CRIMINAL LAW 1A

Midterms, 1S 24-25 Consolidated codal, case law, and commentary

Codal

Commentary

Case law

Criminal law - defines a crime, provides for their punishment, and treats of their nature.

Inmates of Bilibid v. De Lima, G.R. 212719, Jun. 25, 2019

A law that has the purpose and effect of diminishing the punishment attached to the crime may be considered as a penal law under Art. 22 of the RPC, and be given retroactive effect.

A Considered an exception to the definition of a "penal law."

Crime - an act or omission in violation of a penal law forbidding or commanding it.

- Act a bodily movement producing some effect in the external world.
- Omission a failure to act or perform a duty which, if not performed, is punishable by law.

Consti II

Constitutional limitations on the power of Congress to enact penal laws:

- 1. Equal protection (Const. art. III, §1) All persons similarly situated should be treated alike.
- 2. Due process (id.)
 - a. Substantive right to life, liberty and property
 - b. Procedural notice and hearing, and impartial tribunal
- 3. Bill of attainder (Const. art. III, §22) A legislative act which

inflicts punishment on individuals without a judicial trial.

- a. Focuses on the *class* of people targeted.
- 4. Ex post facto law (*id.*) retroactive penal laws, concerns *αcts*:
 - a. Makes criminal an act done before the passage of the law and punishes such an act;
 - b. Aggravates a crime;
 - c. Inflicts a greater punishment than the law annexed to the crime when committed:
 - d. Alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of commission of the crime;
 - e. Assumes to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and
 - f. Deprives a person accused of a crime some lawful protection he was initially entitled to.
- 5. Cruel and unusual punishment, and excessive fines (Const. art. III, §19)
 - a. Cruel and unusual punishment Situations of extreme corporeal or psychological punishment that strips individuals of his humanity.
 - b. Excessive fines The penalty must be flagrantly and plainly oppressive or disproportionate to the offense committed.

Generally, only penal laws can become an ex post facto law or a bill of attainder. However, the Supreme Court also declared the following as ex post facto laws:

- 1. A provision in the Anti-Money Laundering Act which removed a layer of protection for account holders prior to the law's enactment (Republic v. Eugenio); and
- 2. A presidential proclamation which voided a person's prior amnesty grant (Trillanes v. Exec. Sec., G.R. 241494, Apr. 3, 2024).

The definition of an expost facto law, then, is expanded to any governmental action that "unlawfully and retroactively strips a person of a lawful protection."

Characteristics of criminal law:

- 1. General binding on all persons who live or sojourn in Philippine territory (who).
- 2. Territorial crimes committed within Philippine territory are punished (where).
- 3. Prospective penal laws shall have no retroactive application (when).

Exemptions/qualifications to the characteristics of criminal law

General

- 1. Members of the armed forces <u>may</u> be tried under court martial, if the offense was service-connected.
- 2. Treaties or treaty stipulation (e.g. RP-US VFA)
- 3. Law of preferential application (e.g. RA 75, which prevents arrests of ambassadors with reciprocity)
- 4. Immunity provided by the Vienna Convention (diplomatic immunity)
- 5. Sovereign immunity (government officials in their official capacity cannot be sued)
- 6. Presidential immunity from suit

Territorial – <u>Art. 2 nos. 1-5</u> provide exemption from the territoriality rule.

Prospective – A penal law may apply retroactively when it is favorable to the accused (*see* Art. 22), except:

- a. When the law does not provide for retroactivity.
- b. When the accused is a habitual offender (see Art. 62).

Statcon, pt. 1

Effects of repeal/amendments of penal laws

- 1. <u>Lighter penalty</u> If the repeal makes the penalty lighter in the new law, the new law shall be applied, except:
 - a. When the law does not provide for retroactivity
 - b. When the accused is a habitual offender
- 2. Heavier penalty If the new law imposes a heavier penalty,

- the law in force at the time of the offense shall be applied.
- Decriminalization If the new law repeals the existing law such that the act penalized is no longer punishable, the crime is obliterated.
- If an old law has been repealed by a new law, but still reenacted the penal provision, a person may be charged under the new (repealing) law.
- When the old and new law penalize the same offense, the law with a lighter penalty prescribed must be applied.
- A self-repealing law also carries with it the consequence of decriminalization.

Statcon, pt. 2

If a penal law has been completely repealed-

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

If a penal law has been partially repealed, impliedly repealed, or repealed by reenactment-

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

Statcon, pt. 3

Construction of penal laws

- 1. Penal laws are <u>strictly construed against the state</u> and liberally for the accused.
- 2. The Spanish text of the Revised Penal Code is controlling.

ACT NO. 3815

An Act Revising the Penal Code and Other Penal Laws

ART. 1 Time when act takes effect.

This Code shall take effect on the first day of January, nineteen hundred and thirty-two.

Philaw

Schools of thought

- 1. <u>Classical theory</u> Human free will is the basis of criminal responsibility, and penalty is retribution.
- 2. <u>Positivist theory</u> Links crime to external or internal influences placed upon individuals and attributes the reason people commit crimes to these factors.

Crimes, as to the law punishing them:

- 1. Felonies acts or omissions punished under the RPC.
- 2. Offenses acts or omissions punished under special penal laws.
- 3. <u>Infractions or misdemeanors</u> violations of municipal/city/provincial ordinances.

Crimes, as to their nature:

- 1. <u>Mala in se</u> crimes which are considered inherently evil, or wrong in themselves, or in their nature.
- 2. <u>Mala prohibita</u> crimes that are considered wrong because there is a law that prohibits them (special penal laws).

Generally, <u>crimes mala in se are the felonies defined and penalized in the RPC</u>. However, when the acts complained of are inherently evil or wrong per se, they are deemed mala in se even if they are punished by a special law.

When asked to determine if a crime is male in se or mala prohibita:

- 1. See if the crime is punished by the RPC or a SPL.
- 2. Is it wrong merely because there is a law prohibiting it or punishing it as such? If it is, then it is mala prohibita.
- 3. <u>If you remove the law, will the act still be wrong?</u> *If it is, then it is mala in se.*

Q: Why is it important to distinguish?

A: Because of the <u>element of intent</u>. Mala in se crimes (except for culpable felonies) require the attendance of criminal intent. To be considered mala in se, the commission of the unlawful act must be coupled with criminal intent.

<u>Criminal intent is not an element in mala prohibita</u>. The only question to be asked is: <u>Has the law been violated?</u> The mere commission of the prohibited act is enough to constitute the crime.

	Mala in se	Mala prohibita
Basis	Moral state	Voluntariness
Nature	Inherently wrong	Prohibited by law
Moral turpitude?	Yes	No
Good faith defense	Yes, only for intentional felonies	No
Intent required?	Yes	No
Law violated?	RPC	SPL
Stages of execution	Attempted, frustrated, consummated	They are formal crimes, only consummated
Who is liable?	Principal, accomplice,	Principal only

	accessory	
Penalties?	Divided into degrees and periods	No division
Modifying circumstances?	Yes	No

ART. 2 Application of its provisions.

Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

- 1. Should commit an offense while on a Philippine ship or airship;
- 2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;
- 3. Should be liable for acts connected with the <u>introduction</u> into these islands of the obligations and securities mentioned in the preceding number;
- 4. While being <u>public officers or employees</u>, should commit an offense in the exercise of their functions; or
- 5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.

"Should commit an offense while on a Philippine ship or airship"

Requisites:

- 1. The crime must be committed <u>onboard</u> the vessel.
- 2. The vessel must be <u>registered</u> in the Philippines.
- 3. The ship is on the <u>high seas</u> (international water/airspace)

Exceptions:

- 1. Foreign warships It is considered territory of the origin country.
- 2. Foreign merchant ships Same as above.
 - a. Except: When it's a continuing crime.

Rules on jurisdiction over crimes committed aboard foreign merchant vessels (vs.)

- English Rule (PH ≥ follows this) Such crimes are triable, except for purely internal ship matters.
 - a. *Hypothetical exception*: The country of the warship where the offense was committed can waive jurisdiction.
- 2. French Rule Such crimes are not triable, except that they affect the peace and security of the territory.

