and officials thereof classified as Grade "27" and up</li> <li>- Members of the Judiciary without prejudice to the provisions of the Constitution</li> <li>- Chairpersons and members of Constitutional Commissions, without prejudice to the provisions of the Constitution</li> <li>- All other national and local officials classified as <b>Grade "27" and higher</b></li> </ul>
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	<p>Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned above <u>in relation to their office</u></p> <p>Criminal cases filed pursuant to and in connection with EO Nos. 1, 2, 14 and 14-A.</p> <p><b>Note:</b> The <b>RTC</b> shall have <b>exclusive original jurisdiction</b> where the information:</p> <p>(a) does not allege any damage to the government or any bribery; or</p> <p>(b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding P1 million (<u>from RTC, you appeal this to SB</u>)<sup>2</sup></p> <p>In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.</p>
Concurrent	<p><i>With Supreme Court</i></p> <ul style="list-style-type: none"> <li>- Certiorari, prohibition, mandamus, habeas corpus, injunction and other ancillary writs in aid of its <u>appellate</u> jurisdiction, including quo warranto arising in cases falling under EO Nos. 1, 2, 14, and 14-A</li> </ul>
Appellate	From the RTC, whether in the exercise of their own original jurisdiction or of their appellate jurisdiction
Court of Tax Appeals	
Original	Violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties is <u>at least</u> P1 million
Appellate	<p><i>Via notice of appeal</i></p> <ul style="list-style-type: none"> <li>- From RTC, in tax cases originally decided by them, in their respected territorial jurisdiction</li> </ul> <p><i>Via petition for review</i></p> <ul style="list-style-type: none"> <li>- From RTC, in the exercise of their appellate jurisdiction over tax cases originally decided by the MTCs in their respective jurisdiction</li> </ul>
Regional Trial Courts	

Exclusive	<ul style="list-style-type: none"> <li>- Criminal cases <u>not</u> within the exclusive jurisdiction of any court, tribunal or body</li> <li>- Criminal cases where the penalty provided by law exceeds six years imprisonment <u>irrespective of fine</u></li> <li>- Criminal cases <u>not</u> falling within the SB's exclusive jurisdiction where <u>none</u> of the accused are occupying positions corresponding to Grade "27" and higher</li> <li>- Where fine is only provided, the RTC has jurisdiction if the amount of the fine exceeds P4,000</li> <li>- Libel cases (art. 360, RPC)</li> <li>- Election offenses, except the offense of failure to register or failure to vote</li> <li>- Intellectual property cases</li> <li>- Agrarian cases (for RTCs designated as Special Agrarian Courts)</li> <li>- Crimes against humanity</li> <li>- Drugs cases (RA 9165)</li> <li>- Violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs, where the principal amount of taxes and fees, exclusive of charges and penalties is <u>under</u> P1 million</li> </ul>
Appellate	All cases decided by lower courts in their respective territorial jurisdictions
Family Courts	
Exclusive	<ul style="list-style-type: none"> <li>- Criminal cases where one or more of the accused is below 18 but no less than 15, when one or more of the victims is a minor at the time of the commission of the offense</li> <li>- Cases against minors cognizable under the Dangerous Drugs Act</li> <li>- Violations of RA 7610</li> <li>- Cases of domestic violence against women and children (<i>i.e.</i>, RA 9262)</li> </ul> <p><b>Note:</b> All criminal cases involving a minor victim/s who is/are deceased at the time of the filing of the Information/s shall be raffled to the regular courts of competent jurisdiction.</p> <p><i>If the minor victim dies after the information is filed but before arraignment, the case shall be transmitted to the Office of the Clerk of Court for re-raffle/assignment to a regular court of competent jurisdiction (A.M. No. 15-02-10-SC)</i></p>
First-level courts (MTC, MeTC, MTCC, MCTC)	

<sup>2</sup> Such cases shall be tried in a judicial region other than the place where the accused official holds office.

Exclusive	<ul style="list-style-type: none"> <li>- Violations of city or municipal ordinances</li> <li>- All offenses punishable with imprisonment of not more than six years, irrespective of the fine and regardless of other imposable accessory or other penalties and the civil liability arising therefrom</li> <li>- Offenses involving damage to property through criminal negligence (art. 365, RPC)</li> <li>- All offenses committed not falling within the exclusive original jurisdiction of the SB where none of the accused are occupying positions corresponding to Grade "27" and higher</li> <li>- Where fine is only provided, the RTC has jurisdiction if the amount of the fine does not exceed P4,000</li> <li>- Election offense of failure to register or failure to vote</li> </ul>
Special	Applications for bail in the absence of all RTC judges
Summary	<ul style="list-style-type: none"> <li>- Traffic violations</li> <li>- Rental law violations</li> <li>- Violations of city and municipal ordinances</li> <li>- Violations of BP 22</li> <li>- All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding one year, or a fine not exceeding P50,000, or both, regardless of other imposable penalties</li> <li>- Damage to property through criminal negligence (art. 365, RPC) where the imposable fine does not exceed P150,000 <ul style="list-style-type: none"> <li>- If the prescribed penalty does <u>not</u> consist of imprisonment and or a fine, the prescribed imprisonment shall be the basis</li> </ul> </li> </ul>
Military courts	
Exclusive	Over members of the AFP on service-connected offense ( <i>i.e.</i> , within the Articles of War): <ul style="list-style-type: none"> <li>- Arts. 54-70</li> <li>- Arts. 72-92</li> <li>- Arts. 95-97</li> </ul>

Rules applicable:

- Rule 122
- Rules 40-45
- Rules on Expedited Procedure

Statutory references:

- RA 9282 (CTA)
- RA 10660 (SB)
- BP 129 (CA, RTC, MTC)
- RA 7055 (Military courts)
- RA 8369 (Family courts)
- Phil. Const. art. VIII, § 5 (SC)

**Rule 126**  
**Search and Seizure**

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (*Phil. Const. art. III, § 3*)

**Search warrant** – An order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court (R126.1).

- Every search warrant is applied for and issued by and under the authority of the State, regardless of who initiates its application or causes its issuance
- It is a judicial process to respond only to an incident in the main case, if one has already been instituted, or in anticipation thereof
- Thus, the conformity of the public prosecutor is not necessary before an aggrieved party may move for the reconsideration of an order granting a motion to quash search warrants

**Constitutional guarantee and the exclusionary rule**

- The right against unreasonable searches and seizures is the immunity of one's person from government interference.
- Thus, Const. art. III, § 3 (2) provides for the exclusionary principle.
- The exclusionary rule or fruit of the poisonous tree doctrine is the practical means of enforcing the constitutional injunction against unreasonable searches and seizures
- Its purpose is to deter law enforcement in engaging from fishing expeditions and, ultimately, protect the right against unreasonable search and seizure.
- The constitutional protection against unreasonable search and seizure (Bill of Rights) is a restraint on the government and its agents, not on private individuals (*People v. Marti*).

Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding. (*Phil. Const. art. III, § 3 (2)*)

**Definition:** The exclusionary rule tells that any evidence obtained in violation of the accused's constitutional right against warrantless search and seizures and warrantless arrests, the same shall be inadmissible in court.

- 🟢 So long as the evidence sought to be presented is fairly traceable to the illegal search or seizure or the intrusion into privacy, then the same must be excluded.

**Where should an application for search warrant be filed**

1. Any court within whose territorial jurisdiction a crime was committed
2. For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced
3. However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending (R126.2)

**Note:** These rules are mandatory. Thus, a statement of compelling reasons must accompany the application, if the exception under no. 2 will be used. This provision will be strictly construed against the state who will enforce the search warrants.

