

CRIMINAL LAW

REMEDIAL LAW, LEGAL AND JUDICIAL ETHICS WITH PRACTICAL EXERCISES

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CRIMINAL LAW

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I. Book I [Articles 1-99 of the Revised Penal Code (RPC)]

A. General Principles

1. Mala In Se and Mala Prohibita NIBD

Distinctions	In Se	Prohibita
Nature	Inherently wrong, immoral, vile	Not inherently wrong; considered an offense only because there is a positive law punishing it
Intent	Intent to commit the crime	Intent to perpetrate the act, e.g., animus possidendi drugs and firearms cases.**
Burden of prosecution	Prove the actus reus and mens rea	Prove the act; that it was done freely and voluntarily
GF defense	Available	Not available; has the law been violated. Defense: not committed freely or voluntarily
Examples	Vote padding and shaving (OEC); RA 7610	Technical malversation (Art. 220 RPC)

****In one case, SC acquitted a member of the ICC for illegal logging on ground of GF belief that he had authority to cut the trees from his elders since the trees were in the ancestral domain (no intent to perpetrate the act).**

2. Scope and Characteristics

a) Generality

Penal laws are **obligatory** upon those who live and sojourn in the Ph territory.¹

- Both Filipinos and aliens.

Limitations: (i) PIL principles; (ii) treaty stipulations

- Under GAPIL – Heads of States, other high-ranking officials representing the State.
- Diplomatic immunity – (i) Under treaty VCDR; (ii) applies to diplomatic agents, i.e., representatives in political relations; (iii) includes: heads and members of missions, their staff, private servants, charges affaires; (iv) they have **blanket diplomatic immunity** from criminal actions – *the person of the diplomat shall be inviolable. He shall enjoy immunity from criminal jurisdiction and shall not be liable to any form of arrest or detention.*
- Consular immunity – (i) Under treaty VCCR; (ii) applies to consular agents, i.e., representatives in commercial. Economic relations; (iii) The consul shall not be liable to **arrest** or detention pending trial. XPN: in case of grave crimes and pursuant to decision by the competent judicial authority; (iv) c.f.: diplomatic immunity, consular immunity is not absolute (functional immunity, i.e., only with respect to act necessary for the exercise of his functions).
- Immunity – (i) not from observance of law or from legal liability; (ii) immunity from exercise of territorial jurisdiction.
- Diplomatic agents while they have blanket immunity from criminal actions may commit crimes in the Philippines, only that no liability will attach.

Laws of preferential application

- Parliamentary privilege from arrest by members of Congress.
- R.A. No. 9344 – minors are exempt from prosecution for prostitution and mendicancy.

b) Territoriality

Philippine laws are **enforceable** within the Philippine territory.

- Full jurisdiction – (i) Ph archipelago; (ii) internal, archipelagic waters; (iii) territorial sea (12NM from baselines); (iv) atmosphere; (v) regime of islands.
- Functional jurisdiction in contiguous zone (24 NM from baselines) – only to prevent or punish infringement or punish the violation of customs, immigration, fiscal, sanitary **CIFS** laws and regulations.
- Functional jurisdiction EEZ (200 NM from baselines) – only to prevent or punish infringement of environmental laws concerning the management and preservation of natural resources.
- No jurisdiction to crimes committed in (i) high seas; (ii) territorial waters of foreign state. XPNs: (i) If continuing crime and some **elements** committed while in Ph territorial waters, though commenced outside, is triable in Ph; (ii) if committed on board Ph **ship** (high seas only). Flag state has jurisdiction over crimes committed in the high seas.

Crimes committed in foreign merchant vessels

- Committed within Ph territory.
- Two views: (i) Frech Rule – GR: not triable in Ph; XPN: if affecting peace and national security; (ii) English Rule – crimes committed in foreign merchant vessels in the Ph territory are triable in Ph courts. They owe temporary allegiance to Ph while within its territory. XPN: (i) **treaty** stipulations; (ii) those merely pertaining to **internal** management of the ship. To subject to Ph jurisdiction, offense must involve **disturbance** of public peace.
- Ph adheres to English Rule.
- Mere possession of a thing of prohibited use is not triable in Ph. But when the thing was landed from the vessel to the Ph soil, the violation becomes subject to Ph criminal jurisdiction. Mere possession of prohibited article also triable in Ph if the vessel is not in transit but Ph is the destination.
- Smoking opium (illegal drugs) on board a vessel is already triable since it already produces pernicious effects in Ph.

Extra-territorial jurisdiction (Art. 2 RPC) – crimes committed outside Ph but still subject to Ph criminal jurisdiction SCoPIN

- Committed while on Ph **ship** or airship;²
- Counterfeiting** of Ph coin, currency notes, obligations and securities of GRP.
- Introduction** of counterfeited obligations and securities issued by GRP.
- Committed by **public** officers/EEs in the exercise of their functions. – crimes committed by public officers.
- Crimes against **National** Security and the Law of Nations, e.g., terrorism³

Under special laws: **HIT CV**

- human trafficking;
- illegal recruitment;
- terrorism or terrorism financing;
- cybercrimes;
- VAWC (psychological abuse).

GOTE – generality obligatory; territoriality enforceable.

c) Prospectivity

GR: Penal laws are prospective.

¹ Art. 14 NCC.

² Registration determines nationality of ship. No jurisdiction if committed in the territorial waters of foreign state.

³ Extra-territorial jurisdiction also provided under ATL.

***Under the Constitution, the Congress cannot pass an ex-post facto law (see below) or bill of attainder.*

XPN: If favorable to accused.

XPN to XPN: (i) habitual delinquent;⁴ (ii) express provision.

3. Pro Reo Principle

In dubio pro reo. "When in doubt, for the accused."

When the courts are faced with two possible interpretations of a penal law – one prejudicial and one favorable to the accused, the latter shall be adopted.

Also applies when evidence is susceptible of two interpretations – one consistent with the guilt and one with the innocence of the accused, the latter shall be adopted.

4. Ex Post Facto Law

In general, one which criminalizes an act which was innocent when committed.

Also: (i) imposes a higher penalty or burden to a crime after commission; (ii) deprives the accused of a defense which was available when committed.

***Prohibited under the Constitution, along with bill of attainder.⁵*

5. Interpretation of Penal laws

(a) Doubts should be resolved in favor of the accused.

(b) Spanish text is controlling since it was the text approved by the Legislature.

(c) Titles cannot modify the words of the text. They are merely intended as convenient index.

(d) Legislature is deemed to have adopted the technical meaning (under law or jurisprudence) of the words used in crafting a statute.

6. Retroactive Effect of Penal Laws

*See Prospectivity

B. Felonies

1. Criminal Liabilities and Felonies

a) Classifications of Felonies

Based on nature: (a) Intentional; (b) Culpable; (c) Mala prohibita

Based on gravity: (d) grave; (e) less grave; (f) light

Based on stage of execution: (g) Consummated; (h)

Frustrated; (i) Attempted

(a) Intentional

1. Committed by dolo (deceit)
2. Act committed with deliberate intent.
3. GF is defense.
4. Intent must be proven.
5. Requirements – freedom, intelligence, intent.

(b) Culpable

1. Committed by culpa (fault)
2. Wrongful act results from imprudence, negligence, lack of foresight/skill. Intent is irrelevant.
3. GF is not defense, but exercise of due care is.
4. Requirements – freedom, intelligence, lack of foresight or skill, voluntariness of the act.

(c) Mala prohibita c.f.: mala in se (see above)

1. There are mala prohibita crimes in RPC – e.g., technical malversation.

2. There are mala in se crimes in SPL – e.g., (i) plunder;⁶ (ii) child abuse under RA 7610; (iii) vote shaving and padding under OEC.

(d) Grave felonies – punishable by (i) capital punishment; (ii) afflictive penalties.

(e) Less grave felonies – punishable by penalties which in their maximum are correctional.

(f) Light felonies – (i) punishable by arresto menor, or fine ≤40,000, or both; (ii) punishable only if consummated.

b) Aberratio Ictus, Error In Personae, and Praeter Intentionem

Principle of transferred intent

1. Criminal liability is incurred by any person (a) committing a felony; (b) even though the wrongful act done be different from that which he intended.
2. May either be: (b) aberratio ictus; (a) error in personae; (c) praeter intentionem.

(a) Aberratio Ictus

1. Mistake in the blow;
2. Elements: (i) offender is committing a felony; (ii) wrongful act done different from that intended; (iii) the difference consist in directing the blow to a person other than the intended victim; (iv) the resulting felony is a natural, direct, logical NDL consequence of the intentional felony.
3. Felony results.
4. E.g., hitting and killing a bystander with stray bullet while in the process of killing another person. If the accused was not aiming at anyone he shall be liable for homicide if he killed someone, or physical injuries if only injuries were inflicted.
5. Qualifying circumstance may be appreciated even with respect to the unintended victim.
6. If the accused created an immediate sense of danger upon another's mind, he shall be liable for injuries sustained by the latter for trying to escape. But the actor shall not be liable if the victim suffered injuries due to his own reaction or other state of mind, e.g., suffering heart attack.

(b) Error in Personae

1. Mistake in the identity of the victim;
2. Elements: (i) offender is committing an felony; (ii) wrongful act done different from that intended; (iii) the difference consist in the identity of the intended victim.
3. Felony results. Same felony as that intended, different victim.
4. Neither exempting nor mitigating; the resulting crime carries the same gravity as the intended crime;
5. The penalty provided for is that under Art. 49. Generally the penalty prescribed for the committed crime, or the intended crime, whichever is lower, imposed at the maximum period.

(c) Praeter Intentionem

1. Elements: (i) offender is committing an intentional felony; (ii) the wrongful act done is different from that intended; (iii) the resulting felony is the NDL consequence of the intentional felony, or the intentional felony is the proximate cause of the resulting offense;
2. Efficient intervening cause – that which breaks the connection between the intentional felony and the resulting offense.

⁴ Within 10 years after release or last conviction for the crimes of serious or less serious physical injuries, robbery, theft, estafa, falsification, the accused was found guilty of the said offense for third time of offender.

⁵ One which imposes a penalty without judicial trial.

⁶ Given the seriousness of the crime, and that fact that constituent crimes are mala in se.