"While being public officers of employees, should commit an offense in the exercise of their functions"



The <u>following crimes</u> that may be committed in the exercise of official functions are, even when the official is abroad:

- 1. Direct and indirect bribery
- 2. Frauds against the public treasury
- 3. Possession of prohibited interest
- 4. Malversation of public funds or property
- 5. Failure of accountable officer to render accounts
- 6. Illegal use of public funds or property
- 7. Failure to make delivery of public funds or property
- 8. Falsification by a public officer or employee committed with abuse of his official position.

"When the offender should commit any of the crimes against the national security and the law of nations"



Are the following **felonies**:

- 1. Treason (including conspiracy and proposal)
- 2. Espionage
- 3. Inciting to war and giving motives for reprisals
- 4. Violation of neutrality
- 5. Correspondence with hostile country

- 6. Flight to enemy's country
- 7. Piracy and mutiny

Meaning, these felonies can be tried in the Philippines though they've been committed abroad. The RTC has jurisdiction.

- For SPL, Philippine courts also have jurisdiction over crimes defined and penalized under RA 9851 (Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity), if:
 - o The accused is a Filipino,
 - The accused is in the Philippines (any nationality), or
 - \circ The victim is a Filipino.

This is regardless where the genocide, war crime or other crimes against humanity may have been committed.

ART. 3 🜟 Definition.

Acts and omissions punishable by law are felonies (delitos).

Felonies are committed not only by means of deceit (*dolo*) but also by means of fault (*culpa*).

There is deceit when the act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

Felonies – acts and omissions punishable by the RPC.

Felonies are committed by means of:

- 1. <u>Dolo</u> (deceit) The act is performed with <u>deliberate intent</u>.
- 2. <u>Culpa</u> (fault) The wrongful act results from <u>imprudence</u>, negligence, lack of foresight, or lack of skill.
 - a. Imprudence Deficiency of action/lack of skill
 - b. Negligence Deficiency of perception/lack of foresight

Elements of felonies ♥

- 1. Act or omission
- 2. Punishable by the RPC
- 3. Performed by dolo or culpa.

Act – Any bodily movement tending to produce some effect in the external world.

- The act must be defined by the RPC as constituting a felony; or at least, an overt act of that felony.
- **Overt act** An external act which has direct connection with the felony intended to be committed.

Omission – The failure to perform a positive duty which one is bound to do.

- In felonies by omission, there is a law requiring a certain act to be performed and the person required to do the act fails to perform it.
- But without a law punishing the omission, the omission is not a felony.

Intentional felonies ♥

Deceit (dolo)

Requisites (F-I-I):

- 1. Freedom
- 2. Intelligence
- 3. Intent

The act is **malicious**, or has the intention to cause an injury.

• Acting with malice – Intention to do an injury to a person, property or rights of another.

Intent – A purely mental process, and is presumed, which arises from the proof of the commission of an unlawful act.

• "General intent" is required, but some felonies require specific intent (e.g. intent to kill, intent to gain)

Mistake of fact

The supposed offender believes as true the facts perceived by him that impelled him to do a particular act.

- Had the facts been true to the belief of the offender, his act would've been justified because of the absence of intent (dolo).
- No intent = no criminal liability

It is only a defense in intentional felonies (dolo).

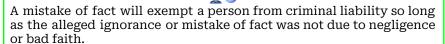
Requisites (A-I-M):

- 1. Act done would have been lawful had the facts been as the accused believed them to be
- 2. Intention of the accused in performing the act should be lawful
- 3. Mistake must be without fault or carelessness on the part of the accused.

Mistake of fact cannot be raised when-

- 1. Culpable felony was committed
- 2. Negligence on the accused
- 3. Mistake in identity

Baxinela v. People, G.R. 149652, Mar. 24, 2006



Tabuena v. People, G.R. 103501-03, Feb. 17, 1997

Even if the order is illegal if it is patently legal and the subordinate is not aware of its illegality, the subordinate is not liable, for then there would only be a mistake of fact committed in good faith.

A Romero, J., dissenting: Assuming arguendo that petitioners acted in good faith in following the President's order, undeniably, they were negligent as found by the trial court. The instructions in the President's order should have sufficed to put any accountable head

of an office. Tabuena included, on guard.

Culpable felonies ♥

Fault (culpa)

Requisites (F-I-N):

- 1. Freedom
- 2. Intelligence
- 3. Negligence

The act is **not malicious**, the injury being unintentional as it being simply the incident of another act performed without malice.

Felonies committed by means of fault or culpa:

- 1. Malversation through negligence (Art. 217)
- 2. Evasion through negligence (Art. 224)
- 3. Imprudence or negligence (Art. 365)

Such negligence or indifference to duty or consequence is equivalent to criminal intent.

Crimes punished by special penal laws

These are crimes defined and penalized by special laws, including ordinances.

Intent to commit the crime is not required, but **intent to perpetrate** the act prohibited.

X Intent to commit - Criminal intent✓ Intent to perpetrate - It is enough that the prohibited act is done freely and consciously.

The act alone constitutes the offense.

• Hence, good faith and absence of criminal intent are not valid defenses.

Motive

The moving power which impels one to action for a definite result.

It is not an essential element of a crime, and need not be proved.

- Lack of motive may aid in acquitting the accused
- But proof of motive alone isn't enough to secure a conviction

Illustrative example: In euthanasia, the motive may be good, but it is punishable by law.

Motive is relevant in:

- 1. The identity of the accused
- 2. Antagonistic theories
- 3. No eyewitness
- 4. Circumstantial evidence or sufficient evidence

ART. 4 \(\) Criminal liability.

Criminal liability shall be incurred:

- 1. By any person committing a felony (*delito*) <u>although the</u> <u>wrongful act done be different</u> from that which he intended.
- 2. By any person performing an act which would be <u>an offense</u> against persons or property, were it not for the <u>inherent</u> impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means.

 \P 1: "By any person committing a felony (delito) although the wrongful act done be different from that which he intended.

Rationale: He who is the cause of the cause is the cause of the evil caused.

"Committing a felony"

- Committing an intentional felony punished by the RPC.
 - Why intentional? Because the last word of this paragraph mentions "intent."
 - Hence, if the wrongful act results from negligence,

liability should be under Art. 365, not this one.

- o SPL also not included.
- When a person has not committed a felony, he is not criminally liable for the result which is not intended.
 - o If what you're doing is legal, this does not apply.

"Although the wrongful act done be different from that which he intended"

- 1. **Aberratio ictus** (mistake in the blow) The offender intends the injury on one person but the harm falls on another.
 - a. There are 3 persons involved: (1) offender, (2) victim, and (3) intended victim.
 - b. Example: X fired on Y, but the bullet hit Z. X here is liable for attempted homicide/murder as against Y and homicide/murder as against Z. If Z survives \rightarrow physical injuries.
- 2. **Error in personae** (mistake in the identity of the victim) The offender committed a mistake in ascertaining the identity of the intended victim.
 - a. There are 2 persons involved: (1) offender, and (2) actual/unintended victim. The intended victim is absent.
 - b. *Example*: X wanted to kill Y. X went to Y's house and saw a man standing near a door, whom he thought was Y. X shot and killed the man who, unfortunately, turned out to be Z.
- 3. **Praeter intentionem** (the injurious result was greater than intended) The offender inflicts the injury on his intended victim, but the injury that resulted is far greater than what was intended.
 - a. *Example*: X punched Y on the face. As a result, Y stumbled and fell on the road, with the back of his head hitting the pavement. Y became unconscious and died a few minutes after.
 - b. Cannot be appreciated if the means used to commit the desired crime would also logically and naturally bring about the actual felony committed.
 - i. Example: Praeter intentionem cannot be invoked when you use a knife to stab someone and he eventually dies. To stab someone ... could very well result in death!

c. This is also a mitigating circumstance in Art. 13(3).