**Personal properties to be seized**

1. Subject of the offense
2. Stolen or embezzled and other proceeds, or fruits of the offense
3. Used or intended to be used as the means of committing an offense (R126.3)

It does not require that the property to be seized be owned by the person against whom the search warrant is directed.

- It is sufficient that the person against whom the warrant is directed has *control or possession* of the property sought to be seized (*Burgos v. Chief of Staff*).

*"Means of committing the offense"*

- They must bear a relation to the use or manufacture of the crime (e.g., drugs) (*People v. Nuñez*).

**Requisites for issuing search warrants**

1. There is probable cause
2. Such probable cause has connection with one specific offense
3. The probable cause will be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce
4. On the basis of their personal knowledge of the facts they are testifying to
5. There must be particularity in describing the place to be searched and the things to be seized which may be anywhere in the Philippines

*Probable cause*

- The existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe a reasonably discreet and prudent man to believe that an offense has been committed and that the item/s, article/s or object/s sought in connection with said offense or subject to seizure and destruction by law is in the place to be seized.
- An underlying offense must first exist.

- The determination of its existence is *not* concerned with the question of whether the offense charged has been or is being committed, but only whether the affiant has *reasonable grounds* for his belief.
- The requirement is less than certainty or proof, but more than suspicion or probability.

*One specific offense*

- One specific offense, one warrant. This is to prevent the issuance of a scattershot warrant.
- Thus, an applicant cannot be allowed to maintain the search warrant's validity based on facts and circumstances that may be related to *other* search warrants but are extrinsic to the warrant in question.

*Personally determined by judge*

- In any case, great deference is to be accorded to the judge's determination
- The oath required must refer to the truth of the facts within the personal knowledge of the applicant or his witness, because the purpose thereof is to convince the magistrate of the existence of probable cause
- Examination must be probing and exhaustive, not merely routinary or pro forma. The judge must not simply rehash the contents of the affidavit but make his own inquiry on the intent and justification of the application
- Absent the element of personal knowledge by the applicant or his witness of the facts upon which the issuance of a search warrant may be justified, the warrant is deemed not based on probable cause and is a nullity

*Particularity*

- The requirement of particularity in the description, especially of the things to be seized, is meant to enable the law enforcers to readily identify the properties to be seized and, thus, prevent the seizure of wrong items.
- It seeks to leave the law enforcers with no discretion at all regarding these articles.
- Thus, objects taken which were not specified in the search warrant should be returned
- The test of whether the requirement of particularity has been met is whether the description of the place to be searched under the warrant is sufficient and descriptive enough to prevent a search of other premises located within the surrounding area or community.

*Three 'kinds' of particularity*

<b>Particularity as to the PLACE TO BE SEARCHED</b>
A description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community.
<b>Particularity as to the PROPERTY TO BE SEIZED</b>

Description must be so particular that the officer charged with the execution of the warrant will be left with no discretion respecting the property to be taken.  <b>Test:</b> Whether the things described are limited to those which bear direct relation to the offense for which the warrant is issued
<b>Particularity as to the PERSON TO BE SEARCHED</b>
It may be said that the person to be searched is "particularly described" in the search warrant when his name is stated in the search warrant, or if the name is unknown, he is designated by words sufficient to enable the officer to identify him without difficulty

*Specificity*

- Technical accuracy in the description of the property to be seized is not required.
- Specificity is satisfied if the property's description is as far as the circumstances will ordinarily allow it to be so described.
- Test: Whether the things described are limited to those which bear direct relation to the offense for which the warrant is being issued
- A description is sufficient if the officer with the warrant can ascertain and identify with reasonable effort the place intended, and distinguish it from other places in the community
- A designation that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it satisfies the constitutional requirement of definiteness

**Examination of complaint**

- Before issuing the warrant, the judge must personally examine in the form of *searching questions and answers*, in writing and under oath, and together with the affidavits submitted (R126.5).
- Searching questions and answers is a form of personal examination by the judge of the complainant and the witnesses he may produce on facts personally known to him.
- The mandate of the judge is for him to conduct a full and searching examination of the complainant and the witnesses he may produce.
- The examination must be probing and exhaustive. The questions should not be merely repetitious of the averments stated in the affidavits/deposition of the applicant and the witnesses.

**Right to break door or window to effect search**

- Knock and announce principle.
- To justify a no-knock entry, the police must have a reasonable suspicion that knocking and announcing their presence would be dangerous or futile.

**Presence of two witnesses**

- No search may be done except in the presence of either the lawful occupant thereof or any member of his family, or in the absence of the latter, two

witnesses of sufficient age and discretion residing in the same locality

- This rule clearly establishes a hierarchy among the witnesses in whose presence the search of the premises must be conducted.
  - Thus, only upon the absence of the lawful occupant may the two witnesses rule apply.
- The absence of the lawful occupant does not taint the regularity of the search, provided that two witnesses are present.

#### Chain of custody under RA 9165 (§ 21) ☞☞

1. The confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer
2. The turnover of the seized item from the apprehending officer to the investigating officer
3. The investigating officer's turnover of the specimen to the forensic chemist for examination;
4. The submission of the item by the forensic chemist to the court.

#### Time of making search

- **General rule:** It must be served during daytime
  - **Exception:** When the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night.

#### Validity of search warrant

- A search warrant shall be valid for 10 days from its date. Thereafter it shall be void (R126.10).
  - Nevertheless, the search—if interrupted—may be continued under the same warrant, provided it's still within the 10-day period.

#### Receipt for the property seized

- The officer seizing property under the warrant shall give a *detailed receipt* for the same to the lawful occupant, or, in his absence, leave a receipt in the place in which he found the seized property, *in the presence of at least two witnesses*.

#### Delivery of property and inventory

- The delivery of the seized items must be delivered to the judge to be kept in *custodia legis*.
- The judge who issued the warrant is mandated to ensure compliance:
  - For the issuance of a detailed receipt
  - Delivery of the seized property to the court
  - Verified true inventory of the items seized
- Hence, the police cannot retain the property seized without approval by the court.

#### Exceptions to search warrant requirements

#### Search incidental to a lawful arrest

- A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense *without a search warrant*
- The law requires that there first be a lawful arrest before a search can be made—the process cannot be reversed.
- Assuming a valid arrest, the arresting officer may search the person of the arrest and the area within which the latter may search for a weapon or for evidence to destroy, and seize any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence.
- A search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search.
- The search is limited to the following:
  - Dangerous weapons
  - Anything which may have been used in the commission of the offense
  - Anything which constitute proof in the commission of the crime
- Immediate possession and control rule:
  - Search may be done also within the permissible area within the latter's reach
  - The area from which he might gain possession of a weapon or destroy evidence

#### Requisites of a warrantless search incidental to a lawful arrest:

1. The accused was lawfully arrested
2. The arresting officers subsequently made a warrantless search
3. The search was limited to the person of the accused and the area within his immediate control
4. Search was performed at the place of the arrest (*Ridon v. People*)

#### Consented search

- There is consented search when there is a waiver of the constitutional guarantee against obtrusive searches.
- **Requisites:**
  - The right exists
  - The person involved had knowledge of said right
  - That person had an actual intention to relinquish that right (*Vda. de Garcia v. Locsin*)
- The consent must be voluntary in order to validate an otherwise illegal detention and search.
  - The consent must be unequivocal, specific and intelligently given, uncontaminated by any duress or coercion.
  - Consent must be shown by clear and convincing evidence.