3. Not EIC. (i) physical, psychological, pathological condition of the victim which may have aggravated the results; (ii) predisposition of victim, e.g., failure to seek medical attention; (iii) concurrent or concomitant negligence of physician; (iv) supervening causes, e.g., tetanus, gangrene, infections. In these cases, the offender remains liable. But if it is shown that tetanus could not have come from the wound inflicted by offender, tetanus is EIC.
4. E.g., not praeter intentionem. (i) a person committing suicide survived, instead passing through his body causing death of another. Suicide is not a crime. (ii) police officer who fired a warning shot hit a bystander. Police is not performing unlawful act, but he may be liable for reckless imprudence.
5. E.g., prater intentionem. (i) person indiscriminately firing hit a bystander. Offender was committing the crime discharge of firearms. (ii) person punched a another without ITK, the latter fell on the ground, hit his head and died. Offender was committing the felony of physical injuries.

c) Elements of Criminal Liability

(a) Actus reus

1. The overt act or omission constituting the crime;
2. Must be done with (i) intelligence and (ii) freedom.

(b) Mens rea

1. Guilty state of mind or intent to commit the crime;
2. Intent v. Motive. (i) Intent is the particular means to attain a result. Motive is the moving force which impels one to action for a definite result; (ii) GR: motive need not be proven. XPNs: (a) **identity** of accused is in doubt; (b) evidence is merely **circumstantial** (motive may be corroborative); (c) defense and prosecution versions diametrically **opposed**.

d) Impossible Crime

Criminal liability is committed by any person (a) performing an act which would be an offense against **person or property** were it not for (b) inherent impossibility of its accomplishment **InImA**, or (c) the employment of inadequate or ineffectual means.

1. Not a defense but an act penalized by itself.
2. Crime committed in the "impossible crime of xx"
3. The penalty for impossible crimes is not the penalty imposed for the related crime but that fixed in Art. 59.
4. Purpose it to suppress criminal tendency.

***There is no crime (objectively), but there is a criminal (subjectively).*

(a) Would be an offense

1. Act would be an offense against person or property;
2. No impossible crime against chastity – e.g., in adultery where a married woman had sexual intercourse with another woman; in concubinage where a married man cohabitated with another man.
3. The act must **not constitute an offense**, otherwise, the offender shall be liable for the offense committed under Art. 4(1).

(b) Inherent impossibility of accomplishment

1. The act must be impossible by nature: (i) legal impossibility; (ii) physical impossibility. No distinction.
2. Legal impossibility – the intended acts, even if completed will not amount to a crime. E.g., killing a dead person [to be an impossible crime, there must be proof of knowledge that the person is

already dead. Otherwise, it will be an ordinary crime]; unlawful taking of one's own property.

3. Physical impossibility – extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the crime. E.g., shooting at an empty house intending to kill the inhabitant who not then present; woman who tried to commit intentional abortion turned out not pregnant.

(c) Inadequate or ineffectual means

1. Ineffectual – e.g., giving poison to another with ITK which turned out to be a non-toxic substance.

e) Stages of Execution

(a) Consummated; (b) Frustrated; (c) Attempted

1. All stages are punishable;
2. Affects imposable penalty.

(a) Consummated

1. All the elements necessary for its execution and accomplishment are present;

(b) Frustrated

1. The offender performed all acts of execution which will produce the felony as a result, but which nevertheless did not produce it by reason independent of the perpetrator's will;
2. E.g., if accused brought victim to hospital and was saved he is still liable for frustrated homicide since the victim was saved by reason independent of accused's will, i.e., medical science, even if he was the one who bought the victim to hospital. But if the accused himself administered the antidote, he can be prosecuted only for physical injuries, not frustrated homicide since the felony was not produced by reason dependent on accused's will.

(c) Attempted

1. The offender commences the commission of a felony directly by overt acts but did not perform all acts of execution which should produce the felony by reason of some **cause or accident** other than his own spontaneous desistance. **CAOSD**
2. Overt act must have **causal relation** to the intended crime and would have produced the same in the ordinary course absent desistance or other externa causes.
3. E.g., (i) cause – victim was able to flee; (ii) accident – jamming of gun.
4. Spontaneous desistance: (i) has the effect of removing ITK; (ii) may be due to fear, still considered spontaneous.
5. If the accused spontaneously desisted from the commission of the crime, he shall be held liable for its consequences but not for the crime intended, e.g., an accused spontaneously desisted from killing another after inflicted a non-fatal wound. The accused will be liable only for physical injuries but not for attempted homicide.
6. If no damage resulted before the spontaneous desistance, the accused shall not be held criminally liable.

In specific crimes

1. Homicide – (i) frustrated, if mortal wound inflicted but victim survived by reason independent of accused's will; (ii) attempted, if no mortal would inflicted due to cause or accident other than spontaneous desistance. There must be proof that wound is mortal.
2. Estafa – (i) attempted, if deceit was committed but no damage caused
3. Theft/robbery – (i) consummated, if accused was able to take possession of the thing even temporarily (or split second) and without opportunity to dispose so long as there was disturbance in owner's proprietary rights; (ii)

attempted, if there is ITG by unlawful taking but accused was not able to take possession of property; (iii) **not frustrated stage**. As long as accused takes possession, the crime is consummated.

4. Kidnapping, serious illegal detention – (i) consummated, if there is total deprivation of liberty; (ii) attempted, if only partial deprivation; (iii) **no frustrated stage**.
7. Rape by sexual assault – (i) consummated, if penis touches vagina, even slightest penetration; (ii) attempted, if penis did not touch vagina but with intent to have carnal knowledge of woman. But pressing chemical-soaked cloth in the mouth of victim is not an overt act of rape. The accused must have commenced inserting his organ to the victim's.
5. Only in consummated stages – (i) physical injuries; (ii) libel, oral defamation, slander by deed.

Formal crimes (without frustrated stage)

1. Rape
2. Indirect bribery/corruption of public officers
3. Adultery/concubinage
4. Acts of lasciviousness
5. Physical injury
6. Impossible crimes

f) Continuing Crimes

AKA transitory crime. Consists of a **series** of acts, each of which is considered a crime, but which the law considers only as a single offense. The constituent acts are considered partial execution of the single continuing crime.

Basis: single criminal resolution.

Two variations:

1. One where all elements occurred on one place, but the violation of the law is deemed continuing, e.g., libel (circulation)
2. One where the essential elements were committed in different locations, e.g., estafa where place of perpetration of deceit may be different from occurrence of damage. Jurisdiction: court of place where an essential element took place, and which first takes cognizance to the exclusion of others.

Elements

1. Multiple **acts** committed at or about the same time (plurality of acts performed separately over a period of time);
2. Violates single penal **law**;
3. Singularity of criminal **intent** or resolution;
4. Generally RPC crimes – estafa, kidnapping, rebellion, robbery, under certain circumstances.

****Intended to benefit the accused since only one crime is prosecuted despite multiple acts.**

1. It does not generally apply to offenses malum prohibitum since the basis of continuing crimes is singularity of criminal intent. Whereas, in malum prohibitum crimes, intent is generally irrelevant.

g) Complex Crimes and Composite Crimes

Single penalty is imposed for multiple acts constituting crime (a) Compound Crime; (b) Complex Crime proper; (c) Special Complex (Composite) Crimes; (d) Continuing Crimes

(a) Compound Crimes (delito compuesto)

1. Single act which gives rise to two or more grave or less grave felonies – (i) grave: capital punishment, or afflictive penalties; (ii) less grave: penalty which in their maximum are correctional. Light felonies cannot be complexed with other crimes – separate prosecution.

2. E.g., hurling grenade resulting in multiple deaths – multiple murder with multiple frustrated murder; forcible abduction with rape.
3. Conjunction: “with”

(b) Complex Crime proper (delito complejo)

1. When an offense is a necessary means for committing another
2. E.g., estafa through falsification of public documents
3. Conjunction: “through”

****Penalty for the most serious crime shall be imposed at its maximum period.**

(c) Special Complex Crimes or Composite Crimes

1. Complex crimes specifically defined and punished by law as a single indivisible offense.
2. May include, grave, less grave, light felonies. An offense need not be a necessarily be a means of committing another.
3. E.g., robbery with rape, robbery with homicide.

Doctrine of absorption

1. Elements: (i) crimes are punished by the same statute; (ii) TC has jurisdiction over the offenses; (iii) does not constitute separate counts of violation of the law
2. When an offense is (i) inherent; (ii) element of another offense; or (iii) done in its furtherance.
3. In special complex crimes where the composite crime is generic – e.g., robbery with homicide where homicide absorbs all bodily injury not resulting in death, rape, and other crimes committed BROO of robbery.
4. E.g., illegal possession is absorbed in illegal use of drugs; use of firearms is absorbed in rebellion; entering in polling places is absorbed in the crime of promotion of the election of candidates under OEC since the entry is for the purpose of promotion.

(d) Continuing Crimes (see below)

2. Circumstances affecting Criminal Liability

a) Justifying Circumstances

(a) **Defense** of persons or rights; (b) **State** of necessity; (c) **Fulfillment** of duty or lawful exercise of right or office; (d) **Obedience** to lawful order **FODS**

1. Exempt from CML, CVL. If state of necessity, person benefited is CVL in proportion to the benefit derived.

(a) Defense of persons or rights;

2. Kinds: defense of persons of rights (i) of self; (ii) of spouse, as/descendants, siblings, relatives by affinity in the same degree, relatives by affinity up to 4th degree; (iii) of strangers **SASR**
3. Common requirements: (i) unlawful aggression; (ii) reasonable necessity of means employed to prevent or repel the attack; **con**
4. Third element: (i) of self: lack of sufficient provocation on the part of the person defending himself; (ii) of relative: if the person defended provoked the attack, the person defending him had no part in the provocation; (iii) of strangers: the one making the defense is not motivated by revenge, resentment or evil motive.
5. Scope: (i) defense of persons; (ii) defense of rights – includes property, chastity, honor.

Unlawful aggression

In defense of persons

1. Elements – (i) physical or material attack or assault by use of actual physical force or weapon; (ii) actual or imminent danger; (iii) attack is unlawful.

- Physical assault which places the life or limb of a person in actual or imminent danger (not imaginary).
- Must come from the victim.
- Must be continuing at the time the act of defense. Once aggression ceases, the offender loses the right to injure/kill the victim.
- This is condition sine qua non both as justifying and mitigating (incomplete self-defense).
- May be actual or imminent, but mere threatening attitude of victim, e.g., thrusting hands in pocket to get weapon or cocking rifle without more is not unlawful aggression, is not sufficient to constitute unlawful aggression.

In defense of rights

- Need not be directed to a person if directed against rights.
- Property rights: aggression continues as long as the property is possessed and not released by victim-aggressor.
- Right of honor: does not involve physical assault; e.g., if libelous remarks were published against a person, he can defend himself by publishing counterattacks against the aggressor, even if also defamatory in character, provided (a) reasonable and (b) relevant to his defense and in the restoration of his honor.

Reasonable means

- Requires only **rational equivalence**, i.e., whether the parties are placed on equal footing.
- Relative potency of weapons is not determinative as a person may use the weapon with him to defend himself.