Requisites of Art. 4(1) ♥

- 1. Intentional felony was committed
 - a. Punished by the RPC
 - b. There is no intentional felony when:
 - i. Not punished by the RPC
 - ii. Covered by the justifying circumstance/s in Art. 11.
- 2. Wrong done to the victim be the direct, natural, and logical consequence of the felony
 - a. **Proximate cause** That cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produced the injury, and without which the result would not have occurred.
 - Example: X, holding a gun, declared a hold-up in a bus. Y jumped through the window, but got run over by the truck, and died.
 - 1. Here, X will be liable for Y's death. When a person causes a belief in the mind of another making the latter act in a manner fatal to him, the former will be liable for that act of engendering such a belief. Even if there is no intent to kill on X, he is liable for homicide on the ground of proximate cause.
 - 2. While the truck may be the immediate cause of Y's death, it is not the proximate cause.
 - ii. A cause is still proximate, although farther in time in relation to the injury, if the happening of it sets other events into motion resulting ultimately in the injury.
 - iii. A cause-and-effect relationship between the felony and the injuries. It is not altered by:
 - 1. Pathological condition of the victim
 - 2. Predisposition of the offended party

3. Concomitant/concurrent conditions

There is no proximate cause when (exceptions):

- 1. **Efficient intervening cause** A new cause which is not a consequence of the first wrongful cause and not under the control of the wrongdoer.
 - a. Active force that intervened between the felony and the injury; and
 - b. A distinct act or fact <u>absolutely foreign</u> from the felonious act of the accused.
- Intentional act of the victim The resulting injury is due to the victim's own intentional act (e.g. fault or carelessness of the victim).

The death of the victim is presumed to be the natural cause of the physical injuries inflicted when:

- 1. The victim had *normal health*
- 2. Death may be *expected* from the physical injuries
- 3. Death ensued within a reasonable time

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

One who commits an intentional felony is responsible for all the consequences which may naturally and logically result therefrom, whether foreseen or intended or not.

Requisites:

- 1. The intended act is felonious
- 2. The resulting act is felonious
- 3. The unintended albeit graver wrong was primarily caused by the actor's wrongful acts.

Impossible crimes

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

Rationale: The commission of an impossible crime is indicative of criminal tendency, from which society must be protected from.

"Performing an act which would be an offense against persons or property"

Felonies against persons	Felonies against property
 Homicide Murder Parricide Infanticide Abortion Duel Physical injury Rape 	 Robbery Brigandage Theft Usurpation Culpable insolvency Swindling Chattel mortgage Arson Malicious mischief

"Were it not for the inherent impossibility of its accomplishment"

The act intended by the offender, by its nature, is one of impossible accomplishment.

- 1. Legal impossibility This occurs when the action that the person intends to carry out is not actually illegal, even though they think it is.
- 2. Physical/factual impossibility This occurs when a person tries to commit a crime, but some physical or factual condition prevents it.

"Or on account of the employment of inadequate or ineffectual means"

- 1. *Inadequate means* The methods or tools that are inherently insufficient to accomplish the intended criminal act.
 - a. But, if the means employed is adequate but does not result in the expected felony, it is a frustrated felony.
- 2. *Ineffectual means* The tool or method might usually be effective but is rendered useless or fails in this particular instance.

Requisites of Art. 4(2) ♥

P-E-I-N

- 1. The performed an act against persons or property
- 2. The act was done with evil intent
- 3. That its accomplishment is inherently impossible, or that the means employed is either inadequate or ineffectual
- 4. That the act performed should not constitute a violation of another provision of the RPC.

⚠ It's easy to confuse an impossible crime with other felonies or felonies in various stages of execution. It's important to ask first if the acts done were a felony—if they are, it's not an impossible crime.

Intod v. CA, G.R. 113109, Oct. 21, 1992

Legal impossibility occurs when the intended act, even if completed, would not amount to a crime. While factual impossibility occurs when other circumstances unknown and beyond the actor's control prevents the consummation of the crime.

But Intod was liable for another crime in the RPC, such as alarms and scandal, for shooting at the house (requisite #4 falls). However, that crime is not included in the Information. Hence, the Supreme Court should've dismissed the case.

Jacinto v. People, G.R. 162540, Jul. 13, 2009

The requisites of an impossible crime are: (1) that the act performed would be an offense against persons or property; (2) that the act was done with evil intent; and (3) that its accomplishment was inherently impossible, or the means employed was either inadequate or ineffectual.

People v. Domasian, G.R. 95322, Mar. 1, 1993

An act cannot be considered impossible because there was no inherent improbability of its accomplishment or the employment of inadequate/ineffective means.

This case shows the interplay of ¶1 and ¶2 of Art. 4. In this case, the

defendant sought a ransom for the kid (Enrico). However, they got caught easily-but that already consummated the felony of kidnapping with serious illegal detention. Besides, kidnapping is an offense against liberty (requisite #1 falls).

Art. 5

Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties.

Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that the said act should be made the subject of penal legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and injury caused by the offense.

No bodypenal law, no crime

¶1 is applied when:

- The act committed by the accused appears not punishable by any law
- 2. But the court deems it proper to repress such act
- 3. In that case, the court must render the proper decision by dismissing the case and acquitting the accused
- 4. The judge must make a report to the president, via the DOJ, stating the reasons which induce him to believe that the said act should be penalized.

Rationale: *Nullum crimen, nulla poena sine lege* (no crime if there is no law punishing it)

Excessive penalty

¶2 is applied when:

- 1. The court renders a guilty verdict
- 2. The penalty imposed appears to be excessive because:
 - a. The accused acted with lesser degree of malice; and/or
 - b. The injury caused is lesser or absent
- 3. The court should not suspend the execution of the sentence
- 4. The court should submit to the president, via the DOJ, a request for executive clemency.

On "excessive punishments"

- 1. It is not "excessive" when harsh penalties are deliberately imposed due to public policy.
- 2. Penalty must be applied provided the law, notwithstanding:
 - a. Their personal views (e.g. opposition to the death penalty)
 - b. The manner at which the executive branch executes and implements judges' judgment.
- 3. Lower courts must apply the law as interpreted by the Supreme Court (See Civil Code, Art. 8).

In Mendoza v. People (G.R. 183891, Oct. 19, 2011), the court held that **Art. 5 is applicable to crimes punishable by special penal laws,** in light of the code's suppletory application (Art. 10).

Art. 6 // Consummated, frustrated, and attempted felonies.

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

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

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of

execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

In general:

- 1. Consummated, frustrated and attempted felonies are **punishable**.
- 2. Art. 6 does not apply to culpable felonies.
- 3. Art. 6 does not apply to SPL, unless it provides otherwise.

Phases of a crime ♥

Subjective phase – If the felony is still in the <u>attempted</u> stage, the <u>offender still has control over his felonious act</u>, that is, he may or may not perform all the acts necessary to consummate the felony.

Objective phase – If the felony is in the <u>frustrated or consummated</u> stage, the offender has performed all the acts necessary to produce the felony. It is frustrated if the intended felony is not produced and it is consummated if the intended felony is produced. The offender no longer has control over his felonious act.

Attempted stage

Definition: The offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

Test: *Is there anything else that the offender has to do to commit the felony?* **If yes, it's attempted**.

"Commission of a felony directly by overt acts"

Over acts – External acts when, if continued, will *generally* produce the intended felony.

• A physical deed/act indicating the intent to commit a particular felony

- More than a mere planning or preparation
- Which, if carried out to its complete termination following its natural course ... will logically and necessarily ripen into a complete offense
- Without being frustrated by voluntary desistance or external force

For an overt act to be considered as an attempt of a felony, it must be directly related to the intended felony. Otherwise, it's not punishable, unless there's an independent crime.

Preparatory acts – Equivocal acts which will require another act so a felony will result.

- Susceptible of double meaning, in favor or against the offender
- They are not the same as overt acts because a preparatory act is committed *prior* to overt acts
- Preparatory acts are not punishable, unless they are punished as independent crimes.