- Silence cannot be construed as an implicit acquiescence to the warrantless search.
- A peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of law.
- The following characteristics are relevant in the determination of whether a consent was given:
  - Age of defendant
  - Whether he was in a public or secluded location
  - Whether he objected to the search or passively looked on
  - Education and intelligence of defendant
  - Presence of coercive police procedures
  - Defendant's belief that no incriminating evidence will be found
  - Nature of the police questioning
  - The environment in which the questioning took place
  - Possibly vulnerable subjective state of the person consenting

#### Plain view doctrine

- The search incidental to a lawful arrest may extend beyond the person of the one arrested to include the premises or surroundings under his immediate control
- An object is in plain view if the object itself is plainly exposed to sight
- The object must be open to eye and hand and its discovery inadvertent
- If a package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view
- Unlawful objects within the plain view of an officer who has the right to be in the position to have that view are subject to seizure and may be presented in evidence
- The plain view doctrine, however, may not be used to launch unbridled searches and indiscriminate seizures nor to extend a general exploratory search made solely to find evidence of defendant's guilt
- Seizure of evidence in plain view **does not apply** if law enforcement officers are *intentionally searching* the person of the accused for evidence, as most objects that can be recovered are not in plain view (*People v. Bautista*)
- In plain view doctrine, warrantless search is valid if the following **requisites** concur:
  - The law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area
  - The discovery of evidence in plain view is inadvertent
  - It is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure

#### Stop and frisk (a.k.a. Terry searches)

- This refers to the act of a police officer stopping a citizen on the street, interrogating him, and patting him for weapons or contrabands.
- The allowable scope of the search is limited to a protective search of outer clothing for weapons
- Law enforcers must have a genuine reason to believe that criminal activity may be afoot.
- To sustain the validity of a stop and frisk search, the arresting officer should have personally observed two or more suspicious circumstances, the totality of which would then compel a reasonable inference of criminal activity to compel the arresting officer to investigate further.
- Suspicion alone is *not* sufficient.
- It should only be allowed–
  - On the basis of the officer's reasonable suspicion that criminal activity may be afoot and that the persons with whom he is dealing with may be armed and presently dangerous
  - The search must only be a carefully limited search of the outer clothing
  - Conducted for the purpose of discovering weapons which might be used to assault the officer

#### Requisites for a Terry search

1. There were two or more reasonable suspicious circumstances involving the accused
2. The arresting officers observed the suspicious circumstances before approaching the accused
3. The purpose of the police officers in approaching the accused was to investigate

#### Search of a moving vehicle

- To be nonviolative of an individual's right against unreasonable searches, the search must be limited to the following:
  - Where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair ground
  - Where the officer simply looks into a vehicle
  - Where the officer flashes a light therein without opening the car's doors
  - Where the occupants are not subjected to a physical or body search
  - Where the inspection of the vehicles is limited to a visual search or visual inspection
  - Where the routine check is conducted in a fixed area
- An extensive search of a vehicle is permissible, but only when the officers made it upon probable cause.

#### Summary

Type of warrantless search	Requisites/notes
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Search incidental to a lawful arrest	<ol style="list-style-type: none"> <li>1. The accused was lawfully arrested</li> <li>2. The arresting officers subsequently made a warrantless search</li> <li>3. The search was limited to the person of the accused and the area within his immediate control</li> <li>4. Search was performed at the place of the arrest</li> </ol>
Consented search	<ol style="list-style-type: none"> <li>1. The right exists</li> <li>2. The person involved had knowledge of said right</li> <li>3. That person had an actual intention to relinquish that right</li> </ol>
Plain view	<ol style="list-style-type: none"> <li>1. The law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area</li> <li>2. The discovery of evidence in plain view is inadvertent</li> <li>3. It is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure</li> </ol>
Stop and frisk (Terry search)	<ol style="list-style-type: none"> <li>1. There were two or more reasonable suspicious circumstances involving the accused</li> <li>2. The arresting officers observed the suspicious circumstances before approaching the accused</li> </ol>

	<ol style="list-style-type: none"> <li>3. The purpose of the police officers in approaching the accused was to investigate</li> </ol>
Search of a moving vehicle	Probable cause <ul style="list-style-type: none"> <li>- The vehicle—not the person—must be the target</li> <li>- The vehicle was intentionally used as means to transport illegal items</li> </ul>
Customs search	The police may enter, pass through or search any land, inclosure, warehouse, store or building, etc. <u>suspected of holding or conveying any dutiable or prohibited article</u> introduced into the Philippines contrary to law
Exigent and emergency circumstances	Probable cause

**Motion to quash search warrant**

1. May be filed in and acted upon only by the court where the action has been instituted
2. If no criminal action has been instituted, it may be filed in and resolved by the court that issued the search warrant
3. If such court failed to resolve the motion and a criminal case is subsequently filed in another court, the motion shall be resolved by the latter court

**Guidelines in motion to quash a search warrant or suppress evidence**

1. It may be based on **grounds extrinsic** of the search warrant, such as:
  - a. the place searched or property seized are not those specified or described in the search warrant; and
  - b. there is no probable cause
2. A motion to suppress evidence is filed when objects and properties are seized illegally pursuant to the exclusionary rule (*i.e.*, fruits of the poisonous tree)
3. All grounds and objections then available, existent or known shall be raised in the original or subsequent proceedings for the quashal of the warrant, otherwise they shall be deemed waived. Except:
  - a. Issue not available or existent when the motion to quash was filed
  - b. Issue over subject matter jurisdiction
4. The court cannot entertain a motion to suppress evidence while a preliminary investigation is ongoing.
5. Where a search warrant is issued by one court and the criminal action is commenced in another court, the motion may be filed either in the issuing court or

that in which the criminal action is pending. The remedy is alternative, *not cumulative*.

6. Where no motion to quash the search warrant was filed in or resolved by the issuing court, the interested party may move in the court where the criminal case is pending for the suppression as evidence of the property seized for said purpose. In any case, a motion to quash and a motion to suppress evidence are *alternative and not cumulative remedies*.<sup>3</sup>

#### *Denial of MTQ—when final/interlocutory*

- **Interlocutory** – Where the search warrant is issued as an incident in a pending criminal case, the quashing of a search warrant is merely interlocutory.
  - Hence, no appeal may be taken.
- **Final** – Where a search warrant is applied for and issued in anticipation of a criminal case yet to be filed, the order quashing the warrant is applied for and issued in anticipation of a criminal case yet to be filed, the order quashing the warrant ends the judicial process.
  - Hence, an appeal may be properly taken therefrom.