Provocation

- Act or utterance inciting another to anger.
- Defense of own person is available even if there is provocation if: (a) not sufficient; (b) attack did not immediately follow the provocation; (c) did not come from the person defending himself.
- Defense of relative is available if even if the relative provoked the attack, provided the person defending took no part (whether sufficient or slight).

(b) State of necessity;

- Applies when a person, in order to prevent an evil or injury, does an act which causes damage to another; **EGreN**
- Elements: (i) the evil sought to be prevented actually **exists**; (ii) the injury feared is **greater** than that done to avoid it; (iii) there are **no** other practical and less harmful means to prevent it **PLH**
- The state of necessity must not have originated from the fault, negligence or unlawful act of the actor;
- CVL shall be borne by the person benefited in proportion to the benefit derived.

(c) Fulfilment of duty or lawful exercise of right or office; **FD LERO**

- (i) Person was acting in **FD** or **LERO**; (ii) the act, injury or wrong was a **natural consequence** of such.

(d) Obedience to lawful order **SLR**

- (i) An order was issued by a **superior** to a subordinate; (ii) the order was for a **lawful** purpose; (iii) the actor employed **reasonable** means in complying with the order.
- Lawful purpose – what is required is the **belief** of the actor that the order was lawful, even if it was actually not.

b) Exempting Circumstances

Effect:

- Accused does not incur criminal liability;
- Civil liability – GR: accused is not exempt; XPN: (i) compulsion of irresistible force, impulse of uncontrollable fear, lawful or insuperable cause – civil liability shall be borne by one causing the force, fear or cause;
- There is a crime but there is no criminal.

IMACIL: (a) insanity/imbecility; (b) minority; (c) accident; (d) compulsion of irresistible force; (e) impulse of an uncontrollable fear; (f) lawful or insuperable cause

CIF IUF LUC

(a) Insanity/imbecility;

- XPN: if acting under lucid interval.
- Insanity, under the law, means total deprivation of intelligence such that in committing the act, the accused is deprived of reason, discernment, or freedom of will. Imbecility means having the mental capacity a child below 7 years.
- A person is presumed sane. He who invokes insanity as defense must prove the same. **CoMPL**
- Requisites: (i) complete deprivation of intelligence of freedom of will; (ii) insanity is the primary cause of the criminal act; (iii) not acting during lucid interval; (iv) manifest at the time or **immediately before or simultaneous** to the commission of the crime. Medical tests done years or months prior to commission of the crime cannot be relied upon.
- Two tests – (i) test of cognition: complete deprivation of **intelligence** in committing the crime; (ii) test of volition: total deprivation of freedom of **will**.
- Proof may be given by (i) a person intimately acquainted with the accused, or (ii) who has rational basis to conclude that he was insane based on his perception, or (iii) who is a qualified expert.
- Effect: insane/imbecile persons shall be **acquitted**, and **committed** to a mental institution until he can be released without danger.
- Nature: confession and avoidance, accused has the burden of proving his insanity.
- Effect of subsequent finding of insanity: not acquittal but merely suspension of trial until accused can stand trial.

(b) Minority;

- May be absolute or conditional;
- If $\leq 15y$ – absolutely exempt.
- If $>15y$ but $<18y$ – exempt, if w/o discernment;
- If $>15y$ but $<18y$ – liable, if w/ discernment. XPNs: (i) prostitution, sniffing rugby, mendicancy under JJWA; (ii) statutory rape if (a) age difference with the woman is $<3y$; (b) sex is consensual, non-abusive, and non-exploitative;
- If not exempt, penalty shall be at least 2 degrees lower without prejudice to suspension of sentence.

****A child $>15y$ but $<18y$ is **presumed not acting with discernment**, and the prosecution has the burden of proving the same.**

(c) Accident; **LaDAW**

- Requisites: (i) A person performing **lawful** act (ii) with **due** care, (iii) **causes** damage to another by mere accident (iv) without fault or intention of causing it.
- E.g., driving without seatbelt is not lawful act.

(d) Compulsion of irresistible force;

- Use of **force or violence**
- Requisites: (i) fear of infliction must be real, actual, immediate, (ii) threat must not be fanciful, speculative, remote.

- (e) Impulse of an uncontrollable **fear**;
1. A person acting under the impulse of uncontrollable fear of equal or greater injury;
 2. Use of intimidation of threats;
 3. Requisites: same as [d]
 4. E.g., Threats to kill wife of A if he will not kidnap B. Kidnapping committed 1 week later. No duress since A has 1 week to escape or report to authorities.
- (f) Lawful or insuperable cause
1. A person who performs an act required by law when prevented by a lawful or insuperable cause

c) Mitigating Circumstances

Effect:

1. Lowers the penalty imposed without exonerating the accused from criminal liability;
2. Does not affect the nature of crime.
3. Limit: penalty imposed ~~shall~~ be reduced beyond prison correctional.

Kinds

1. (i) Ordinary **OMC**; (ii) Privileged **PMC**; (iii) Special **SMC**.
2. Ordinary – (i) may be offset by aggravating circumstance; (ii) imposition of minimum penalty; or (iii) reduction by 1 or 2 degrees, if 2 or more mitigating w/o aggravating and penalty is divisible (considered PMC)
3. Privileged – (i) not offset by aggravating; (ii) reduction by 1 or 2 degrees; (iii) (a) minority – minor is entitled to reduction of 2 degrees without prejudice to suspension of sentence; (b) incomplete justifying/exempting circumstance if majority of the elements are proven
4. Special – (i) not offset by aggravating; (ii) applicable to certain crimes as provided in the various provisions of RPC; (iii) e.g., concealment of dishonor in case of abortion.

IANI SPV DIO: (a) incomplete justifying or exempting circumstances; (b) age; (c) no intention to commit so grave a wrong; (d) immediate vindication; (e) sufficient provocation; (f) passion or obfuscation; (g) voluntary surrender (h) deaf, dumb, blind; (i) illness; (j) other analogous circumstances

(a) Incomplete justifying or exempting circumstances

1. Either ordinary or privileged. Privileged if accused is able to prove at least a majority of the elements in justifying/exempting circumstance. Otherwise, ordinary.
2. In defense of persons – element of unlawful aggression is indispensable. Without it, the circumstance cannot be appreciated either as justifying or mitigating.
3. Sufficient provocation on the part of offended party must immediately precede the act, i.e., there must be **no interval of time** between the provocation and the commission of crime by the person provoked. c.f.: vindication of grave offense admits of some interval of time for as long as the grave offense is the proximate cause for commission of the crime.

(b) Age;

1. <18, >70
2. See JJWA for minority.
3. Old age can be appreciated even on appeal even if not raised in TC, for equitable and humanitarian considerations since the age of the accused exist in the records and known to prosecution.

(c) No intention to commit so grave a wrong as that committed

1. Criminal liability is incurred by any person who is committing a felony even though the wrongful act

done is different from that intended. The accused is still criminally liable, but his liability may be mitigated

(d) Immediate vindication;

1. Of a grave offense committed against the person committing the felony, his spouse, ascendants, descendants, siblings, relatives by affinity in the same degree;
2. The grave offense and the vindication need not be immediate to each other.

(e) Sufficient provocation;

1. Sufficient provocation of threat from the offended party immediately preceded the attack; (i) P/T must be sufficient; (ii) it must come from the offended party; (iii) it must immediately precede the attack.
2. Provocation means any act, utterance inciting a person to anger. Threat is intimidation constituting an unlawful act, e.g., "I will kill you".

(f) Passion or obfuscation;

1. Acting under an impulse so powerful as to have naturally caused passion or obfuscation.
2. The act causing P/O must be unlawful, sufficient to produce the state of mind, immediately prior to the attack such that the accused did not have time to recover his equanimity.
3. It must arise from lawful sentiments, not committed in the spirit of lawlessness or revenge.

****GR: Immediate vindication [d], P/T [e], P/O [f] are of similar character, only one can be appreciated. XPN: if premised on different acts.**

(g) Voluntary surrender; voluntary confession

1. Voluntary surrender to a person in authority or his agent; **NPVB** (i) accused was **not** yet arrested; (ii) he surrendered to **PIA** or his agent; (iii) **voluntary**; (iv) **before** filing of information in court. Admission of guilt is not necessary. The spontaneous surrender may be due to (a) acknowledgement of guilt, or (b) desire to save the authorities of the trouble and expense in his search or capture.
2. Voluntary confession before the court before the prosecution presents evidence; **JVPC** (i) judicial, not EJ even if assisted by counsel, may be during arraignment or pre-trial; (ii) done before presentation of prosecution's evidence; (iii) voluntary, spontaneous, unconditional; (iv) plea is of the offense charged, not lesser, not attempt/frustration.
3. Voluntary surrender cannot be appreciated on appeal. Otherwise, prosecution is deprived of opportunity disprove its elements.

(h) Deaf, dumb, blind;

1. Includes other physical defects which limits a person's actions, defense, communication with other persons

(i) Illness;

1. Must be of such nature as to diminish the will-power of the accused without depriving him of the consciousness of his acts

(j) Other analogous circumstances

1. To P/O – feeling of unpaid creditor
2. To state of necessity – stealing due to hunger
3. To confession of guilt – return of thing stolen
4. To voluntary surrender – restitution

****If both present, two mitigating circumstances shall be appreciated.**

d) Aggravating Circumstances

Kinds: (a) Generic **GAC**; (b) Qualifying **QAC**; (c) Inherent **IAC**; (d) Specific **SiAC**; (e) Special **SaAC**

1. Increases the penalty of an offense or change its nature by making it more grave;
2. To be appreciated, they must be alleged and proved. Quantum of proof is proof beyond reasonable doubt. (i) if alleged but not proven, violation of due process; (ii) if proven but not alleged, violation of right to be informed of the nature and cause of accusation.