"does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance"

- The accused isn't able to continue to produce the felony.
- He is prevented by external forces and not because he has chosen not to to continue.

Acts of execution - The act/s punished by the RPC.

Cause – Something that happens because a person interfered in the incident or due to acts of the offender or victim. *Example:*

- 1. The weapon was snatched by the victim.
- 2. The victim managed to escape.

Accident – Something that happens outside the sway of our will, and lies beyond the bounds of humanly foreseeable consequences.

Spontaneous desistance – Absolves the offender of liability.

An absolutory cause to reward an offender who heeded their conscience and returned to the righteous path. *Provided*:

- o Offender must still be in the <u>subjective phase</u>
- o Offender doesn't perform all the acts of execution
- Only applies to the intended felony, but to not other possible crime/felony already committed with the acts.
- The reason for resistance is *immaterial*.
- Desistance does not have any legal effect in the frustrated and consummated stage of a felony-only in the subjective phase.

Frustrated stage

Definition: The offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

Requisites:

- 1. That the offender has performed all the acts of execution which would produce the felony; and
- 2. That the felony is not produced due to causes independent of the perpetrator's will.

"Performs all the acts of execution"

- Nothing more must be done by the offender
- He must've performed the last act necessary to produce the crime.
 - o This distinguishes frustrated from attempted.
- Belief of the accused that he has completed all the acts of execution could be necessary in determining whether the stage is attempted or frustrated (See People v. Listerio).
 - Example: The offender thought the victim was dead already, so the offender went away. However, the victim eventually lived because he pretended he was dead already.

"Would produce the felony as a consequence"

- All the acts of execution performed by the offender could have produced the felony as a consequence.
- Examples: Murder/killing
 - o Shooting a person to kill him, but the victim survives.
 - The blow must also be fatal, or hit the victim at a vital

spot of the body (mortal wound).

"Do not produce it"

• Duh. If it's produced, it's consummated already.

"Causes independent of the will of the perpetrator"

- Certain *causes* have prevented the felony's consummation.
 - Frustrated mentions "cause or accident." Here, "causes" only are referred to.
- If the crime is not produced because a third person intervened, it is frustrated.
- If the perpetrator prevented the consummation of the offense, the crime is not frustrated (because it is a cause dependent on the will of the perpetrator).
 - It will not be attempted, too, because all the acts of execution have been committed.
 - Hence, other felony, if any, could be applicable.

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

There is no crime of frustrated theft. Theft can only be attempted or consummated. Theft is already consummated upon the "taking of personal property of another without the latter's consent."

Canceran v. People, G.R. 206442, Jul. 1, 2015

An accused cannot be convicted of a higher offense that with which he was charged in the Information and on which he was tried. The attempted stage is necessarily included in a charge of a frustrated felony.

People v. Listerio, G.R. 122099, Jul. 5, 2000

It is not the gravity of the wounds that determines whether a felony is attempted or frustrated but whether the subjective phase in the commission of the offense has been passed.

▲ Listerio carved out a very narrow exception in defining frustrated felonies. Generally, mortal wounds are required to convict someone of frustrated felony. Here, the injuries weren't mortal, but the offender

already thought they've performed all the acts of execution to kill the victim. because he appeared dead or lost consciousness.

Frustrated felony vs. impossible crime

	Frustrated felony Art. 6(1)	Impossible crime Art. 4(2)
Is the evil intent accomplished?	Yes	Yes
Can the evil intent be accomplished	Yes	No
Why?	Inherent impossibility or employment of inadequate or ineffectual means	Intervention of certain cause in which the offender had no part

An impossible crime does not have stages of execution!

Consummated felony

Definition: All the elements necessary for its execution and accomplishment are present.

- The offender does not have to do anything more to accomplish the crime.
- The crime has been produced.

When not all the elements of a felony is proven, either-

- 1. The felony is not shown to have been **consummated**
- 2. The felony is **not shown** to have been committed
- 3. Another felony is shown to have been committed

In determining the stage of execution, the following must be considered:

1. **Nature** of the offense

- a. *Example*: In arson, it's irrelevant that the property is destroyed. The crime of arson is consummated only if a small portion is burned.
- 2. **Elements** constituting the felony
 - a. Example: No frustrated theft and rape.
- 3. **Manner** of committing the felony
 - a. Formal crimes Consummated in one instant, no attempt (e.g. libel, slander, selling drugs).
 - b. Crimes committed by mere attempt or proposal or by overt act (e.g. flight to enemy's country, corruption of minors).
 - c. Felony by omission Because no acts are required.
 i. They are generally formal crimes.
 - d. Crimes requiring the intervention of 2 persons to commit them are consummated by mere agreement (e.g. betting in sport contests, and corruption of public officer).
 - e. Material crimes There are three stages of execution
 - f. Sui generis (from lecture) Felonies which only have 2 stages (e.g. rape: attempted or consummated only).

Art. 7 When light felonies are punishable.

Light felonies are punishable only when they have been consummated, with the exception of those committed against persons or property.

Q: What are light felonies?

A: Light felonies are infractions of law for the commission of which the penalty of *arresto menor* (1-30 days), or a fine not exceeding P40,000, or both, is provided (*See* Art. 9).

• They still have stages, but only the consummated stage is punished.

Light felonies punished by the RPC:

- 1. Slight physical injuries
- 2. Theft

- 3. Alteration of boundary marks
- 4. Malicious mischief
- 5. Intriguing against honor
- 6. Disobedience to an agent of a person in authority.
- 7. Alarms and scandals
- 8. Concealing true name
- 9. Prostitution
- 10. Other forms of trespass
- 11. Other light threats
- 12. Light coercion
- 13. Destroying and damaging paintings
- 14. Slander by deed, not serious

General rule: Light felonies are only punishable when they are consummated.

Exception: When the light felony is committed against persons or property, they are punishable even if attempted or consummated.

Art. 8 Conspiracy and proposal to commit felony.

Conspiracy and proposal to commit felony are punishable only in the cases in which the law specifically provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

"Only in cases in which the law specifically provides therefor"

General rule: Mere conspiracy or proposal is not a felony. **Exception:** Unless there is a specific provision providing a penalty for conspiracy or proposal to commit a felony.

• Rationale: Because they are merely preparatory acts.

Conspiracy

2 types of conspiracy:

- 1. <u>Conspiracy as a felony</u> The RPC itself punishes mere conspiracy:
 - a. Conspiracy to commit treason (Art. 115)
 - b. Conspiracy to commit coup d'etat (Art. 136)
 - c. Conspiracy to commit rebellion or insurrection (id.)
 - d. Conspiracy to commit sedition (Art. 141)

⚠ In the felonies above, the conspirators *need not* to consummate the felony to be punished. Conspiracy itself is *the* felony. Consummating the felony automatically absorbs the conspiracy.

- 2. Conspiracy as a manner of incurring criminal liability All the conspirators who carried out their plan and personally took part in its execution are equally liable.
 - a. When conspiracy is only a manner of incurring liability, it is not punishable as a separate offense (i.e. there's no such thing as "conspiracy to commit theft").
 - b. The act of one is the act of all.

Requisites of conspiracy

T-A-D

- 1. **Two or more persons** agree
 - An agreement presupposes the meeting of the minds of two or more persons.
- 2. **Agreement** concerned the commission of a felony
 - It is an agreement to act, to effect, to bring about what has already been conceived and determined.
- 3. **Decided to commit** the felony
 - They must have made up their minds to commit the crime.

Proving conspiracy

- Direct proof is not essential
- May be <u>inferred</u> from the collective acts of the accused before, during and after the crime
- Proven by:
 - Joint purpose and design
 - Concerted action

Community of interests

- Elements of conspiracy must be proven beyond reasonable doubt
 - Mere presence of a person at the scene of the crime does not make him a conspirator
 - o Conspiracy transcends companionship

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

"Heto na sila, heto na sila" does not have conclusive conspiratorial meaning for the supposedly damning utterances are susceptible of varied interpretations.

In order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy.