### **Rule on Cybercrime Warrants**

#### **Where to file an application**

1. Where the offense or any of its elements is committed;
2. Where any party of the computer system used is situated; or
3. Where any of the damage caused to a natural or juridical person took place

#### **Types**

1. Warrant to disclose computer data (WDCD)
  - a. This warrant authorizes law enforcement to require a person or service provider to disclose subscriber's information, traffic data, or relevant data in his/her or its possession or control
  - b. Upon securing the WDCD, law enforcement issues an order for the disclosure of data within 72 hours from receipt, provided the disclosure is necessary and relevant for the purpose of investigation and related to a

valid complaint officially docketed and assigned for investigation

2. Warrant to intercept computer data (WICD)
  - a. It is used to carry out activities such as listening to, recording, monitoring, or surveillance of the content of communications
  - b. It authorizes procuring of the content of computer data," either directly through a computer system or indirectly via electronic eavesdropping or tapping devices, while the communication is occurring
3. Warrant to search, seize and examine computer data (WSSECD)
  - a. This warrant is an order authorizing law enforcement to search the particular place for items to be seized and/or examined
  - b. The process involves a search and seizure strategy that may include an off-site or on-site search.
  - c. While implementing the warrant, law enforcement may intercept communications and computer data"that are reasonably related to the subject matter of the WSSECD
4. Warrant to examine computer data (WECD)
  - a. This is required when law enforcement has already acquired possession of a computer device or computer system via a lawful warrantless arrest, or by any other lawful method
  - b. Authorities must apply for this warrant before searching the said computer device or computer system for the specific purpose of obtaining "for forensic examination the computer data contained therein

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<sup>3</sup> In the scenario where RTC Quezon City issues a search warrant but the criminal case is subsequently filed in RTC Makati City, the accused may file a motion to suppress evidence in the Makati court provided that the issuing court in Quezon City has not already ruled on a motion to quash. This rule ensures that the court actually trying the case—RTC Makati—has the authority to determine the admissibility of the evidence that will be used during the trial. Under the principle that these remedies are alternative and not cumulative, the interested party must choose a single forum for the challenge; once a motion is filed and resolved in one court, the party is generally barred from seeking the same relief in the other to prevent conflicting rulings and forum shopping.

**Rule 113**  
**Arrest**

**Arrest** is the taking of a person into custody in order that he may be bound to answer for the commission of an offense (R113.1).

**How arrest is made**

1. An actual restraint of a person to be arrested
2. His submission to the custody of the person making the arrest (R113.2)

**Requisites for the issuance of a warrant of arrest**

1. Issued upon probable cause<sup>4</sup>
2. Determined personally by the judge
3. After examination under oath or affirmation of the complainant and the witnesses produced
4. Particularly describing the person to be seized

*Note: The requisites sound so familiar with that of a search warrant. This is because they are both based on the same constitutional provision.*

- However, personal examination of the complainant and the witness is *not* mandatory and indispensable for determining the aptness of a WOA.
- It's enough that the

**Limitations on arrest**

1. No violence or unnecessary force shall be used
2. The person arrested shall not be subject to a greater restraint than is necessary for his detention

**Use of force**

- Application of actual force, manual touching of the body, physical restraint or a formal declaration of arrest is not required.
- It is enough that there be an intent on the part of one of the parties to arrest the other and an intent on the part of the other to submit, under the belief and impression that submission is necessary (*Sanchez v. Demetriou*)
- A policeman is never justified in using unnecessary force or in treating the offender with wanton violence, or in resorting to dangerous means when the arrest could be affected otherwise.
  - A policeman in the performance of duty is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm.
  - Since a policeman's duty requires him to overcome the offender, the force exerted by the policeman may therefore differ from that which ordinarily may be offered in self-defense (*Cabanlig v. Sandiganbayan*).

**Questions on the legality of arrests**

- Any irregularity attending the arrest must be raised in a Motion to Quash the Information, at any time before arraignment.
- When an accused never objected to the irregularity of his arrest before arraignment, pleaded not guilty and actively participated in the trial, he is considered to have properly and voluntarily submitted himself to the jurisdiction of the court and waived his right to question his arrest.
- The failure of the accused to timely object to the illegality of his arrest does not preclude him from questioning the admissibility of the evidence seized as an incident of the warrantless arrest.
  - The question of admissibility and jurisdiction over the person of the accused are separate and mutually exclusive consequences of an illegal arrest.

**Duties of the arresting officer**

1. Arrest the accused
2. Deliver him to the nearest police station or jail without unnecessary delay (R113.3)

*Penalty!*

The crime of **delay in the delivery of detained persons to the proper judicial authority** has the following elements:

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

**Execution of warrant**

**SEC. 4. Execution of warrant.**—The head of the office to whom the warrant of arrest was delivered for execution shall cause the warrant to be executed within ten (10) days from its receipt. Within ten (10) days after the expiration of the period, the officer to whom it was assigned for execution shall make a report to the judge who issued the warrant. In case of his failure to execute the warrant, he shall state the reasons therefor. (4a)

- The head of office to whom the WOA was delivered for execution shall cause the warrant to be executed within 10 days from its receipt
- Within 10 days after the expiration of the period, the officer to whom it was assigned for execution shall make a report to the judge who issued the warrant
  - In case of his failure to execute the warrant, he shall state the reasons therefor
  - Unlike a SW, no time limit is fixed for the validity of a WOA. The 10-day period in R113.4 is only a directive to the officer to make a return to the court.

<sup>4</sup> As a general rule, the determination of probable cause is addressed to the sound discretion of the trial judge. It is not interfered with in the absence of grave abuse of discretion.

- Unless specifically provided in the warrant, the WOA shall remain enforceable until it is executed, recalled, or quashed.
- The 10-day period is only a directive to the officer executing the warrant to make a return to the court.

### Warrantless arrest

**SEC. 5. Arrest without warrant; when lawful.** — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (5a)

1. In flagrante delicto
2. Hot pursuit
3. Escapees

- A valid warrantless arrest must be done before a search can be made. *The process cannot be reversed.*

### In flagrante delicto

- When in the presence of a peace officer the person to be arrested has committed, is actually committing or is attempting to commit a crime

#### Elements:

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

### Hot pursuit

- When an offense has just been committed, and the officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it

#### Elements:

1. An offense has just been committed

2. The arresting officer has probable cause to believe on personal knowledge of facts or circumstances that the person to be arrested has committed it

*Note:* This doctrine is different from *in flagrante delicto* in the sense that **this does not require the arresting officer or person to personally witness** the commission of the offense.

- What is important is the immediacy of the arrest reckoned from the commission of the crime.

#### Test of immediacy

- There must be no appreciable lapse of time between the arrest and the commission of the crime.
  - Else, a WOA must be secured.
- It is evaluated based on the circumstances surrounding each case
- This guarantees that the police would have no time to base their probable cause finding on facts or circumstances obtained after an exhaustive investigation<sup>5</sup>

#### Personal knowledge

- It covers facts and circumstances.
  - Circumstances may pertain to events or actions within the actual perception, personal evaluation, or observation of the police officer at the scene of the crime
- Thus, **even though the police officer did not see someone actually fleeing, he could still make a warrantless arrest** if, based on his personal evaluation of the circumstances at the scene of the crime, he could determine the existence of probable cause that the person sought to be arrested has committed the crime.
- In any case, officers cannot act *solely* on the basis of confidential or tipped information, since a tip is hearsay (*Calleja v. Executive Secretary*).

#### Probable cause in warrantless arrests

- Probable cause for the issuance of a warrant of arrest has been defined as **such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person** sought to be arrested
- Probable cause means an actual belief or reasonable grounds of suspicion
  - The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts
  - A reasonable suspicion therefore must be founded on probable cause, coupled with

<sup>5</sup> The reason for the element of the immediacy is this—as the time gap from the commission of the crime to the arrest widens, the pieces of information gathered are prone to become contaminated and subjected to external factors, interpretations and hearsay (*Agravante v. People*).

good faith on the part of the peace officers making the arrest

- Reliable information alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, are not sufficient to constitute probable cause that would justify an *in flagrante delicto* arrest (*People v. Molina*)
- An informant's tip alone is not sufficient as probable cause for warrantless arrests. Exclusive reliance on information tipped by informants goes against the very nature of probable cause.
- Circumstances may pertain to events or actions within the actual perception, personal evaluation or observation of the police officer at the scene of the crime. **Thus, even though the police officer has not seen someone actually fleeing, he could still make a warrantless arrest if, based on his personal evaluation of the circumstances at the scene of the crime, he could determine the existence of probable cause** that the person sought to be arrested has committed the crime (*Pestilos v. Generoso*).