AC	May be appreciated	Effect
GAC	Any offense	Penalty imposed in maximum, regardless of number; offset by OMC
QAC	Specific offense	Change the nature of offense; penalty is that provided by law for the qualified offense
IAC	Specific offense which it is an element	No effect in CML
SiAC	Specific offense; found under Art. 14	Penalty imposed in maximum, regardless of number; offset by OMC
SaAC	Specific offense; not found under Art. 14	Penalty is that provided by law for the offense; not offset by OMC. Examples ⁷

QAC in murder – TICESA Mwa

(a) Treachery

(b) By means of **inundation**, artifice involving great waste and ruin

(c) In **consideration** of price, reward, promise

(d) **Evident** premeditation

(e) Taking advantage of **superior** strength; means employed to **weaken** defense

(f) With aid of **armed** men; means employed to **assure** impunity

GAC – TOPNiCHERDD IIAAU

(g) **Taking** advantage of public position

(h) On **occasion** of conflagration, calamity, or misfortune

(i) In the **place** of Chief Executive or in his presence

(j) In **nighttime**, by band, in uninhabited place

(k) In **contempt** or with insult to public authorities

(l) **Habituality**

(m) **Employment** of craft, fraud, or disguise **CFD**

(n) **Recidivism**

(o) Wrong done **deliberately** augmented by other wrong not necessary for its commission

(p) With **insult** or in disregard of rank, age, or sex **RAS**

(q) Dwelling

(r) **Ignominy**

(s) With **abuse** of confidence

(t) With **aid** of minors or motor vehicles

(u) **Unlawful** entry

(a) Treachery (Alevosia)

1. When the offender commits a **crime against person**, employing means to insure its execution without risk to himself arising from the defense which the offended party may interpose
2. SiAC – can be appreciated only in crimes against person.
3. Characterized by **swift, sudden, unexpected** attack. If the parties were engaged in a heated argument, the parties are placed on guard for possible retaliation by the other making the attack expected. Cannot be appreciated in spur of the moment, casual, fortuitous incidents.

4. Elements: (i) offender commits a crime against person; (ii) he adopted means to ensure its execution without risk to himself arising from the defense which may be interposed by the offended party; (iii) the means were **deliberately and consciously** adopted.
5. Presumption of treachery – (i) victim was attacked while sleeping; (ii) just woken up; (iii) answering call of nature; (iv) minor; (v) ambushes.
6. Killing or assault of child by an adult is always considered treacherous.

(b) By means of **inundation**, artifice involving great waste and ruin

1. Use of fire is inherent in arson;
2. Use of fire – (i) if primary intention is to kill a person, crime is murder qualified by use of fire; (ii) if primary intention is to destroy property, arson. If a person dies, the death is absorbed in the crime of arson. But in one case, the SC affirmed the holding of the trial court finding an accused guilty of the complex crime of arson with homicide.

(c) In **consideration** of price, reward, promise **PRP**

1. May be appreciated against the giver and receiver;
2. Giver – principal by inducement
3. Recipient – principal by direct participation.

(d) **Evident** premeditation

1. Deliberate planning to commit a crime.
2. IAC in robbery/theft, rape/AOL, estafa
3. Prosecution must prove: **TOL** (i) **time** when the accused conceived the plan (previous decision to commit a crime); (ii) **overt** acts which shows that the accused clung to his plan; (iii) sufficient **lapse** of time to show that the accused had the opportunity to fully reflect on the consequences of his actions. There must be proof of the planning by overt acts, not merely based on suspicions.
4. The intended victim must be the actual victim, or if there was no intended victim, the actual victim belongs to the class intended by the offenders. Applies when the accused is determined to kill not only the victim but all those who may come to his aid.
5. If conspiracy was proven, evident premeditation may be appreciated even if some elements were not established.

(e) Taking advantage of **superior** strength; means employed to **weaken** defense

1. Elements: (i) offender has taken advantage of superior strength; (ii) he has notoriously chosen the superiorities; (iii) there was some preparation for the offense, not spur of the moment.
2. Essentially the use of excessive force disproportionate to defense available to the victim.
3. If multiple aggressors, it must be shown that they simultaneously attacked the victim, not just alternatively.
4. E.g., (i) accused was 35y while victim was frail 75y; (ii) victim was outnumbered without means to put up defense, taken to place where rescue was close to impossible, and use of weapons disproportionate to the defense available to victim.

(f) With aid of **armed** men; means employed to **assure** impunity

⁷ Quasi-recidivism, complex crimes, crimes committed by syndicate/organized crime groups, crimes committed under the influence of illegal drugs, use of loose firearms.

1. c.f. by band: Need not be more than 3; need not conspire (may be accomplices)							
(g) Taking advantage of public position							
1. Elements: (i) The offender is public officer/EE; (ii) he used his power, prestige, influence to commit the crime with facility . The public position must have facilitated the commission of the offense.							
2. IAC: (i) in crimes committed by public officers; (ii) in falsification of public documents.							
(h) On occasion of conflagration, calamity, or misfortune							
(i) In the place of Chief Executive or in his presence; where public authorities are engaged in the discharge of their duties; in a place dedicated to religious worship							
1. In the place of President – Malacañang							
2. In presence of President – wherever he may be found							
3. Where public authorities are EDD – the public authority may or may not be the offended party							
4. In place devoted to worship – (i) regardless of whether religious ceremony/ manifestation is ongoing; (ii) IAC in interruption of religious worship; offending religious feelings.							
5. The offender went on the these places to commit an offense; not appreciated if the commission of offense is mere afterthought.							
(j) In nighttime , by band, in uninhabited place NUB							
1. Must facilitate commission of offense.							
2. Band: >3 armed malefactors acting together in the commission of offense; there must be conspiracy; all must have directly participated.							
3. Requirements: (i) offender took advantage; (ii) specially sought to ensure impunity; (iii) facilitated the commission of crime.							
(k) In contempt or with insult to public authorities							
1. Elements: (i) offender committed a crime; (ii) in the presence of a public officer; (iii) the offender knew that the person is a public authority; (iv) he is not deterred in committing the crime; (v) the public authority himself is not the victim of the crime.							
(l) Habituality (Reiteracion)							
1. One who has been previously punished: (i) by an offense to which the law attaches an equal or greater penalty; (ii) or for two or more offenses for which the law attaches a lighter penalty.							
2. Appreciation is discretionary on the court.							
(m) Employment of craft, fraud, or disguise CFD							
1. Craft/Fraud – IAC in estafa;							
2. Disguise – (i) the accused must have intended to conceal his identity, the concealment must not be incidental; (ii) QAC in robbery with FUA							
(n) Recidivism							
1. One who at the time of his trial, has been convicted by final judgment of a crime embraced in the same title							
2. c.f.: habituality, quasi-recidivism, habitual delinquent.							
3. Always appreciated.							
<table border="1"> <thead> <tr> <th>Recidivism</th><th>Reiteracion</th></tr> </thead> <tbody> <tr> <td>Previous conviction is sufficient</td><td>Previous conviction is not sufficient; he must have been previously punished of he same</td></tr> <tr> <td>Always appreciated</td><td>Appreciation is discretionary</td></tr> </tbody> </table>		Recidivism	Reiteracion	Previous conviction is sufficient	Previous conviction is not sufficient; he must have been previously punished of he same	Always appreciated	Appreciation is discretionary
Recidivism	Reiteracion						
Previous conviction is sufficient	Previous conviction is not sufficient; he must have been previously punished of he same						
Always appreciated	Appreciation is discretionary						
(o) Wrong done deliberately augmented by other wrong not necessary for its commission							

(p) With insult or in disregard of rank, age, or sex RAS	
1. Crime committed with insult or in disregard of the respect due the offended party on account of his RAS	
2. SiAC in crimes against persons/honor.	
3. RAS not in itself AC, there must be showing of deliberate disregard or disrespect of RAS.	
4. Rank – higher rank;	
5. Age – great discrepancy in age;	
6. Sex – offender is man, offended party is woman.	
(q) Dwelling	
1. Offense committed in the dwelling of offended party , provided the latter has not given provocation.	
2. Provocation which will negate appreciation – (i) given by offended party; (ii) sufficient; (iii) immediate to the commission of the crime.	
3. It need not be deliberately and purposefully sought by accused.	
4. Inherent AC in Robbery with FUA but not in Robbery with VAIP; in trespass to dwelling; in violation of domicile.	
5. Offender party need not be the owner so long as he has right to stay on the place – e.g., lessee, boarder, etc.	
6. May be appreciated even if offense was commenced outside and consummated in the dwelling, or vice versa.	
7. The place must be exclusively devoted for dwelling purposes. If committed in store where the offended party sleeps, cannot be appreciated. The essence of the circumstance is the protection of the sanctity of privacy of residential abodes.	
8. Cannot be appreciated if: (i) offended party gave sufficient provocation; (ii) both offender and offended party lives in the same house.	
(r) Ignominy	
1. The means employed or circumstances brought add ignominy to the natural effects of the act;	
2. SiAC – can be appreciated only in crimes against chastity;	
3. Involves moral suffering.	
(s) With abuse of confidence	
1. Act committed with abuse of confidence or obvious ungratefulness;	
2. IAC in estafa, qualified theft.	
(t) With aid of minors or motor vehicles	
1. With aid of persons <15y, by means of motor vehicles or other means.	
2. May be used to escape from crime scene, or to facilitate the commission of crime.	
3. QAC from homicide to murder.	
(u) Unlawful entry	
1. Committed after an unlawful entry, i.e., when a wall, roof, floor, door, window was broken.	
2. Offender entered the place of commission of crime through means not intended for entry.	
3. IAC in violation of domicile; trespass to dwelling; robbery with FUA.	
e) Alternative Circumstances	
DIR (a) Degree of education or instruction; (b) intoxication;	
(c) relationship	
1. Either (i) mitigating, or (ii) aggravating	
(a) Degree of education or instruction;	
1. Aggravating – (i) if offender possesses high degree of education; (ii) which is used to commit the crime, or to facilitate its commission;	
2. Mitigating – (i) if offender possesses low degree of education and could not have orchestrated the	

commission of crime; (ii) XPN: if crime is wrong regardless of degree of education, e.g., robbery, rape, etc.

(b) Intoxication;

1. Mitigating, if not habitual or intentional;
2. Aggravating – (i) if habitual or intentional; (ii) intoxication is subsequent to resolution to commit a crime to lower inhibitions or bolster courage.

(c) Relationship

1. In crimes against chastity – always aggravating;
2. In crimes against persons – (i) always aggravating; (ii) XPNs: (i) in parricide, IAC; (ii) in slight physical injuries, mitigating if offender is relative of higher degree.
3. In crimes against property – (i) always mitigating; (ii) may be absolutory in case theft, estafa, malicious mischief (see below)

f) Absolutory Causes

(a) Mistake of fact

1. Elements: (i) The facts were lawful had they been what the accused believed them to be; (ii) intention of the accused in performing the act was lawful; (iii) Mistake was not attended with fault or negligence on the part of the accused.
2. Mistake of fact doctrine applies when the accused has no time or opportunity to make further inquiry, and the circumstances pressed him to act immediately.
3. E.g., the accused believed that he may be a victim of a serial killer. One night he noticed a person following him and about to pull something from his waist. He shot and killed the person who turned out not the killer. Mistake of fact can be invoked.
4. Absolutory cause since it negates the element of criminal intent.