The overt act may:

- 1. consist of <u>active participation</u> in the actual commission of the crime itself, or
- 2. consist of <u>moral assistance</u> to his co-conspirators by <u>being</u> present at the time of the commission of the crime, or
- 3. by exerting <u>moral ascendancy</u> over the other co-conspirators by moving them to execute or implement the conspiracy.

People v. Abina, G.R. 129891, Oct. 27, 1998

Simultaneity alone would not be enough to demonstrate the concurrence of will or the unity of action and purpose that could be the basis of two or more individuals particularly if the incident occurred at the spur of the moment.

Unity of purpose and unity in the execution of the unlawful objective are essential to establish the existence of conspiracy.

Proposal

Requisites of proposal

- 1. That a person has decided to commit a felony; and
- 2. That **he proposes** its execution to some other person/s.

The RPC punishes mere proposal in:

- 1. Proposal to commit treason (Art. 115)
- 2. Proposal to commit coup d'etat (Art. 136)
- 3. Proposal to commit rebellion or insurrection (Art. 136)

There is no proposal when-

- 1. The person who proposed isn't determined to commit the felony.
- 2. There is no decided, concrete and formal proposal.
 - a. A mere "suggestion" will not suffice.
- 3. It is not the execution of a felony that is proposed.
 - It should be the felony itself that must be proposed.

Art. 9 Grave felonies, less grave felonies, and light felonies.

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

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

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

"Capital punishment" – Death penalty (abolished by RA 9346)

Grave

"Or penalties which in any of their periods are afflictive"

- Afflictive penalties (Art. 25):
 - Reclusion perpetua
 - Relclusion temporal
 - Prision mayor

- o Perpetual or temporary absolute disqualification
- Perpetual or temporary special disqualification

Less grave

"Penalties which in their maximum period are correctional"

- Correctional penalties:
 - o Prision correccional
 - Arresto mayor
 - Suspension
 - Destierro

Light (see Art. 7)

"The penalty of arresto menor or a fine not exceeding P40,000, or both, is provided":

- == $P40,000 \rightarrow Light$
- >P40,000 \rightarrow Less grave
- $>P1,200,000 \rightarrow Grave$

Art. 10 Offenses not subject to the provisions of this Code.

Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

Construing Art. 10

• Clause 1 means that SPL are controlling over offenses punished by SPL. Clause 2 provides that the RPC is supplementary to SPL, unless the contrary is provided.

General rule: RPC does not apply to SPL.

Exception: RPC is supplementary.

Exception to the exception: RPC is *not* supplementary if the SPL provides so.

• Either expressly or by necessary implication.

"Special laws"

• A penal law which punishes acts not defined and penalized by the RPC.

"Supplementary"

Supplying what is lacking; additional.

"Unless the latter should specially provide the contrary"

• In the absence of a contrary provision in the SPL, the general provisions of the RPC may be applied suppletorily.

The suppletory application of the RPC (through Art. 10) only finds relevance when the provisions of the SPL are silent on a particular matter.

Hence, the following have been applied to SPL:

- 1. Subsidiary penalty (Art. 39)
- 2. Civil liability (Art. 100)
- 3. Rules on service of sentence (Art. 70)
- 4. Definition on principals, accomplices, and accessories (Arts. 17-19)
- 5. Principle of conspiracy (Art. 8)
- 6. Graduating penalties by degrees or determining proper period, only when the SPL adopted penalties of the RPC.
- 7. SPLs which amend the RPC.

When the RPC is *inapplicable* to SPL:

- 1. When the SPL provides different penalties from the RPC
- 2. Concept of frustrated and attempted stages a. The SPL has to fix penalties for them.
- 3. When being an accomplice is not punished in the SPL, the RPC cannot be applied suppletorily.
- 4. Mitigating or aggravating circumstances are not applied to offenses under SPL.
- 5. No accessory penalty, unless the SPL provides so.

Yu v. People, G.R. 134172, Sep. 20, 2004

The absence of an express provision on subsidiary imprisonment in a special penal law (e.g. BP 22) does not and cannot preclude its imposition in cases involving its violations.

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

Provisions in the RPC can only be applied to SPL when the latter is silent on the matter, i.e. when the RPC will "fill the gap" on the SPL. Hence, the RPC provision that tolls the running of the prescriptive period (Art. 91) does not apply to RA 3019 or Act No. 3326.

↑ Carpio, J., dissenting: Art. 10 of the RPC makes Art. 91 supplementary to special laws, unless the latter should provide the contrary. Nothing in RA 3019 prohibits the supplementary application of Art. 91 to that law.

Circumstances affecting criminal liability (*J-E-M-A-A*):

- 1. Justifying circumstances (Art. 11)
- 2. Exempting circumstances (Art. 12)
- 3. Mitigating circumstances (Art. 13)
- 4. Aggravating circumstances (Art. 14)
- 5. Alternative circumstances (Art. 15)

Key concepts:

- **Imputability** Quality by which an act may be ascribed to a person (imputed); implies that the act has been committed freely and consciously
- Responsibility Obligation of suffering the consequences of a crime.

Summary (also <u>here</u>)

Justifying	Exempting	Mitigating
 Self-defense Defense of a relative Defense of a stranger Avoidance of a greater evil Fulfillment of 	 Insanity Person under 15 y/o Person over 15, under 18 Accident Irresistible force 	 Incomplete justifying/ex empting Age (<18, >70) Praeter intentionem Sufficient provocation

6. Obedience to a lawful order	offense Description Offense Description Offense Offe
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Art. 11 🜟 Justifying circumstances.

The following do not incur any criminal liability:

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

First. Unlawful aggression;

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

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

- 2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making the defense had no part therein.
- 3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment or other evil motive.
- 4. Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the

following requisites are present:

First. That the evil sought to be avoided actually exists:

Second. That the injury feared be greater than that done to avoid it:

Third. That there be no other practical and less harmful means of preventing it.

- 5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.
- 6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

Justifying circumstances – Where the act of the person is said to be in accordance with the law, so that such person is deemed to not have violated the law, and is free from civil and criminal liabilities.

There is no crime, and no criminal.

Burden of proof – Belongs to the accused.

- The accused admits to committing the act, but asserts that he is justified in doing such.
- A reverse trial is done.

¶1: Self-defense

(U-R-L)

Requisites:

- 1. Unlawful aggression
- 2. Reasonable necessity of the means employed to prevent or repel it
- 3. Lack of sufficient provocation on the part of the person defending himself

Includes defense of:

- 1. Life
- 2. Chastity
- 3. Honor
- 4. Property

"Unlawful aggression"

A physical movement against a person that puts his safety in danger:

- *Actual aggression* attack with a physical force or weapon
- *Imminent aggression* must be offensive and positively strong
- This is an indispensable requisite.

⚠ A slap on the face constitutes unlawful aggression.

Lawful aggression:

- 1. Fulfillment of duty
- 2. Lawful exercise of a right
- 3. A spouse attacking a paramour caught in bed

Not unlawful aggression:

- 1. Saying hurtful words
- 2. Making mere push or shove
- 3. Shouting "I will kill you" and pressing hand to the hip where there's a gun
- 4. Two parties agreeing to fight
- 5. Voluntarily joining a fight when he doesn't have to
- When the aggression ceases to exist, i.e. the aggressor runs or retreats.

Exception: Mistake of fact.

• Even if the unlawful aggression does not really exist, the accused will not be criminally liable for as long as he is able to prove that he was of the honest belief that the facts were true as he believed them to be.

"Reasonable necessity of the means employed to prevent or repel it"

The means employed must be rationally necessary to prevent or repel an unlawful aggression.

Factors to be considered:

- 1. Necessity of the course of actions taken
- 2. Necessity of the means used
 - a. Whether the aggressor was armed
 - b. Nature or quality of the weapon
 - c. Physical condition and sizes of the 2 parties
 - d. Place and time of the incident

Doctrine of rational equivalence – What the law requires is rational equivalence, in the consideration of which will enter as principal factors *the emergency*, the *imminent danger* to which the person attacked is exposed, and the *instinct*, more than reason, that moves or impels the defense.