#### Escapees

- When the person to be arrested is a *prisoner who has escaped* from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another
- If a person lawfully arrested escapes or is rescued, any person may immediately pursue or retake him without a warrant at any time and in any place within the Philippines (R113.13).
- An accused released on bail may be re-arrested without the necessity of a warrant, if he attempts to depart from the Philippines without permission of the court (R114.23)
- The bondsman may arrest him or, upon written authority, cause him to be arrested by a police officer or any other person of suitable age and discretion

#### Time of making arrest

- Any day, and at any time of the day or night.

#### Methods of arrest

##### If with WOA

- General rule: The officer shall inform the person to be arrested of the cause of the arrest and the fact that a warrant has been issued for his arrest
- Exceptions:
  - When the person flees
  - When a person forcibly resists before the officer has opportunity to so inform him
  - When the giving of such information will imperil the arrest

- The officer need not have the WOA in his possession at the time of the arrest. It may be shown to the accused after the arrest if he so requires, as soon as practicable.

##### *If warrantless arrest*

- General rule: The officer shall inform the person to be arrested of his authority and the cause of the arrest.
- Exceptions:
  - When the person is either engaged in the commission of the offense
  - When the person is pursued immediately after its commission
  - When the person has escaped, flees, or forcibly resists before the officer has opportunity to so inform him
  - When the giving of such information will imperil the arrest

##### *Summary*

Type of warrantless arrest	Requisites/notes
In flagrante delicto	<ol style="list-style-type: none"> <li>1. The person to be arrested is executing an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime</li> <li>2. Such overt act is done in the presence or within the view of the arresting officer</li> </ol>
Hot pursuit	<ol style="list-style-type: none"> <li>1. An offense has just been committed</li> <li>2. The arresting officer has probable cause to believe on personal knowledge of facts or circumstances that the person to be arrested has committed it</li> </ol>
Arrest of a person who escaped from jail	

##### *Arrest by a private person*

- General rule: The private person shall inform the person to be arrested of the intention to arrest him and the cause of the arrest
- Exceptions:
  - The person is either engaged in the commission of an offense
  - The person is pursued immediately after its commission
  - The person has escaped, flees, or forcibly resists before the person making the arrest has opportunity to so inform him
  - When the giving of such information will imperil the arrest

of issue	
SW does not require the existence of a criminal case—it may be issued prior to the filing of the case	Issuance of a WOA presupposes the existence of a pending criminal case that gave rise to the warrant

**Assistance by private persons**

- An officer making arrest may orally summon as many persons as he deems necessary to assist him
- Every person so summoned shall assist him in effecting the arrest

**Right to break in/out of an officer**

- An officer making an arrest may break into any building or enclosure where the person is or is reasonably believed to be *if he is refused admittance after announcing his authority and purpose.*
- Whenever an officer has entered the building, he may break out from there when necessary to liberate himself.

**Right to visit**

- When so requested, any lawyer shall have the right to visit and confer privately with such person in the jail or any other place of custody, at any hour of the day or night.
- Subject to reasonable regulations, a relative can also exercise the same right.

**Distinguished from warrant of arrest**

SW	WOA
Concerned with the seizure of personal property subject of the offense, stolen or embezzled property, fruits of the offense, or those intended to be used to commit an offense	Concerned with the seizure of a person so he may be made to answer for the commission of an offense
Personal examination of the complainant and the witness is required from the judge	Judge is not required to make a personal examination but the judge must make an independent evaluation of the records forwarded to him after PI
GR: At day time XPN: If the SW provides that it may be served at any time of the day or night	May be made at any time of the day or night
Expires in 10 days from date	Valid until served

**Rule on the Use of Body-Worn Cameras in the Execution of Warrants**

A.M. No. 21-06-08-SC

**Arrest Warrants**

- At least one body-worn camera and one alternative recording device (minimum of two devices)
  - Upon *ex-parte* motion: Can be two alternative recording devices
- When making an arrest, the officers should notify the person to be arrested of the recording
- Both audio and video recording functions of the cameras shall be activated as soon as the officers arrive at the place of the arrest
  - The recording shall continue until the delivery of the person arrested to the nearest police station/jail
- The same procedure shall be used when effecting *warrantless arrests*, “insofar as it is practicable” (not required!)
- **Effect of failure to observe the rules:**
  - It will not render the arrest unlawful nor render the evidence obtained inadmissible
  - However, a law enforcement officer who fails, *without reasonable grounds*, to use body-worn cameras or alternative recording devices, or intentionally interferes with the body-worn cameras' ability to accurately capture audio and video recordings of the arrest, or manipulates such recording during or after the arrest may be liable for contempt of court

**Search Warrants**

- At least one body-worn camera and one alternative recording device (minimum of two devices)
- When making an arrest, the officers should notify the person to be arrested of the recording
- Both audio and video recording functions of the cameras shall be activated as soon as the officers arrive at the place of the arrest
  - The recording shall continue until the search has been concluded, and the officers conducting the search have left the premises and returned to the police station
- **Effect of failure to observe the rules:**
  - Failure to observe the requirement of using body-worn cameras or alternative recording devices, *without reasonable grounds*, during the execution of the search warrant shall **render the evidence**

**obtained inadmissible**<sup>6</sup> for the prosecution of the offense for which the search warrant was applied

- A law enforcement officer who fails to adhere to the requirements during the execution of a search warrant, or intentionally interferes with the body-worn cameras' ability to accurately capture audio and video recordings of the search, or otherwise manipulates such recording during or after the search may be liable for contempt of court

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<sup>6</sup> A motion to suppress evidence may be filed by a person searched if the search was done without the use of body-worn cameras or alternative recording devices and the failure to use such cameras is without any reasonable ground. Same remedy applies to persons searched incidental to an arrest by virtue of a warrant, when such arrest was without the use of body-worn cameras or alternative recording devices without reasonable ground.

**Rule 110**  
**Prosecution of Offenses**

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

**Criminal proceeding** – A proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment.

**How are criminal actions instituted**

1. By a **complaint** for offenses where a preliminary investigation is required
2. By a **complaint or information** for all other offenses

**Where to file the complaint or information**

<b>If a preliminary investigation is required</b>	<i>Complaint</i> filed the proper officer for the purpose of conducting the requisite PI
<b>For all other offenses</b>	The <i>information</i> filed directly with the MTC and MCTC, or the <i>complaint</i> with the office of the prosecutor
<b>For Manila and other chartered cities</b>	<i>Complaint</i> filed with the office of the prosecutor <sup>7</sup>

**Preliminary investigation**

- A summary proceeding to determine whether a person should be indicted in court after ascertaining, based on the evidence provided and after case build-up has been conducted that there is *prima facie* evidence with reasonable certainty for the respondent's conviction and that he/she be held for trial (DC 15, Rule 4.7)

*When is preliminary investigation required*

- It's required for crimes or offenses where the penalty prescribed by law is at least 6 years and 1 day without regard to fine (DC 15, Rule 1.3)

*Interruption as a result of institution of the criminal action*

- The institution shall interrupt the running of the period of prescription of the offense charged
  - Including crimes which are under the 2022 Rules on Expedited Procedures in the First Level Courts (*People v. Consebido*)
- When the information or complaint were filed by an unauthorized party, the prescriptive period is not interrupted
- In any case, the accused *cannot be convicted* of an offense lesser than the charged if the lesser offense

<sup>7</sup> Therefore, it's possible that there are crimes where PI is not required, yet no direct filing can be had. For example, slight physical injuries carry the penalty of *arresto menor*. As a general rule, it doesn't require a PI, and may be filed directly with the first-level court. However, if the felony is committed in Makati City, the complaint must be filed before the Prosecutor, notwithstanding the fact that its penalty does not exceed six years.

had already prescribed at the time the information was charged.