(b) Instigation

1. Occurs when police officers induces or lures a person to committing a crime, and who has no intention of committing such were it not for the inducement of the police officers.
2. The accused shall be absolved of CML; the police officers are considered co-principals.
3. c.f.: entrapment

(c) In accessories

1. With respect to HCA the escape of accused in TAMP, or accused known to be habitually guilty;
2. Spouse, as/descendant, sibling, relatives by affinity in the same degree are exempt from liability.

(d) In crimes against property

1. With respect to crimes of theft, estafa, malicious mischief - N.B.: if in other crimes, OMC.
2. Following are exempt: (i) spouse, as/descendant, relatives by affinity in the same degree; (ii) widow with respect to property of deceased spouse before its possession is transferred to another; (iii) siblings and siblings in law, if living together.

(e) Death under exceptional circumstances

1. Elements: (i) A person who surprises (a) his legal spouse, (b) his minor daughter living with him, in the act of sexual intercourse; (ii) he has killed or inflicted serious physical injuries in either or both, while in the act or immediately thereafter; (iii) he has not facilitated the prostitution of his spouse or daughter or has not consented to the infidelity.
2. The offender does not incur CML and punished only with destierro.

(f) Spontaneous desistance

1. With respect to the crime intended, but not for the results of the act before the desistance.

3. Persons Liable and Degree of Participation

a) Principals, Accomplices, and Accessories

(a) Principals

1. Kinds: (i) by direct participation **PDP**; (ii) by inducement **PBI**; (iii) by indispensable cooperation **PIC**
2. Principals are conspirators (agreement and decision), they participated in the criminal resolution

Principal by inducement

1. How done – (i) by force, violence, intimidation **FVI**; (ii) by offering price, reward, promise **PRP**; (iii) by uttering words of command **UWC**
2. By FVI – (i) PBI is liable; (ii) the person induced may invoke exempting circumstances: (a) acting under the compulsion of irresistible force; (b) acting under impulse of uncontrollable fear of equal or greater injury;
3. By PRP – (i) Elements: (a) inducement was intended directly to procure the commission of the crime; (b) the PRP is the determining cause of its commission; (ii) PBI is liable; (iii) person induced is liable PDP. If the crime consists of killing, the crime is murder qualified by price, reward, promise; (iv) aggravating circumstance of PRP is appreciable only to the material executor not the PBI.
4. By UWC (see below)
5. If the crime was not committed, the inducement merely constitutes proposal to commit a crime which is generally not punishable;
6. If crime committed, PBI is the most guilty since the inducement is the determining cause for its commission

PBI; UWC

1. Elements: (i) inducement was intended directly to procure the commission of the crime; (ii) PBI has moral ascendancy over the person induced; (iii) the inducement is the determining cause of commission; (iv) words of command are efficacious, powerful, direct amounting to physical or moral coercion; (v) words of command uttered prior to commission of offense.
2. E.g., (i) “patayin mo” uttered after the crime was committed is not inducement [e]; (ii) “yariin mo na” is efficacious, powerful, direct [d]; (iii) chance words or those uttered in heat of anger are not commands as “take care of the two”.
3. There must exist on the part of the inducer, a positive resolution and persistent effort to secure the commission of the crime, together with the presentation to the person induced of the very strongest kind of temptation to commit the crime.

(b) Accessories

1. Knowledge + concurrence + prior/simultaneous acts
2. Those who are not principals but cooperate in the execution of the offense by previous or simultaneous acts.
3. They did not take part in the criminal resolution but they: (i) have **knowledge** of the criminal resolution; (ii) they **concurred** with the criminal resolution; (iii) they cooperated by previous or simultaneous acts supplying material and moral aid but which acts are not essential for the commission of the crime.
4. They have community of design with the principals, although they did not determine the crime to be committed nor decided its commission.
5. An accomplice is one who did not conspire, and did not participate in the commission of the crime.

Conspirator	Accomplice
They agreed to commit a crime and decided to commit it	They did not take part in the criminal resolution but knew of it and concurred to it after principals agreed and decided
Authors of the crime	Merely instruments who perform acts not essential to commission of the crime
Penalty same as principal	One degree lower
Agreement + decision	Knowledge + concurrence + prior/ simultaneous acts

(c) Accessories

1. Knowledge + subsequent acts
2. Those who (i) having **knowledge** of the commission of the crime (but no participation in the criminal resolution; no community of design); (ii) within having participated either as principal or accomplice; (iii) take part subsequent to the commission of offense
3. **Subsequent participation** – (i) by profiting; (ii) by concealing or destroying the body, effects, instruments; (iii) by harboring, concealing, assisting **HCA** the escape of principal
4. HCA – (i) public officer/EE acting with abuse of official functions; (ii) private person where the principal (a) is guilty of **TAMP** treason, attempt against life of Chief Executive, murder, parricide (not liable if not one of the offenses, but may be liable for obstruction of justice); (b) is known to be habitually guilty of some other crime (final conviction not required)
5. Exemption: if principal is (i) spouse; (ii) ascendant; (iii) descendant; (iv) sibling; (v) relatives by affinity within the same degree. Aunt is not exempt. XPN: with respect to profiting.
6. The exemption also applies to public officials. Death of a spouse does not terminate the relationship created by affinity for purposes of applying the exemption.
7. No accessories in (i) light felonies per RPC; (ii) in crimes of robbery/theft by profiting. Instead, he is considered principal in the crime of fencing⁸

b) Conspiracy and Proposal

Nature: preparatory mental acts to the commission of an offense.

GR: Conspiracy and proposal to commit a felony are not punishable. XPN: if the law specifically provides for their penalty.

(a) Conspiracy

1. When two or more persons come to an **agreement** concerning the commission of a crime and **decided** to commit it.
2. Essence: community of criminal design.
3. May be a means of incurring criminal liability, or a felony itself.
4. As felony – (i) treason; (ii) rebellion or insurrection; (iii) sedition **TRS**; (iv) if the felony was executed, the conspirators will be liable only for the felony, conspiracy is considered means of incurring liability.
5. As means – (i) relevant in determining liability; (ii) elements: (a) agreement to commit an illegal act; (b) overt acts of execution of the illegal act; (c) intent to commit the illegal act; (iii) if conspirators are apprehended before execution, no crime is committed.

6. How proved: prior, simultaneous, and subsequent acts showing community of criminal purpose or design (not necessarily by direct evidence).

Liability

1. Collective liability: the act of one is the act of all. Act of one is imputable to all co-conspirators;
2. All are liable as co-principals; degree and character of participation immaterial and need not be investigated;
3. It is not necessary to join all alleged co-conspirators in the indictment;
4. Requirement for liability: participation in the **criminal resolution**. Even if actual participation took place after commission of the crime (act of accessory).
5. A conspirator not in the place of commission is still liable if it is proved that it is his through moral ascendancy over the other conspirators that the latter are moved to carry out the conspiracy.
6. For special complex crimes. GR: all conspirators are liable for the resulting crimes. XPN: those who did not actually take part in the commission of the other crime endeavored to prevent the same. E.g., robbery with homicide with respect to homicide.
7. If a person who took part in the criminal resolution desisted from performing any act of execution, he is not liable.

Kinds: (i) express or implied; (ii) wheel; (iii) chain

1. Express conspiracy requires proof of actual agreement among co-conspirators to commit the crime.
2. Implied conspiracy – 2 or more persons are shown by their acts to have aimed toward the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, are in fact, connected, cooperative, indicating closeness of personal association and concurrence of sentiments.
3. Presumed conspiracy – presence of the person in the commission of crime is prima facie evidence of his participation as principal, unless he endeavored to prevent the commission of offense or timely reported the same. Applies to hazing of fraternity/sorority, crimes by band.
4. Wheel conspiracy – (i) a single person or group (hub) deals with two or more other persons (spokes) to accomplish a common illegal purpose; (ii) required in plunder, i.e., the public officer must be identified as the one of amassed, acquired, accumulated the ill-gotten wealth by himself or in connivance with others. If there is no common illegal purpose, there are multiple conspiracies.
5. Chain conspiracy – (i) involves successive communication and cooperations among different persons to accomplish a common illegal purpose; (ii) individuals are linked in a vertical chain to achieve a common objective; (iii) usually involved in the distribution of narcotics, contraband.

(b) Proposal to commit a crime

1. A person who has **decided** to commit a felony **proposes** its execution to another person.
2. May be a mode of committing a felony, or a felony itself.
3. As felony – (i) treason; (ii) rebellion or insurrection

c) Multiple Offenses (Differences, Rules, Effects)

(1) Recidivism

(a) One who at the time of his **trial** for one crime (b) have been **previously convicted** by **final** judgment (c) of another **crime** embraced in the same **title** of RPC **T PCF CT**

⁸ Dealing with anything known to him to be derived from robbery/theft.

1. Not a criminal offense but a generic aggravating circumstance
2. No time limit between the previous conviction and the second charge
3. The accused must have been convicted of the second charge; hence **two convictions** are required, both involving crimes embraced in the same title of RPC;
4. If the accused is both recidivist and habitual delinquent – recidivism shall be considered in the imposition of principal penalty, notwithstanding that additional penalty may also be imposed upon him for being a habitual delinquent.
5. No recidivism in treason (crime against national security) and rebellion (crime against public order); also in violation of domicile (crime against fundamental laws of the state) and trespass to dwelling (crime against security)

(2) Habituality (Reiteracion)

- (a) The offender has been previously **punished** (b) for an offense to which the law attaches an equal or greater penalty or (c) for **two** or more crimes to which it attaches a lighter penalty **PAT**
1. Also a GAC.

(3) Quasi-Recidivism

- After conviction** by final judgment for an offense, the accused commits a new felony before serving sentence, or while serving the same. **ACF CNF BW**
1. Special aggravating circumstance; cannot be offset by ordinary mitigating circumstance;
 2. Effect: the penalty for the new felony is imposed in the maximum period;
 3. Offenses need not be embraced in the same title of the Code
 4. First offense may either be punished under RPC or SPL

(4) Habitual Delinquency

- (a) Within a period of **ten** years from the date of his **release** or last conviction (b) of the crimes serious or less serious physical injuries, robo, hurto, estafa, or falsification, (c) he is found guilty of any of said crimes a third time or oftener. **TRL CGT**
1. Extraordinary and special aggravating circumstance;
 2. Effect: imposition of additional penalty, in addition to the penalty for the last crime committed
- (b) Crimes
1. Against persons – serious, less serious physical injuries
 2. Against property – robbery, theft, estafa
 3. Against public interest – falsification
- (c) Found guilty, third time or oftener
1. Requires at least convictions – 3 prior and 1 for the current charge

d) Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders (PD 1829)

- Punishes obstruction of justice
1. Accused frustrates, obstructs, delays, impedes (i) the apprehension of suspects, and (ii) the investigation and prosecution of criminal cases through the acts provided by law.
 2. He acted willfully and knowingly.
- Punishable acts
1. Preventing a witness from testifying or reporting a crime or the identity of accused;
 2. Destruction of evidence;
 3. Harboring, concealing, facilitating the escape of a suspect – N.B.: although he person cannot be held liable as accessory as the crime committed was

- not TAMP or the accused in not known to be habitually guilty, he may still be found guilty for violating PD 1829;
4. Publicly using fictitious name to conceal a crime, prevent prosecution of offense, or execution of judgment;
 5. Delaying prosecution of criminal cases by obstructing service of processes or disturbing proceedings;
 6. Making, presenting, using false document in any official proceeding;
 7. Soliciting, accepting benefits in consideration from abstaining or impeding prosecution of a crime;
 8. Threatening a person to prevent him from appearing in an investigation;
 9. Giving false information to mislead law enforcement officers.