• The proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury.

⚠ In rel. to req. 1, retaliation is not unlawful aggression because there is no more danger to prevent or repel. Retaliation is not a justifying circumstance.

"Lack of sufficient provocation on the part of the person defending himself"

Rationale: The person defending himself must not have given cause for the aggression, that is, he must not sufficiently provoke the aggressor.

Provocation – Action by the person defending himself that will cause the other party to be agitated, irritated, vexed.

• **Sufficient provocation** – Enough to stir the person provoked to commit an act of aggression.

3rd element is present when:

- 1. No provocation at all
- 2. There was provocation, but it was not sufficient
- 3. There was provocation, but it was *not* given by the person defending himself.
- 4. There was provocation, it was given by the person defending himself, but it was not proximate and immediate to the act of aggression.
 - a. Note the space and time.

BWS as an exception to the requisites of self-defense

Battered woman syndrome

Definition: a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering

relationships as a result of cumulative abuse.

§26, RA 9262: Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the RPC.

Cycle of violence

- 1. Tension-building phase
- 2. Acute battering incident
- 3. Tranquil, loving phase

To be classified as a battered woman, the couple must go through the cycle twice.

People v. Calabroso, G.R. 126368, Sep. 14, 2000

Where the accused invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself by fulfilling the three requisites.

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

There can be no unlawful aggression when the victim is already running away.

The reasonableness of the necessity of the means employed may be inferred from the number of stab wounds and their location.

People v. Narvaez, G.R. L-33466, Apr. 20, 1983

Aggression against a person's property rights is considered as unlawful aggression for the purposes of Art. 11(1).

⚠ Abad Santos and Gutierrez, JJ., dissenting: The self-defense of the RPC refers to unlawful aggression on persons, not property.

¶2: Defense of a relative

Requisites:

- 1. Unlawful aggression
- 2. Reasonable necessity of the means employed to prevent or repel it
- 3. In case the provocation was given by the person attacked, that the one making defense had no part therein

"In case the provocation was given by the person attack, that the one making the defense had no part therein"

- It's fine if the relative being defended has given provocation
- So long as the person defending has no part in the provocation
 - The defender must not induce his relative to provoke!

Who are to be defended:

- 1. Spouses, ascendants and descendants
- 2. Legitimate, natural or adopted brothers or sisters
- 3. Relatives by affinity in the same degrees (in-laws)
- 4. Relatives by consanguinity within the 4th civil degree

¶3: Defense of a stranger

Requisites:

- 1. Unlawful aggression
- 2. Reasonable necessity of the means employed to prevent or repel it
- 3. The person defending be not induced by revenge, resentment, or other evil motive.

Q: Who is a stranger?

A: Anyone not included in the enumeration in $\P 2$.

"The person defending be not induced by revenge, resentment, or other evil motive"

- The defender must have a disinterested or generous motive.
- It's fine if the defender had a standing grudge against the assailant, so long as during the defense of the stranger, he is actuated by a generous motive to save the stranger.

Giving someone who is in serious danger a weapon is a defense of a

stranger.

¶4: Avoidance of a greater evil or injury

Requisites:

- 1. That the evil sought to be avoided actually exists
- 2. That the injury feared be greater than that done to avoid it
- 3. That there be no other practical and less harmful means of preventing it.

"damage to another" - includes persons and damage to property.

"That the evil sought to be avoided actually exists"

• Evil must not be expected or anticipated, or may happen in the future.

"That the injury feared be greater than that done to avoid it"

- *Compare*: Injury feared vs. action taken
- The person invoking this must not be negligent.

⚠ Civil liability arises from the invocation of this justifying circumstance (Art. 101, RPC; see also Art. 23, Civil Code).

¶5: Lawful exercise of a right or office

Requisites:

- 1. The accused acted in the performance of a duty or in the lawful exercise of a right or office
- 2. The injury caused or the offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office

"lawful exercise of right or office"

- 1. Right Art. 429 of the Civil Code provides that any person may use reasonably necessary force to repel/prevent an actual or threatened physical invasion of one's property.
 - a. It is not necessary that there be unlawful aggression against the person.
- 2. Office

- a. The executioner of the NBP cannot be held liable for the execution performed by him
- b. A doctor who amputated the leg of a patient isn't liable for mutilation

Doctrine of self-help, requisites:

- 1. Reasonable force
- 2. Owner or lawful possessor is the person who will exercise
- 3. Actual or threatened physical invasion or usurpation
- 4. No delay in one's exercise

¶6: Obedience to an order

Requisites:

- 1. An order has been issued by a superior
- 2. Such order must be for some lawful purpose
- 3. The means used by the subordinate to carry out said order is lawful

⚠ When the order is not for a lawful purpose, the subordinate who obeyed it is criminally liable.

• Exception: When the subordinate is not aware of the order's illegality (see *Tabuena*, supra art. 3).

Exempting circumstances – Grounds for exemption from punishment because there is wanting in the agent of the crime.

• There is a crime, but there is no criminal.

Rationale: The exemption is based on the <u>complete absence</u> of freedom, intelligence, or intent, or negligence on the part of the accused.

Art. 12 ★ Circumstances which exempt from criminal liability.

The following are exempt from criminal liability:

- 1. An imbecile or an insane person, unless the latter has acted during a lucid interval.
 - When the imbecile or an insane person has committed an act which the law defines as a felony (*delito*), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.
- 2. A person under fifteen years of age.
- 3. A person over fifteen years of age and under eighteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Republic Act 9344.
- 4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.
- 5. Any person who acts under the compulsion of an irresistible force.
- 6. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.
- 7. Any person who fails to perform an act required by law, when prevented by some lawful or insuperable cause.

Exempting circumstance	Lacking element of a felony
Imbecility/insanity	Intelligence
Age <15	Intelligence
Age 15-18, without discernment	Intelligence
Accident	Negligence/Intent
Irresistible force	Freedom
Fear of an equal or greater injury	Freedom
Insuperable cause	Intent

¶1: Imbecility/insanity

Imbecile - One who is deprived completely of reason or discernment and freedom of the will at the time of committing the crime.

• Always exempt; cannot be lucid.

Insane - There is a complete deprivation of intelligence in committing the act.

• Not exempt when crime is committed during lucidity.

Proving insanity:

- 1. Circumstantial evidence, if clear and convincing, will suffice
 - a. Evidence must show the state of mind before, during, and after the commission of the felony
- 2. Insanity must be proven at the time of the commission of the felony
- 3. Evidence of insanity must refer to the time preceding the act or to the very moment of its execution

A There could be civil liability.

¶2 & 3: Minority

A Controlling law: RA 9344, as amended.

Aged 15 or under – Exempt (*totally*)

Aged above 15 to under 18 **Requisites:**

- 1. That the offender is over 15 and under 18 years old
- 2. That he does not act with discernment

Discernment - Moral significance (pagpapahalaga) that a person ascribes to an act

• The CICL knows if the act is right or wrong, and its consequences.

How discernment is shown:

- 1. Manner of committing the crime
- 2. Conduct of the CICL

Determination of age:

Presumption: A CICL is a minor until proven otherwise

- 1. Birth certificate
- Baptismal, school records or other pertinent documents
- 3. Testimony of a family member related to the child

If age is contested, a summary proceeding for determination of age may be filed in the Family Court which shall render judgment 24 hours after the receipt of the appropriate pleadings.

A There could be civil liability.

¶4: Accident

Requisites:

- 1. A person is performing a lawful act
- 2. With due care
- 3. He causes an injury to another by mere accident
- 4. Without fault or intention/negligence of causing it

Accident - Something that happens outside the sway of our will, and lies beyond the bounds of humanly foreseeable consequences.

- If consequences are foreseeable: negligence
- Precautions must be taken to avoid the accident

Negligence - Failure to observe, for the protection of the interest of another person, that degree of care, precaution and vigilance which the circumstances justly demand without which such other person suffers injury.

Example: EDSA Carousel bus lane accident.

No civil liability.