- While the dispute is under the Katarungang Pambarangay process, the prescriptive periods shall be interrupted upon the filing of the complaint with the *punong barangay*
  - The prescriptive period shall resume upon receipt by the complainant of the complaint or certificate of repudiation or of the certification to file action
  - In no case shall the interruption exceed 60 days

**Contents of the complaint or information**

It shall be:

1. In writing
2. In the name of the People of the Philippines
3. Against all persons who appear to be responsible for the offense involved

**Complaint**

- A complaint is a:
  - Sworn written statement
  - Charging a person with an offense
  - Subscribed by
    - The offended party,
    - Any peace officer, or
    - Other public officer charged with the enforcement of the law violated
  - May be filed with the court or prosecutor's office
- A complaint should be given a liberal or loose interpretation, meaning a charge, allegation, grievance, accusation or denunciation.

*Who is an offended party?*

- An offended party is any person against whom or against whole property the offense was committed

**Information**

An information is an:

1. Accusation in writing
2. Charging a person with an offense
3. Subscribed by the prosecutor
4. Filed with the court

**Who must prosecute criminal actions**

- **General rule:** All criminal actions shall be prosecuted under the direction and control of the prosecutor
- Exception: The private prosecutor, in case of heavy work schedule of the public prosecutor, or in the lack of public prosecutor
  - The private prosecutor must be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case, subject to the approval of the court
  - Once authorized, the private prosecutor shall continue to prosecute the case up to

the end of the trial even in the absence of a public prosecutor, *unless the authority is revoked or otherwise withdrawn*

#### Crimes that cannot be prosecuted *de officio*

1. Adultery
2. Concubinage
3. Seduction
4. Abduction
5. Acts of lasciviousness
6. Defamation, which consists the imputation of the crimes above-mentioned

#### *Adultery and concubinage—how prosecuted:*

1. Upon the filing of the complaint
2. By the offended spouse
3. Including both guilty parties

#### *Pardon by the offended party in these cases*

- The offended spouse must not pardon nor consent the offenders
  - Consent – *prior to commission*
  - Pardon – *after the commission*<sup>8</sup>

#### *Effect of condonation*

- Condonation – The conditional forgiveness or remission, by a husband or wife of a matrimonial offense which the latter has committed
- This consent need not be express but may be inferred from the conduct or the long-continued inaction of the husband after learning of the offense
- His consent to the offense before it was committed was void but his tolerance of and acquiescence in the offense after it was committed demonstrate that it is a hypocritical pretense for him now to appear in court as the offended party and bar his right to prosecute his wife

#### *Seduction, abduction and acts of lasciviousness—order of persons who may prosecute*

1. The offended party
2. Parents
3. Grandparents
4. Guardian
5. State, *if the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian*

#### *Express pardon given by the offended party*

- The pardon must be expressly given by the offended party
- The pardon must be granted *before* the criminal case

#### Who has the right to initiate the prosecution of private crimes?

1. The offended party, even if a minor, independently of her parents, grandparents or guardian, unless she is incompetent or incapable to do so
2. The right to file the action granted to parents, grandparents, or guardian shall be exclusive of all other persons and shall be exercised *successively* in the order provided
3. If the offended party is of legal age and does not suffer from physical or mental disability, she alone can file the complaint *to the exclusion of all*

**Section 6. Sufficiency of complaint or information.** – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

#### When is a complaint or information sufficient?

1. Name of the accused
2. Designation of the offense given by the statute
3. Acts or omissions complained of as constituting the offense
4. Name of the offended party
5. Approximate date of the commission of the offense
6. Place where the offense was committed

#### Basis of the sufficiency of information requirement

1. The right of the accused to be informed of the nature and cause of the accusation
2. This right has the following objectives:
  - a. To furnish the accused with a description of the charge against him which will enable him to make a defense
  - b. To avail himself of conviction or acquittal for protection against further prosecution for the same cause
  - c. To inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if warranted
3. The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial
4. An accused cannot be convicted of an offense unless it is clearly charged in the information.
  - a. The allegations of facts which constitute the charge are substantial matters and the accused's right to question his conviction based on facts not alleged in the information cannot be waived

#### Test in the sufficiency of information

- **Whether the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty of the offense charged**

<sup>8</sup> Pardon effected *after* the criminal case has been filed with the court has no effect.

- This does not require a verbatim reiteration of the law
- The use of derivatives, synonyms and allegations of basic facts constituting the crime will suffice
- For as long as the **ultimate facts** constituting the offense have been alleged, an Information will be valid

#### *Acts/omissions complained of as constituting the offense*

- Every element of the offense must be stated in the information
  - If one or more elements of the offense have not been alleged in the information, the accused cannot be convicted of the offense charged, even if the missing elements have been proved during trial

#### **How to state the name of the accused**

The complaint or information must:

1. State the name and surname of the accused, or
2. Any appellation or nickname by which he has been or is known

#### *When name of the accused is not known*

1. If his name cannot be ascertained, he must be described under a fictitious name<sup>9</sup> with a statement that his true name is unknown
  - a. The rule is that the complaint or information should sufficiently allege the name of the accused, failing which the complaint or information would be rendered invalid
  - b. The subsequent amendment to insert in the information the real name involved merely a matter of form as it did not, in any way, deprive accused of a fair opportunity to present his defense
  - c. Positive identification pertains essentially to proof of identity and not necessarily to the name of the assailant. A mistake in the name of the accused is not equivalent, and does not necessarily amount to a mistake in the identity of the accused especially when sufficient evidence is adduced to show that the accused is pointed to as one of the perpetrators of the crime.
2. If the true name of the accused is thereafter disclosed by him or appears in some other manner to the court, such true name shall be inserted in the complaint or information and record

#### **Notes**

- A mistake in the name of the accused is not equivalent—and does not necessarily tantamount to—a mistake in the identity of the accused, especially when sufficient evidence is adduced to

<sup>9</sup> While one or more persons, along with specified and named accused, may be sued as “John Does,” an information against *all* accused described as John Does is void; an arrest warrant against them is also void (*People v. Padica*).

show that the accused is pointed to as one of the perpetrators in the crime (*People v. Amodia*)

#### **How to state the designation of the offense**

The complaint or information shall state the designation of the offense:

1. Given by the statute
2. Aver the acts or omissions constituting the offense
3. Specify the qualifying and mitigating circumstances

*If there is no designation, reference be made to the section or subsection of the penal law*

#### *Qualifying and aggravating circumstances*

- It must be alleged in the information
- It is insufficient for prosecutors to indicate in an Information that the act supposedly committed by the accused was done “with treachery” or “with abuse of superior strength” or “with evident premeditation” without specifically describing the acts done by the accused that made any or all of such circumstances present (*People v. Solar*)
  - The Information must so state such means, methods or forms in a manner that would enable a person of common understanding to know what offense was intended to be charged
  - Test: “Did he perform the acts alleged in the body of the information?”
    - If he did, it is irrelevant to him how the law denominates the crime.