C. Penalties

1. Imposable Penalties [Include: Act Prohibiting the Imposition of Death Penalty in the Philippines (RA 9346)]

Imposable penalties are those prescribed by law prior to the commission of the crime (see Retroactive Effect of Penal Laws)

1. Deprivation of liberty – (i) served in penal establishment; (ii) served outside, if probation granted.
2. Fine – (i) served by payment, or (ii) subsidiary imprisonment.
3. Deprivation of civil and political rights.

Non-imposable penalty – Death

1. Prohibited by RA 9346
2. If death is the imposable penalty, it shall be reduced to RP. Not eligible for parole.
3. If minor offender – (i) subject to graduation; (ii) privileged mitigating circumstances may be appreciated.

Not penalty – preventive imprisonment

1. Not yet convicted by final judgment. Either (i) offense is non-bailable; (ii) accused cannot put up bail.
2. Purpose is to ensure that accused will not flee, and his attendance in hearings.
3. Creditable against penalty ultimately imposed – (i) 4/5, in general; (ii) full credit, if the accused at the start of detention agreed in writing and with assistance of counsel to abide by the rules governing the conduct of prisoners.

2. Classification

(a) Principal; (b) Accessory; (c) Capital punishment; (d) Afflictive penalties; (e) Correctional penalties; (f) Light penalties

(a) Principal penalties: capital, afflictive, correctional, light

(b) Accessory penalties

1. Perpetual or temporary absolute disqualification,
2. Perpetual or temporary special disqualification,
3. Suspension from public office, the right to vote and be voted for, the profession or calling.
4. Civil interdiction,
5. Indemnification,
6. Forfeiture or confiscation of instruments and proceeds of the offense,
7. Payment of costs.

(c) Capital punishment;

1. Death

(d) Afflictive penalties;

1. Reclusion perpetua,
2. Reclusion temporal,
3. Perpetual or temporary absolute disqualification,
4. Perpetual or temporary special disqualification,

5. Prision mayor.

(e) Correctional penalties;

1. Prision correccional,
2. Arresto mayor,
3. Suspension,
4. Destierro.

(f) Light penalties

1. Arresto menor,
2. Public censure.

(g) Penalties common to afflictive, correctional, light

1. Fine, and
2. Bond to keep the peace.

3. Duration and Effects

(a) Duration

RP	20y1d – 40y
RT	12y1d – 20y
PM and temporary DQ	6y1d – 12y*
PC, suspension, destierro	6m1d – 6y*
AMayor	1m1d – 6m
AMenor	1d – 30d
Bond to keep the peace	As determined by the court

*XPN: when DQ/suspension is imposed as an accessory penalty, the direction shall be that of the principal penalty.

(b) Computation

1. If the accused is in prison – from the finality of judgment of conviction.
2. If the accused is not in prison – (i) from the day the offender is placed at the disposal of judicial authorities for the enforcement of the penalty; (ii) other penalties shall be computed from the day when the defendant commences his service of sentence.

Deduction for period of preventive imprisonment

1. Full time served – (i) if accused agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, with assistance of counsel; (ii) XPNs – (a) recidivists; (b) if they failed to surrender voluntarily upon being summoned for execution of sentence.
2. 4/5 of time served – if accused does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, which must be done in writing and with assistance of counsel.

Immediate release

1. If the actual period of accused's preventive imprisonment after GCTA equal to the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated – (i) without prejudice to continuation of trial/appeal; (ii) without prejudice to order of court rearresting the accused in case of absence without just cause at any stage of trial; (iii) XPNs: (a) recidivists, (b) accused who has been convicted previously twice or more of any crime; (c) accused who fails to voluntarily surrender upon being summoned for execution of his sentence; (d) habitual delinquents, (e) escapees and (f) PDL charged with heinous crimes are excluded from the coverage of GCTA.
2. If the accused sentenced with destierro has undergone preventive imprisonment of 30d.

(c) Effects

Absolute disqualification from public office

1. Deprivation of public office or employment.
2. Deprivation of right to vote or to be elected.
3. DQ for public office or employment and exercise of above rights.
4. Loss of right to retirement pay or pension.

****If temporary, [2][3] shall last only during the term of sentence.**

SDQ from public office, profession, calling PoPC

1. Deprivation of PoPC
2. DQ from holding similar PoPC either perpetually or during term of sentence.

SDQ for the exercise of the right of suffrage

1. Deprivation of right to vote in popular election.
2. Deprivation of right to be elected in popular election.
3. DQ to hold public office during the period of sentence.

Suspension from any PoPC, or the right of suffrage

1. DQ from holding Po or similar functions, or exercising PC, or right of suffrage during the term of the sentence.

Civil interdiction

1. Deprivation of the rights of parental authority, or guardianship, of marital authority, of the right to manage his property and of the right to dispose of such property by any act or any conveyance inter vivos.

Bond to keep the peace

1. Two present two sufficient sureties who shall undertake (i) that the person will not commit the offense sought to be prevented, (ii) that in case of commission, they will pay the amount determined by the court in the judgment, or (iii) otherwise to deposit such amount in the office of the clerk of the court to guarantee the undertaking.
2. In case of failure to give bond the accused shall be imprisoned – (i) for ≤6m, in case of less/grave felony; or (ii) 30d in case of light felony.

Right of pardon

1. Doe does not restore right to hold public office or of suffrage. XPN: if expressly restored by the terms of the pardon.
2. Does not exempt from CVL.

4. Application

a) Subsidiary Imprisonment

1. Applies only to fine, but not other pecuniary liabilities.
2. 1d per maximum wage rate in Ph at the time of rendition of judgment of conviction by TC.

Rules

1. If the principal penalty is PC/AMayor/AMenor and fine – (i) ≤1/3 of term of sentence and ≤1y; (ii) fraction of a day shall not be counted against the prisoner.
2. If the principal penalty is fine only– (i) ≤6m, if less/grave felony, or (ii) 15d, if light felony.
3. If the principal penalty is >PC, no subsidiary imprisonment shall be imposed.
4. Applies even if the principal penalty is of fixed duration but is not to be executed by confinement in a penal institution.
5. The service of subsidiary imprisonment does not relieve the accused from payment of the fine in case his financial circumstances should improve.

b) Indeterminate Sentence Law (Act No. 4103, as amended)

ISLAW

1. The imposition of a range of penalties for a crime, in lieu of the fixed period prescribed in the RPC.
2. Purpose is to benefit the accused by prescribing a minimum period of sentence of imprisonment, after service of which he may already apply for parole.

3. Application is mandatory if: (i) the imprisonment exceeds one year and the convict is not disqualified, (ii) but not if its application will lengthen the prison sentence.
4. Straight penalty is proscribed.
5. Applies to offenses under RPC and SPL.
6. Applies only when the penalty imposed is penalty of imprisonment. If destierro, not applicable.

Minimum and maximum periods

1. RPC – (i) Maximum period is based on penalty actually imposed, i.e., after considering mitigating and aggravating circumstances; (ii) Minimum penalty must be within the range of the penalty next lower in degree to that prescribed by the Code, at the discretion of court. XPN: when the accused is entitled to a reduction of his penalty of one or two degrees, e.g., if there are two or more ordinary mitigating without aggravating, or there is privileged mitigating⁹ (limit: shall not be lower than prison correccional). In this case, the minimum shall be within the range of the penalty next lower in degree after mitigation.
2. SPL – (i) maximum shall not exceed the maximum fixed by SPL; (ii) minimum shall not be less than the minimum term prescribed by the SPL. When the SPL adopts the nomenclature of penalties under RPC, the rule shall be that applicable to offenses punishable by RPC.

Disqualified **DTHVEN**

1. Convicted of crimes punishable by death, life imprisonment, reclusion perpetua¹⁰ **DRL**
2. Convicted of treason (including conspiracy, proposal misprision), rebellion, sedition, espionage, piracy **TREPS**
3. Habitual delinquents
4. Those who evaded service of sentence
5. Those who have violated conditions of a pardon
6. Those punished with no more than 1 year of imprisonment; straight penalty shall be imposed. One year or less.

5. Graduation of Penalties

(a) Graduated scales

Scale 1

1. Death*
2. RP*
3. RT
4. PM
5. PC
6. AMayor
7. Destierro
8. AMenor
9. Public censure*
10. Fine

*Indivisible penalties.

Scale 2

1. Absolute DQ (P)
2. Absolute DQ (T)
3. Suspension from public office, right to vote and be voted, right to follow a profession or calling.
4. Public censure
5. Fine

(b) Graduation of penalties

Graduation by degree

⁹ If there is an aggravating circumstance, regardless of the number of mitigating circumstances, the penalty will not be reduced by one degree lower. It will only be imposed in the minimum period.

¹⁰ (i) Not specifically mentioned under Act No. 4103; (ii) reclusion perpetua is indivisible penalty which shall be imposed

1. Stages of execution
2. Extent of participation
3. PMC
4. QAC

	Consummated	Frustrated	Attempted
Principal	0	1	2
Accomplice	1	2	3
Accessory	2	3	4

XPN: When the law specifically prescribes the penalty for a frustrated or attempted felony, or for an accomplice or accessory.

Graduation by period

1. Single indivisible penalty. XPN: PMC
2. Felonies through negligence
3. Penalty is only fine imposed by ordinance.
4. Penalty is prescribed by SPL.