¶5: Irresistible force

Requisites:

1. The compulsion is by means of a physical force

- 2. The physical force is irresistible
- 3. The physical force must come from a third person

Irresistible force - In spite of resistance, it reduces him to a mere instrument and, as such, incapable of committing a crime. It compels his members and acts to obey.

• A threat of future injury is not enough.

There could be civil liability.

¶6: Uncontrollable fear

Requisites:

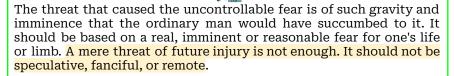
- 1. Existence of an uncontrollable fear
- 2. Real and imminent fear
 - a. Real, imminent, or reasonable fear for one's life or
 - b. There must be proof of actual physical or moral compulsion to act
- 3. Fear of an injury is greater than or equal to that committed
 - The threat must not allow the accused to escape or do-self defense.

Example: Bank robber-sniper aiming at a bank teller from afar. 🏦



A There could be civil liability.

Ty v. People G.R. 149275, Sep. 27, 2004



Irresistible force	Uncontrollable fear

Violence or physical force Intimidation or threat

¶7: Insuperable cause

Elements:

- 1. An act is required by law to be done
- 2. The person fails to perform the act
- 3. His failure was due to some lawful or insuperable cause
 - Not necessarily a physical force



⚠ No civil liability.

Comparison between Art. 11 and 12

	Justifying	Exempting
Act	Lawful	Unlawful
Criminal liability	None	None
Civil liability	None, except ¶4	Yes, except ¶4 & 7

Absolutory causes

Those where the act committed is a crime but for reasons of public policy and sentiment, there is no penalty imposed.

Absolutory causes

- 1. Justifying circumstance (Art. 11)
- 2. Exempting circumstance (Art. 12)
- 3. Spontaneous desistance (Art. 6)
- 4. Relatives who are accessories (Art. 19)
- 5. Inflicting physical injuries upon the spouse and/or his paramour (Art. 247)
- 6. Trespassing to prevent serious harm (Art. 280)
- 7. Commission of theft, swindling or malicious mischief against a relative (Art. 332)
- 8. Victim marrying the rapist/perpetrator (Art. 344)

9. Instigation

Instigation and entrapment

Instigation – The means by which the accused is lured into the commission of the offense charged to prosecute him.

• Officers of the law or their agents incite, induce, instigate or lure an accused into committing an offense.

Entrapment – Employment of ways and means for the purpose of trapping or capturing a lawbreaker.

• The criminal intent or design to commit the offense charged originates in the mind of the accused, and the law enforcement officials merely facilitate the apprehension of the criminal.

Complete defenses in criminal cases

- 1. Any of the essential elements of the crime is not proven, and the elements proven are not crimes themselves.
- 2. The act is justified (Art. 11).
- 3. The accused is exempt from criminal responsibility (Art. 12).
- 4. The case is covered by any of the absolutory causes.
- 5. Guilt not established beyond reasonable doubt.
- 6. Prescription of the crime (Art. 89 for felonies)
- 7. Pardon by the victim before prosecution in crime against chastity (Art. 344).

Mitigating circumstances – If present in the commission of the crime, do not entirely free the actor from criminal liability, but serve to reduce the penalty.

Rationale: Diminution of freedom, intelligence, or intent, or on the lesser perversity of the offender.

Types of mitigating circumstances

Ordinary mitigating – Those in Art. 13 (¶1-10). Privileged mitigating–

- 1. *Minority* (15-18 y/o, with discernment) \rightarrow 1 degree lower
- 2. *Incomplete*, but a majority of the requisites of the justifying or mitigating circumstances \rightarrow 1 or 2 degrees lower
- 3. 2 mitigating, 0 aggravating \rightarrow 1 degree lower

	Can it be offset by aggravating?	Effect if not offset
Ordinary	Yes	Minimum penalty
Privileged	No	1 or 2 degrees lower

Art. 13 / Mitigating circumstances.

The following are mitigating circumstances:

- 1. Those mentioned in the preceding chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.
- 2. That the offender is under eighteen years of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of RA 9344.
- 3. That the offender had no intention to commit so grave a wrong as that committed.
- 4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.
- 5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (*delito*), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees.
- 6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.
- 7. That the offender had voluntarily surrendered himself to a

- person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.
- 8. That the offender is deaf and dumb, blind, or otherwise suffering some physical defect which thus restricts his means of action, defense, or communication with his fellow beings.
- 9. Such illness of the offender as would diminish the exercise of the willpower of the offender without however depriving him of consciousness of his acts.
- 10. And, finally, any other circumstances of a similar nature and analogous to those above-mentioned.

¶1: Incomplete justifying/exempting

- 1. Incomplete justifying
 - a. Self-defense (3 requisites; PM = 2/3)
 - i. Indispensable: Unlawful aggression
 - b. Defense of a relative (3 elements, PM =2/3)
 - i. Indispensable: Unlawful aggression
 - c. Defense of a stranger (3 elements, PM = 2/3)
 - i. Indispensable: Unlawful aggression
 - d. Avoidance of a greater evil (3 elements, PM =2/3)
 - e. Performance of duty (2 elements, PM = 1/2)
 - f. Obedience to order of superior (3 elements, PM = 2/3)
- 2. Incomplete exempting
 - a. Aged 15-18 (2 requisites, PM =1/2)
 - b. Causing injury by accident (4 requisites, PM = 2/4)
 - i. If without due care + with fault = Art. 365
 - ii. If performing an unlawful act + with fault = X
 - c. Uncontrollable fear (2 elements, PM = 1/2)

¶2: Aged 15-18; >70

- If $<15 \rightarrow EXEMPT$
- If 15-18 without discernment → EXEMPT
- If 15-18 with discernment \rightarrow PM + Diversion program

Diversion – Alternative, child-appropriate process of determining the responsibility and treatment of a CICL on the basis of his/her

social, cultural, economic, psychological, or educational background without resulting in formal court proceedings.

System of diversion:

- <6 years penalty Mediation, family conferencing and conciliation
- Victimless crimes, <6 years Develop an appropriate diversion and rehabilitation program
- >6 years Court will decide the diversion method

Aged >70 \rightarrow OM

• Age determined the time of the commission of the offense

¶3: Praeter intentionem

Di ko sinasadya

When there is a **notable and evident disproportion** between the means employed to execute the criminal act and its consequences

 Applied only to offenses resulting in physical injuries or material harm.

Intention is judged by:

- 1. Proportion of the means employed \rightarrow Evil produced
- 2. Whether the blow was aimed at a vital body part

Factors considered:

- 1. Weapon used
- 2. Part of the body injured
- 3. Injury inflicted
- 4. Manner inflicted

Intention is determined at the time of the commission of the offense, not during the planning.

• Determined through the accused's actions

Not applicable when:

- Brute force
- 2. Murder qualified with treachery
- 3. Physical injuries (when the victim doesn't die due to assault + no intent to kill)

- 4. Culpable felonies
- 5. Defamation or slander
- 6. Malversation of public funds

¶4: Sufficient provocation

Ikaw yung nauna!

Requisites:

- 1. The provocation must be sufficient
- 2. It must come from the offended party
- 3. It must be immediate to the act

ightharpoonup This cannot be appreciated with passion or obfuscation (¶6). Pick only one.

Provocation – Any unjust or improper conduct or act of the offender party, capable of exciting, inciting, or irritating any one.

• **Sufficient provocation** – Adequate to excite a person to commit the wrong and must be proportionate to its gravity.

Sufficiency of provocation depends on:

- 1. The act constituting the provocation
- 2. Social standing of the person provoked
- 3. Place and time where the provocation occurred

Provocation in-

- 1. Self-defense (Art. 11(1)): Absence of sufficient provocation on the part of the person defending himself
- 2. As a mitigating circumstance: Presence of sufficient provocation on the offended party.

⚠ In mitigating, the person invoking the mitigating circumstance must have been sufficiently provoked by the other party (offended).