#### **Designation of the offense is controlling**

1. What is controlling is *not* the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being mere conclusions of law made by the prosecutor, but the *description of the crime charged and the particular facts therein recited*.
  - a. The acts or omissions complained of must be alleged in such form as is sufficient to know what offense is intended to be charged, and enable the court to pronounce proper judgment.
  - b. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.
  - c. Every element of the offense must be charged in the information.
  - d. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes
2. The rule is that qualifying circumstances must be properly pleaded in the information in order not to violate the accused’s constitutional right to be properly informed of the nature and cause of the accusation against him
  - a. However, the same may be deemed waived upon failure of the accused to question the sufficiency of the information

at any time during the pendency of the case and allowing the prosecution to present evidence proving the qualifying circumstance

- In any case, the offense may be alleged to have been committed on a date as near as possible to the actual date of its commission
- The phrase "on or about" in the information does not require the prosecution to prove any precise date.

#### What is an accusation?

- A formal charge of criminal wrongdoing.
- The accusation is usually presented to a court or magistrate having jurisdiction to inquire into the alleged crime

#### Cause of the accusation

1. In stating the designation of the offense, the cause of the accusation must be stated through the:
  - a. Acts or omissions complained of as constituting the offense, and
  - b. The qualifying and aggravating circumstances must be stated in:
    - i. Ordinary and concise language and not necessarily in language used in the statute
    - ii. But in terms sufficient to enable a person of common understanding to know what offense is being charged
    - iii. As well as its qualifying and aggravating circumstances and for the court to pronounce judgment
2. The information need not reproduce the law verbatim in alleging the acts or omissions that constitute the offense

**Test: Whether the information enables a person of common understanding to know the charge against him, and the court to render judgment properly.**

- The information need not use the exact language of the statute in alleging the acts or omissions complained of

**General rule:** An accused cannot be convicted of an offense that is not clearly charged in the complaint or information.

- **Exception:** Crimes necessarily included or includes the offenses charged in the complaint

#### Place of the commission of the offense

- It is sufficient if it can be understood that the offense was committed or some of its essential ingredients occurred at some place within the jurisdiction of the court
  - Exception: When the particular place is an essential element of the offense charged or is necessary for its identification (e.g., trespass to dwelling, destructive arson, robbery in an inhabited house)
- Rationale: To show territorial jurisdiction of the court

#### Date of the commission of the offense

- It is not necessary to state the precise date
  - Exception: If it's a material ingredient of the offense (e.g., election offense, infanticide)

#### Name of the offended party

- The complaint or information must state:
  - The name and surname of the person against whom or against whose property the offense was committed
  - Any appellation/nickname by which such person has been or is known
  - He must be described under a fictitious name, if there is no better way of identifying him

#### *In offenses against property*

- If the name of the offended party is unknown, the property must be described with such particularity as to properly identify the offense charged
- If the true name of the person against whom or against whose property the offense was committed is thereafter disclosed or ascertained, the court must cause such true name to be inserted in the complaint/information and the record

#### *If the offended party is a juridical person*

- It is sufficient to state its name, or any name or designation by which it is known or by which it may be identified, without need of averring that it is a juridical person or that it is organized in accordance with law

#### Duplicity of the offense

- General rule: A complaint or information must charge only one offense
  - Except: When the law prescribes a single punishment for various offenses (*complex crime*)
- *Basis for the rule*
  - For the protection of the constitutional right of the accused to be properly informed of the nature and cause of the accusation against him

#### *Complex crime and special complex crimes*

1. Complex crime – A single act constitutes two or more grave/less grave felonies, or when an offense is a necessary means for committing the other:
  - a. Compound crime – A single act constitutes two or more grave/less grave felonies
  - b. Complex crime proper – An offense is a necessary means of committing the other
2. Special complex crime/composite crimes – Composed of two or more crimes that the law treats as a single indivisible and unique offense for being the product of a single criminal impulse. It has a single penalty.

- a. Examples: Rape with homicide, estafa through falsification of public documents, kidnapping with murder

*Remedies in case of duplicity of offense*

- The remedy of the accused is to **move to quash** the information before entering his plea<sup>10</sup>
  - If the accused fails to move → waived
- *Consequence:* When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense

**Amendment or substitution**

**Section 14. Amendment or substitution.** – A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witness to give bail for their appearance at the trial.

**Amendment of information**

- After the accused enters a plea, amendments to the information may be allowed as to **matters of form** and **provided that no prejudice is caused to the rights of the accused.**
- **Test if the defendant is prejudiced: When a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have, would be inapplicable to the complaint or the information as amended** (*People v. Borromeo*)
  - Compare: If the amendment merely states *with additional precision* something which is already contained in the original

information, and which, therefore, adds nothing essential for conviction for the crime charged, is an amendment to form that can be made at any time.

- *Gabionza v. CA* (2001) allows amendments to information as long as:
  - It does not deprive the accused of the right to invoke prescription
  - It does not affect or alter the nature of the offense originally charged
  - It does not involve a change in the basic theory of the prosecution so as to require the accused to undergo any material change or modification in his defense
  - It does not expose the accused to a charge which would call for a higher penalty
  - It does not cause surprise nor deprive the accused of an opportunity to meet the new amendment
- *Example:* A mere change in the date of the commission of the crime, if the disparity of time is not great, is more formal than substantial. Such an amendment would not prejudice the rights of the accused since the proposed amendment would not alter the nature of the offense.

**Formal vs. substantial amendment**

	<b>Formal</b>	<b>Substantial</b>
Definition	Merely states with additional precision something already contained in the original Information; adds nothing essential for conviction	Consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court
Timing	Can be made at any time	
Effect on the felony or offense	Does not alter the nature of the crime or affect the essence of the offense	Changes the nature of the crime or the essence of the offense
Impact on rights	Does not surprise or divest the accused of an opportunity to meet the new accusation; does not adversely affect any substantial right	May prejudice the defendant by making the original defense or evidence no longer applicable
Theory of the case	Does not alter the prosecution's theory so as to cause surprise or	Alters the case such that a defense under the original

<sup>10</sup> Motion to quash is the mode by which an accused assails the validity of a criminal complaint or information filed against him for insufficiency on its face in point of law, or for defects which are apparent in the face of the information.

	affect the form of defense assumed	information would not be available after the amendment
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	<p>the rights of the accused</p> <p>[Note: Very, very rare]</p> <p>A supervening event which changes the nature of the crime charged (i.e., upgrades it to a higher crime) (e.g., initially charged with frustrated murder <u>but during trial, the victim died</u>)</p> <p>The accused must be re-arraigned</p>
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Examples of formal amendments

1. New allegations which relate only to the range of the penalty that the court might impose in the event of conviction
2. An amendment which does not charge another offense different/distinct from that charged in the original one
3. Additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of his defense
4. An amendment which does not adversely affect any substantial right of the accused
5. An amendment which merely adds specifications to eliminate vagueness in the information and *not* to introduce new and material facts

**Amendment without vs. with leave of court**

- Amendment may be done without leave of court at any time before the accused enters his plea
- After plea and during trial, a formal amendment may only be made with leave of court and when it can be done without prejudice to the rights of the accused
- After arraignment, a substantial amendment is proscribed except if the same is beneficial to the accused

*Caveats*

1. Any amendment before plea which downgrades the offense or excludes any accused from the complaint or information may only be made upon motion by the prosecutor, with notice to the offended party (R110.14)
  - a. The said provision applies in equal force when exclusion is sought on the ground of lack of probable cause, or when it is for utilization of the accused as state witness (*Soberano v. People [2005]*)