Penalty next lower in degree

Penalty prescribed	Penalty next lower in degree
Single and indivisible	Immediately following
2 indivisible	Immediately following the lesser penalty
1/more divisible imposed to the full extent	"
Two indivisible and the maximum period of another divisible penalty	Medium and minimum period of the divisible penalty and the maximum of immediately following penalty
One indivisible and the maximum period of another divisible penalty	"
3 periods corresponding to different penalties	3 periods immediately following
2 periods corresponding to different penalties	2 periods immediately following
1 periods corresponding to different penalties	Next period immediately following

Aggravation and mitigation

1. Single indivisible penalty shall be imposed regardless of mitigating or aggravating circumstance.
2. Two indivisible penalties – (i) greater penalty if 1AC and no MC; (ii) lesser penalty if (a) there is no AC or MC, or (b) there is 1/more MC, and no AC.
3. Penalty contains 3 periods – (i) medium: if no AC/MC; (ii) maximum: if there is 1/more AC, and no MC; (iii) minimum: if there is 1 MC, and no AC; (iv) penalty next lower in period deemed applicable: if there is 2/more MC, and no AC. If both AC and MC are present, the court shall reasonably offset them.

6. Accessory Penalties

1. Absolute disqualification from public office
2. SDQ from public office, profession, calling PoPC
3. SDQ for the exercise of the right of suffrage
4. Suspension from any PoPC, or the right of suffrage
5. Civil interdiction
6. Bond to keep the peace

**See above for effects of penalties.

D. Execution and Service of Sentence

1. Three-Fold Rule

Service of two or more sentences

1. Simultaneous – if nature of penalties permit.
2. Successive following the order of severity – if otherwise, e.g., imprisonment. Limitation: three-fold rule.

in its entirety regardless of mitigating or aggravating circumstances (no maximum, medium, minimum); (iii) includes those whose penalties will be reduced to RP due to prohibition on imposition of death penalty.

Three-fold rule

1. Maximum duration of the convict's sentence shall not exceed 3x the length of the most severe penalty.
2. Must not exceed 40y.
3. Perpetual penalties shall be computed at 30y.
4. Applied in the service of sentence, not in the imposition of penalty. Hence, the judge must impose all penalties upon the accused in the judgment, subject to the 3FR. The Director of Prisons make the computation to apply 3FR.
5. Does not include fine and subsidiary penalty. If the accused was not able to pay fine, he must serve subsidiary imprisonment.

2. Probation Law (PD 968, as amended)

Law allowing the service of sentence of imprisonment outside prison facilities. It is a disposition which authorizes the release of convict, subject to (i) conditions imposed by court; (ii) supervision of probation officer.

If approved, it suspends the execution of sentence, and the convict shall be placed under probation.

A person may apply if: (i) convicted already; (ii) not disqualified.

Disqualifications: SiNOPAD

1. Maximum imprisonment >6y;
2. Convicted of crime against national security;
3. Those who once availed probation already;
4. Previously convicted by final judgment of crime punished with imprisonment of >6m1d, or fine >1k, or both.
5. Those already serving sentence when law became effective.
6. Under CDDA, those convicted of drug trafficking and pushing are also DQ from availing probation.

Effect of appeal

1. GR: mutually exclusive with application for probation. (i) application for probation is waiver of appeal; (ii) judgment of conviction rendered final upon application;¹¹ (iii) application must be filed with reglementary period for appeal.
2. XPN: if convict appeals a non-probationable penalty, and appellate court modifies penalty to probationable. In several accused, those who did not appeal can benefit from the modification of penalty, and can likewise apply for probation (already expressed in RA 10707).

Penalty considered

1. The penalty considered for probation is that actually imposed on the accused, regardless of the offense charged.
2. If the accused pleaded guilty to a lesser offense, the penalty imposed for such lesser offense shall be considered in the determination of whether he may avail of probation or not.

3. Juvenile Justice and Welfare Act (RA 9344, as amended)

Criminal liability of children

1. ≤15y – absolute exemption;
2. >15 but <18 – (i) exempt, if acted w/o discernment; (ii) liable if acted w/ discernment.
3. Discernment – mental capacity to fully know the nature of one's actions whether right or wrong, and its consequences.
4. Exemption applies only to CML not CVL;
5. Options available to CICL – (i) Intervention; (ii) Diversion; (iii) Automatic Suspension of Sentence;

(iv) Probation; (v) Alternative Service of Sentence.

IDAPA

6. N.B.: Imprisonment of CICL is not prohibited but (i) last resort; (ii) shortest appropriate time.

Intervention

1. (i) <15y; (ii) ≥15y to ≤17y, acting w/o discernment;
2. Series of activities designed to address the issues that caused the CICL to commit an offense.
3. Includes individualized treatment program: counseling, education, training.

Diversion

1. ≥15y to ≤17y, acting w/ discernment;
2. Mandatory program after CICL is found criminally responsible w/o resorting to formal court proceedings;
3. ≤6y, w/ victim: done before law enforcement officer, Punong Barangay in the form of mediation, conciliation, family conferencing;
4. ≤6y, w/o victim: done before local SWD officer;
5. >6y: done by courts only. If ≤12y: court to determine if diversion proper before arraignment.

Automatic suspension of sentence

1. CICL <18y at time of commission but ≤21y at time of conviction;
2. If exactly 21y, CICL is still entitled to suspension.
3. No need for application;
4. Not exempt from CVL, to be determined by court;
5. Applies even if penalty is RP.

Probation

1. To be filed within reglementary period for appeal;
2. Generally, mutually exclusive with appeal;
3. Render final the judgment of conviction upon application;
4. In determining whether qualified for probation, privileged mitigating circumstance of minority shall be appreciated (one degree lower).

Alternative service

1. Convicted CICL may serve sentence in agricultural camps or other training facilities maintained by BuCor, in coordination with DSWD;
2. In lieu of service in regular penal institutions;
3. Applies even if the convict is more than 21y.

4. An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code (RA 10951)

Retroactive application

1. Reduction of penalty shall apply retroactively;
2. XPN: habitual delinquents.
3. In cases pending appeal. CA should modify judgment to reflect penalties under amendatory law.

Amendments

1. To light felonies §9 – punishable by arresto menor or fine ≤40k or both;
2. To classification of penalties §26 – (i) afflictive if >1.2M; (ii) correctional if ≤1.2M but >40k; (iii) light if ≤40k.

5. Community Service Act (RA 11362 and A.M. No. 20-06-14-SC)

Amendment to Art. 88 RPC which authorizes the discretionary imposition of community service to convicted felons in lieu of service of imprisonment.

Available if penalty imposed is arresto menor or arresto mayor.

¹¹ If there is subsequent withdrawal of application for probation, even within the reglementary period, the appeal cannot be entertained as the judgment was already rendered final.

1. AMenor – 1 to 30d.
2. AMayor – 1m1d to 6m.
3. ***If the TC imposed higher penalty but the appellate court reduced the same to not more than AMenor, the accused may apply for community service in lieu of imprisonment with the court of origin.*

Conditions:

1. To be served in the place where crime was committed.
2. Court must indicate service by CS in an order and prescribe the terms: (i) no. of hours and period to complete; (ii) order assignment of probation officer to have responsibility over convict.
3. May be availed only once. An accused who was previously granted probation is not DQ to apply for community service.
4. Must be applied for within the reglementary period for appeal (15d).¹²
5. The period of community service shall not be more than the maximum sentence prescribed by law but should not be less than 1/3. Period of preventive suspension shall be deducted.
6. The accused must not be a habitual delinquent.

Considerations

1. Gravity of offense
2. Circumstances of the case
3. Welfare of the society
4. Reasonable probability that the accused shall not violate the law while rendering the service.

***It is not a matter of right for the accused but a matter of discretion for the court.*

Notes

1. If the accused applied for community service in lieu of imprisonment but was denied, he may still file an appeal, provided the reglementary period has not yet lapsed.

E. Extinction of Criminal Liability

May be total or partial.

Total extinction: DSPAPM (a) death; (b) service of sentence; (c) absolute pardon; (d) amnesty; (e) prescription of crime; (f) prescription of penalty; (g) marriage

(a) Death;

1. Before final judgment – CML including fine,¹³ CVL¹⁴ ex-delicto extinguished. Criminal case shall be dismissed.
2. After final judgment – CML extinguished; CVL ex-delicto not extinguished, may enforced via writ of execution.
3. CVL based on other source (i) not extinguished; (ii) prescriptive period interrupted during pendency of criminal action; (iii) may be enforced by filing separate claim against the estate.

(b) Service of sentence;

(c) Absolute pardon;

1. Executive clemency for whatever reason and does not require acceptance by accused.
2. Given after conviction by final judgment.
3. Available for common crimes.
4. Effects: (i) Civil and political rights: not automatically restored. Must be expressly restored in the grant. Accused not automatically restored to public office; (ii) Civil liability: not extinguished. This is between the accused and private offended party; (iii) Prospective in application. Relieves the

accused of the penalty but does not erase the fact of commission of the crime or its effects.

(d) Amnesty;

1. Also an act of the President, but requires concurrence of majority of all members of Congress. Public act which must be taken judicial notice.
2. Does not require finality of conviction.
3. Available only for political offense, not common crimes. Usually extended to certain classes or persons.
4. Effects: (i) obliterates the criminal offense and all its effects, as if not committed; (ii) civil and political rights are automatically restored.
5. Requires admission of the commission of crime.
6. Once established, its benefits cannot be waived on account of public interest.
7. Applies to all offenses committed in relation to the offense pardoned. E.g., if the accused evaded service of sentence of the crime rebellion, his pardon of rebellion extends to the evasion of service of sentence. He is entitled to issuance of writ of habeas corpus.

(e) Prescription of crime;

1. State loses right to prosecute the offense after lapse of the prescriptive period.
2. Extinction happens by operation of law. if the last day falls on Sunday or Holiday, information cannot be filed on next working day as the offense already prescribed.
3. Prescription of crimes under SPL: (i) governed by: (a) provisions of the SPL; (b) Act No. 3326; (c) RPC; (ii) commences upon its commission or discovery, and the institution of judicial proceeding for its investigation and punishment.
4. Commencement: discovery of crime (not the offender or other witness) by offended party, PIA, or their agents. Hence if commission is unknown, it starts only from its reporting to the police by the witness.
5. For falsification of public document, period commences from the registration of the document.
6. Interruption: filing of complaint/information. GR: filing of complaint with prosecutor's office interrupts prescriptive period, even with investigative bodies as OMB or SEC. XPNs: (i) SPL provides otherwise; (ii) cases under RSP, including violation of ordinances where the information must be filed in court to interrupt the running of prescriptive period. No distinction whether crime is punished by RPC or by SPL.
7. Continuance: termination of proceedings without conviction or acquittal; unjustifiably stopped for reason not imputable to accused.
8. Will not run if offender is absent from Ph. Applies only if felony but not re: crime punished under SPL since Act No. 3326 is silent on the matter.
9. Blameless ignorance doctrine – statute of limitation start to run only upon discover of the fact of invasion of a right which will support a cause of action. If the plaintiff does not know or has not reasonable means of knowing the existence of cause of action, the courts will decline to apply statute of limitations.