Immediate to the act:

- 1. There should not be an interval of time
- 2. With the passing of time between the provocation and crime \rightarrow the offended party already had time to regain his reason and exercise self-control
- 3. It's possible that the provocation is a threat preceding the

crime

- a. Doesn't have to be positively strong or offensive, that is already unlawful aggression
- b. However, the threat shouldn't be vague

¶5: Vindication of a grave offenseNapahiya

Requisites:

- 1. Grave offense committed against himself/relatives
- 2. Felony was to vindicate the grave offense

⚠ The mitigating circumstance of vindication of a grave offense cannot be appreciated with passion or obfuscation (¶6).

"Immediate" → "proximate" (lost in translation)

Hence, a gap of time between the grave offense and vindication is fine.

The provocation or grave offense should be:

- 1. Proportionate to the damage caused
- 2. Adequate to stir one to commit the felony

⚠ The grave offense can either be lawful or unlawful.

Factors to consider whether an insult is a "grave offense":

- 1. Social standing of the person insulted
- 2. Place and time where the insult was made

Similar example: Wassmer v. Velez

¶4 vs. ¶5

	Sufficient provocation (¶4)	Vindication of a grave offense (¶5)
What was done?	Sufficient provocation	Grave offense

Directed to whom?	The accused	The accused or his relatives
Time gap allowed?	No	Yes

¶6: Passion or obfuscation

Nandilim ang paningin

Requisites:

- 1. That there be an act, both unlawful and sufficient to produce such a condition of the mind.
- 2. The act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.
 - It can build-up through time.

↑ This cannot coexist with vindication of a grave offense (¶5). And, only one between sufficient provocation (¶4) and this can be appreciated.

What "act" is required?

- 1. If the cause of the loss of self-control was trivial and slight, the obfuscation is not mitigating
- 2. Acts arising from an exercise of a right or fulfillment of a duty is not an "act" referred here
- 3. This act-the cause producing passion or obfuscation-must come from the offended party

Not applicable when:

- 1. The felony is committed in a spirit of lawlessness
 - The passion/obfuscation must be legitimate feelings, and not vicious, unworthy and immoral passions
- 2. The felony is committed in a spirit of revenge
 - The felony must not be planned and calmly meditated for a considerable period of time

Q: May passion or obfuscation lawfully arise from causes existing only in the honest belief of the offender?

A: Yes. Passion or obfuscation may lawfully arise from causes

existing only in the honest belief of the accused.

Napone v. People, G.R. 193085, Nov. 29, 2017

Revenge cannot be considered acts done with passion or obfuscation. To avail of this mitigating circumstance (¶6), it must arise from lawful sentiments and not from a spirit of lawlessness or revenge.

People v. Real, G.R. 93436, Mar. 24, 1995

The peculiarity of these two mitigating circumstances (vindication of a grave offense and passion or obfuscation) is that they cannot be applied at the same time if they arise from the same facts or motive.

If the accused attacked the victim in the proximate vindication of a grave offense, he cannot successfully claim in the same breath that he was also blinded by passion and obfuscation.

Art. 13(6) vs. Art. 12(5)

	Passion or obfuscation	Irresistible force
Туре	Mitigating	Exempting
Requires physical force?	No (a state of mind)	Yes
From?	The offender himself	Third person
Where does it arise?	Lawful sentiments	Unlawful

Passion or obfuscation vs. provocation

	Passion or obfuscation			Provocation
Source?	An	impulse	which	From the victim

	could be from provocation		
Time lag?	Need not be immediate • So long as the influence of the passion or obfuscation still affects the mind of the accused	Immediate	
Effect on offender	Loss of reason and self-control		

¶7: Voluntary surrender or guilty plea

There are 2 separate mitigating circumstances:

- 1. Voluntary surrender
- 2. Voluntary confession of guilt

Hence, they can both be appreciated.

Vannie: If you have a client, you make him voluntary surrender and plead guilty. The penalty becomes 1 degree lower.

¶7.1

Voluntary surrender

Requisites:

- 1. The offender had not been actually arrested
- 2. The offender surrendered himself to a person in authority or to the latter's agent
- 3. The surrender was voluntary

The surrender must be spontaneous that it shows the interest of the accused to surrender unconditionally to the authorities, either

because he acknowledged his guilt or because he wishes to save them the trouble and expenses in his search and capture.

- Emphasizes the idea of an inner impulse, acting without external stimulus.
- There is spontaneity if the surrender is induced by fear of retaliation by relatives of his victims.

⚠ Once the warrant of arrest could was already being enforced, this mitigating circumstance can no longer be availed.

- The law does not require that the surrender be prior to the order of arrest.
- Voluntary surrender does not mean non-flight.
- The surrender must be by reason of the commission of the crime for which the defendant is prosecuted.
 - You must surrender for the crime you are invoking this circumstance for.
- Intent to surrender is not voluntary surrender (there must be actual surrender).

¶7.2

Voluntary confession of guilt

Requisites:

- 1. That the offender spontaneously confessed his guilt
- 2. That the confession of guilt was made in open court
- 3. That the confession of guilt was made prior to the presentation of evidence for the prosecution

"In open court"

- 1. Not on appeal
- 2. Not during preliminary investigation

"Prior to the presentation of evidence for the prosecution"

- It is not necessary that the fiscal already completed the presentation of all evidence.
 - As long as they have started already, this cannot be availed.
- If an amended information has been filed and the accused pleads guilty to it, the mitigating circumstance can still be

appreciated.

- This, despite a previous not guilty plea in the original information.
- The amended information can be lesser to the original information.
- Plea of guilty to a lesser offense is not mitigating.
 - It must be a guilty plea to the offense charged.
- When the accused is charged with a capital offense and pleads guilty - the court, beware!
 - Court must conduct a searching inquiry.

A This is not applicable to culpable felonies and SPL.

¶8: Physical defect

Physical defect - Armless, cripple, or a stutterer, whereby the means to act, defend himself or communicate with his fellow beings are limited.

To avail this mitigating circumstance:

- 1. it must be shown that such physical defect limited his means to act, defend himself, or communicate with his fellow beings
- 2. to such an extent that he did not have complete freedom of action
- 3. resulting in a diminution of voluntariness

¶9: Illness

Requisites:

- 1. The illness must diminish the exercise of his willpower
- 2. The illness should not deprive the offender of consciousness of his acts
- Illness of the mind is included
- A diseased mind, not amounting to insanity, may give place to mitigation.

0: Does this circumstance include illness of the mind?

A: It only refers to diseases of pathological state that trouble the conscience or will.

¶10: Similar and analogous circumstances

This authorizes the court to consider in favor of the accused similar circumstances from ¶1-9.

Examples:

- 1. 60 y/o with failing sight \rightarrow age (par. 2)
- 2. Outraged feeling of owner of an animal taken for ransom \rightarrow vindication of a grave offense (par. 5)
- 3. Outraged feeling of creditor who killed a debtor → passion and obfuscation (par. 6)
- 4. Impulse of jealous feeling \rightarrow passion and obfuscation (par. 6)
- 5. Battered Woman Syndrome → illness that diminishes willpower (par. 9)
- 6. Esprit de corps/mob mentality → passion and obfuscation (par. 6)
- 7. Voluntary restitution of stolen property → voluntary surrender (par. 7)
- 8. Extreme poverty and necessity → incomplete justification based on state of necessity (par. 1)
- 9. Testifying for the prosecution \rightarrow guilty plea (par. 7)
- 10. Restitution in a malversation case \rightarrow voluntary surrender (par. 7)

Not analogous:

- 1. Killing the wrong man (error in personae)
- 2. Not yielding to arrest
- 3. Condition of running amuck (without respect to religion)

Mitigating circumstances are personal to offenders. Co-conspirators, accomplices, or accessories cannot avail them too.

Circumstances that are neither mitigating nor exempting:

- 1. Aberratio ictus (see Art. 4(1))
- 2. Error in personae (see Art. 4(1))
- 3. Entrapment of the accused

- 4. Aged over 185. Performance of a righteous action ("Trolley problem")

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