**Substitution**

- If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original information upon the filing of a new one charging the proper offense
  - Caveat: The accused must not be placed in double jeopardy
- When it becomes manifest at any time before judgment that a mistake has been made in charging the proper offense and the accused cannot be convicted of the offense charged or any other offense necessarily included therein, the accused shall not be discharged if there appears good cause to detain him
  - In this case, the court shall commit the accused to answer for the proper offense and dismiss the original case upon the filing of the proper information

**Amendment vs. substitution**

	Formal	Substantial
<b>Before plea</b>	Allowed, w/o leave	Allowed, w/o leave
<b>After plea</b>	Only with leave and without prejudice to accused's right	Proscribed, <u>except if beneficial to the accused</u>

	Amendment	Substitution
Nature of change	Can be either formal or substantial	Necessarily involves a substantial change from the original charge
Leave of court	Not required before a plea is entered	Always required, as the original information must be formally

*Summing-up*

<b>Before plea</b>	
<b>Without leave of court</b>	<ul style="list-style-type: none"> <li>- Upgrade the offense</li> <li>- Allege qualifying and aggravating circumstances</li> <li>- Change the offense charged</li> </ul>
<b>With leave of court</b>	<ul style="list-style-type: none"> <li>- Downgrade the offense charged</li> <li>- Exclude from the information a co-accused</li> </ul>
<b>After plea</b>	
<b>With leave of court</b>	Formal amendments, which will <u>not</u> cause prejudice to

		dismissed
Preliminary investigation	Not required if the amendment is only as to form	Always required (entails a new investigation)
Arraignment/plea	No need to retake the plea if the change is only formal	The accused must plead anew to the new information
Relationship of offenses	Refers to the same offense (or one necessarily included/including the original)	Involves a different offense (not included in the original charge)
Double jeopardy	Can be invoked if substantial amendments are made after the plea over the accused's objection	Cannot be claimed because the offenses are distinct

- Once the offended party has filed a separate civil action arising from the crime, he may not withdraw such a civil case in order to intervene in the criminal prosecution.
  - He loses the right to intervene. He no longer has any standing in the criminal case, *except to be a prosecution witness*
- **Desistance:** The desistance of the private complainant does not bar the People from prosecuting the criminal action, but it does operate as a waiver of the right to pursue civil indemnity.

*Interests of the offended party*

1. Must have legal right to demand
2. Must have substantial interest in the subject matter
3. The interest must not be mere expectancy, subordinate, or inconsequential
4. Must be personal
5. Must not be based on the desire to vindicate the constitutional right of another party

- Where the second information involves the same offense, or an offense which necessarily includes or is necessarily included in the first information, an amendment of the information is sufficient; otherwise, where the new information charges an offense which is distinct and different from that initially charged, a substitution is in order
- The provisions on substitution of information applies **only** when:
  - (1) there is a mistake in charging the proper offense, and
  - (2) the accused cannot be convicted of the offense charged or any other offense necessarily included in the offense charged

**Variance between indicted and proof**

- When the offense proved is *less serious* and is *necessarily included* in the offense charged, the defendant shall be convicted of the offense **proved**
- When the offense provided is *more serious* and includes the offense charged, the defendant shall be convicted of the offense **charged**
- When the offense proved is *neither* included in, nor does it include, the offense charged and is different therefrom, the court must dismiss the action and order the substitution of information

**Intervention of the offended party**

- Where the civil action for recovery of civil liability is instituted in the criminal action, the offended party may intervene by counsel
- The offended party may also be a private individual whose person, right, house, liberty or property was actually or directly injured by the same punishable act or omission of the accused, or that corporate entity which is damaged or injured by the delictual acts complained of

**Rule 115**  
**Rights of Accused**

**SECTION 1.** *Rights of accused at the trial.* — In all criminal prosecutions, the accused shall be entitled to the following rights:

(a) To be presumed innocent until the contrary is proved beyond reasonable doubt.

(b) To be informed of the nature and cause of the accusation against him.

(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.

(d) To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him.

(e) To be exempt from being compelled to be a witness against himself.

(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.

(g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.

(h) To have speedy, impartial and public trial.

(i) To appeal in all cases allowed and in the manner prescribed by law.

*Cf. PHIL. CONST. art. III, § 14*

**SECTION 14.** (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the

production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

**Due process**

- It implies the right of the person to be present before the tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense
- To be heard by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of the right in the matter involved
- Criminal due process is satisfied if the accused is informed as to why he is proceeded against and what charge he shall meet, with his conviction being made to rest on evidence that is not tainted with falsity after full opportunity for him to rebut it and the sentence being implied in accordance with a valid law

**Presumption of innocence**

- Conviction of a crime happens only when the government proves guilt beyond a reasonable doubt, without any burden placed on the accused to prove innocence
- Proof beyond reasonable doubt requires *moral certainty*, or that degree of proof which produces conviction in an unprejudiced mind
- It must establish the truth of the fact to a reasonable and moral certainty—a certainty that convinces and satisfies the reason and conscience of those who are to act upon it
- *Equipose rule* – If the inculpatory facts and circumstances are capable of two or more explanations, the one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty

**Right to be informed of the nature and cause of the accusation**

- Arraignment is the means of implementing this right.<sup>11</sup>
- Objectives of the constitutional right:
  - To enable him to make a defense
  - To avail himself of conviction or acquittal for protection against further prosecution for the same cause (double jeopardy?)
  - To inform the court of the facts alleged, so it may decide whether they are sufficient in law to warrant a conviction
- This right cannot be waived for reasons public policy

**Right to counsel**

- A competent and independent counsel, preferably of his own choice.

<sup>11</sup> See Rule 116, § 1.

- If the person cannot afford so, he must be provided with one.
- The right cannot be waived except in writing and in the presence of counsel.

#### **Right to be present and defend in person**

- When an accused under custody escapes, he shall be deemed to have waived his right to be present
- Upon motion, the accused may be allowed to defend himself (*pro se*) in person

#### **Right to testify as a witness in his own behalf**

- But he will be cross-examined.
- His silence shall not in any manner prejudice him.

#### **Right against self-incrimination**

- It is the right guaranteeing that a person cannot be compelled by the government to testify if the testimony might result in the person being criminally prosecuted
- It is a prohibition against the use of physical or moral compulsion to extort communications from the accused
- It does not apply where the evidence sought to be excluded is not an incrimination but as part of object evidence

#### **Right to confrontation**

- The accused should know who his accusers are and must be given a chance to cross-examine them on their charges
- Purposes:
  - To secure the opportunity of cross-examination
  - To allow the judge to observe the deportment and appearance of the witness while testifying

#### **Right to compulsory processes**

- The Subpoena (Rule 21).
- The court may order the arrest of the person being subpoenaed if it is shown that he received the subpoena but failed to attend.

#### **Right to a speedy, impartial and public trial**

- Speedy trial is a relative term and necessarily a flexible concept.
  - In determining whether the right of the accused to a speedy trial was violated, the delay should be considered, in view of the entirety of the proceedings.
  - Mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum
- This right to a speedy trial may be defined as one free from vexatious, capricious and oppressive delays, its salutary objective being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of

having his guilt determined within the shortest possible time

- The right to speedy trial cannot be invoked where to sustain the same would result in a clear denial of due process to the prosecution.
  - It should not operate in depriving the State of its inherent prerogative to prosecute criminal cases or generally in seeing to it that all those who approach the bar of justice is afforded fair opportunity to present their side

#### **Right to appeal**

- However, a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation. This is referred to as the *finality-of-acquittal rule*.
  - Basis: Prohibition on double jeopardy.