(f) Prescription of penalty;

1. State loses right to execute penalties upon lapse of the prescriptive period.
2. Applies only to convicts serving imprisonment.
3. Requisites: (i) conviction by final judgment; (ii) commencement of service; (iii) evasion of service

¹² Within the reglementary period, the accused may (i) appeal, (ii) apply for probation, (iii) apply for community service.

¹³ Criminal Liability.

¹⁴ Civil Liability.

<p>of sentence. It does not run when the accused never commenced serving sentence, or he was convicted in absence.</p> <ol style="list-style-type: none"> 4. Commencement: evasion of service of sentence 5. Interruption: (i) surrender; (ii) capture; (iii) flee abroad without extradition treaty with Ph; (iv) commission of another crime before expiration of period of prescription. 6. Computation is cumulative. If convict evades sentence for the second time, prescriptive period will be added to the period lapse during first evasion. <p>(g) Marriage</p> <ol style="list-style-type: none"> 1. Applicable (i) in private crimes – (a) abduction; (b) seduction; (c) acts of lasciviousness; and (ii) rape 2. Effect: (i) CML and CVL extinguished; (ii) extends to co-accused, i.e., conspirators, accomplices, accessories. XPN: in rape, extends only to the offender. 3. Requisite: marriage must be valid. <p>Partial extinction: PCG (a) conditional pardon; (b) commutation of sentence; (c) good conduct allowance.</p> <p>(a) Conditional pardon;</p> <ol style="list-style-type: none"> 1. Executive clemency which requires acceptance by accused. 2. Given after conviction by final judgment. 3. Effect of violation: (i) revocation of pardon; (ii) criminal liability for evasion of service of sentence [159]. <p>(b) Commutation of sentence;</p> <ol style="list-style-type: none"> 1. Executive clemency reducing the sentence of the accused. 2. Effect: substitution of shorter sentence in place of the longer sentence. <p>(c) Good conduct allowance</p> <ol style="list-style-type: none"> 1. Period of reduction in sentence awarded to the accused for every month of good conduct spent in prison. 2. May be earned during preventive imprisonment or while serving sentence. <p>(d) Special time allowance for loyalty STAL</p> <ol style="list-style-type: none"> 1. Applies in case there is state of public disorder or calamity declared by President: (i) if accused left returned within 48h from declaration of passing, reduction of 1/5 from original sentence; (ii) if accused did not leave, reduction of 2/5 from original sentence. <p>(e) Parole</p> <ol style="list-style-type: none"> 1. Conditional liberty granted to accused upon service of the minimum term of his sentence. 2. Applied with Board of Pardons and Parole. <p>Novation doctrine</p> <ol style="list-style-type: none"> 1. Civil law concept 2. Not one of the modes of extinction of criminal liability but SC has recognized that it may be raised as defense in criminal prosecution if (i) it prevents criminal liability from arising; (ii) casts doubt on the nature of the basic original transaction. 3. To apply, (i) there must be prior contractual relation between the parties; (ii) there was novation either express or implied (incompatibility on all points); (iii) novation effected prior to filing of criminal information. After filing of information, novation will no longer affect criminal liability. Only State has right to waive. 4. Mere payment of obligation before filing of criminal information does not constitute novation that may prevent criminal liability. 	<ol style="list-style-type: none"> 5. Usually invoked in estafa cases where defendant issues check in satisfaction of obligation. Not applicable when check was issued not as payment but only to secure the obligation. <p>1. An Act Amending Articles 29, 94, 97-99 of the RPC (RA 10592)</p> <p>Art. 29. – amended rules on deduction of period of preventive imprisonment from the term of imprisonment (see Computation under Duration and Effects).</p> <p>Art. 94. – included as one of the modes to partially extinguished CML good conduct allowances – (i) while undergoing preventive imprisonment, or (ii) while serving sentence.</p> <p>Art. 97. – Allowance for good conduct AGC</p> <ol style="list-style-type: none"> 1. 20d/month of good behavior MGB, in the first 2y. 2. 23d/MGB, in years 3-5. 3. 25d/MGB, in years 6-10. 4. 30d/MGB, in 11th year and beyond. 5. Additional 15/month of study, teaching or mentoring service time rendered. 6. Appeal shall not deprive the accused of his entitlement to AGC. 7. Applies both to prisoners undergoing preventive detention and convicts serving sentence. <p>Art. 98. – Special time allowance for loyalty STAL</p> <ol style="list-style-type: none"> 1. 1/5 of the period of sentence, if the PDL surrenders within 48h from issuance of proclamation declaring the passing of calamity or catastrophe. 2. 2/5 of the period of sentence, if the PDL stayed in the place of confinement, despite existence of calamity or catastrophe. <p><i>**Calamity or catastrophe means an occasion of disorder resulting from a conflagration, earthquake, explosion, or similar catastrophe, or during a mutiny in which the PDL has not participated.</i></p> <p>Art. 99. – Persons authorized to grant time allowances</p> <ol style="list-style-type: none"> 1. Director of the Bureau of Corrections; 2. Chief of the Bureau of Jail Management and Penology and/or 3. Warden of a provincial, district, municipal or city jail. <p><i>**Allowances once granted shall not be revoked.</i></p> <p>F. Civil Liabilities in Criminal Cases</p> <p>(a) Every person criminally liable for a felony is also civilly liable.</p> <p>(b) Persons exempt from CML are not exempt in CVL in cases of:</p> <p><i>Mitigating circumstances</i></p> <ol style="list-style-type: none"> 1. Imbecile, insane, or minor IIM shall devolve upon – (i) persons having the IIM under their legal authority or control, unless it appears that there was no fault or negligence on their part; (ii) the IIM himself with his own property not exempt from execution, if there is no such person under [i]. 2. Acting under the compulsion of irresistible force or the impulse of an uncontrollable fear – (i) persons using violence or causing the fears shall be primarily liable; (ii) those doing the act shall be liable only in the absence of [i], except their property exempt from execution. <p><i>Justifying circumstance</i></p> <ol style="list-style-type: none"> 1. If a person does an act which causes damage to another to avoid an evil or injury, the persons for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which they may have received.
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(c) Subsidiary CVL

Of innkeepers, tavern keepers and proprietors of establishments

1. For crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees.
2. For the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, if: (i) guests were notified the innkeeper of the deposit of such goods; and (ii) they have followed the directions given them for the care and vigilance over such goods. XPN: in case of robbery with VAIP, unless committed by the innkeeper's employees.

Of other persons

1. Employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

(d) CVL includes

1. Restitution – (i) restoration of the thing itself with allowance for deterioration or diminution of value as determined by the court; (ii) the property may be recovered even from the person who acquired it by lawful means, unless recovery is barred under the law; (iii) if such person [ii] is dispossessed, he has the right of action against the guilty person.
2. Reparation of the damage caused. – (i) amount of damage considering the price of the thing, and its special sentimental value, if applicable; (ii) applies when restitution is no longer possible.
3. Indemnification for consequential damages – includes those (i) caused the injured party, and (ii) suffered by his family or 39 by reason of the crime.

(e) Who are liable

1. The culprit
2. In default of culprit, his heirs.
3. The share of each person CVL shall be determined by the court.
4. Principals, accomplices, and accessories – (i) shall be liable severally (in solidum) among themselves for their quotas; (ii) subsidiaries for those of the other persons liable; (iii) subsidiary liability shall be enforced, first against the property of the principals, accomplices, accessories, respectively. The person making the payment has a right of against the others for their share.
5. Any person who has participated gratuitously in the proceeds of a felony shall be bound to make restitution in an amount equivalent to the extent of such participation.

****The action to demand CVL also devolves to the heirs of the injured persons.**

(f) Extinction and survival

1. Extinguishment in the same manner as obligations under NCC.
2. CVL remains even after service of CML, or even if the accused was not required to serve the same due to amnesty, pardon, commutation of sentence or any other reason.

II. Book II (Articles 114-365 of the RPC) and Related Special Laws

A. Crimes Against National Security and Laws of Nations (Arts. 114-123)

Sec. 1: (a) Treason; (b) Espionage

Sec. 2: (c) Inciting war; (d) Giving motives for reprisals; (e) Violation of neutrality; (f) Correspondence with hostile country; (g) Flight to enemy country;
Sec. 3: (h) Piracy; (i) Mutiny.

(a) Treason (levy, adherence)

1. Elements: (i) offender is Ph citizen or resident alien; (ii) offender owes allegiance to Ph, permanent or temporary; (iii) he (a) **levies war** against Ph, or (b) **adheres** to enemy, giving them aid or comfort. **AE GAC**
2. Wartime crime
3. **AE GAC** – (i) adherence is mental act; (ii) giving aid or comfort is overt act; (iii) both must concur.
4. Two-witness rule – (i) conviction for treason requires (a) the testimony of at least two witnesses to the same overt act; (b) judicial confession of accused; (ii) in 2WR (a) the 2 witnesses must testify to the whole overt act, (b) if separable, there must be 2 witnesses for each part of the act; (iii) witness must testify to the same overt act committed on the same date or occasion, not just an act of similar kind but committed on a different date; (iv) testimonies must be uniform, although they need not corroborate each other; (v) both testimonies must be believed by court.
5. Relevant crimes: (i) Conspiracy and proposal; (ii) Misprision.

Conspiracy and proposal to commit treason

1. Conspiracy – 2+ persons come into an agreement to commit treason and decided to commit it;
2. Proposal – a person decided to commit treason and proposes its execution upon another.
3. 2WR not applicable.
4. If there is overt act, the crime is treason, not conspiracy or proposal.

Misprision of treason

1. Elements: (i) offender owes allegiance to Ph; (ii) he has knowledge of conspiracy to commit treason; (iii) he conceals or fails to report the same to authorities.
2. Act of accessory, but the offender is punished as principal in Misprision of Treason. Exemption from CML for relatives not applicable.

(h) Piracy

1. Robbery on the high seas, done without lawful authority, animus furandi, in the spirit and intention of universal hostility. Piracy is a crime against humanity. No territorial limits, triable on anywhere defendant is found.
2. Elements: (i) vessel is in the high seas or Ph waters; (ii) offenders are not complements or passengers; (iii) (a) they attack or seize the vessel, or (b) seize the cargoes, equipment, personal belongings of complements or passengers.
3. Use of VAIP or FUA is not an element of piracy, it merely qualifies it.
4. If committed by complement or passenger in high seas, crime is robbery. If in Ph waters, piracy under PD 532.

Qualified piracy

1. (i) Seizure of vessel; (ii) firing upon vessel;
2. Abandonment of victim without means of saving themselves;
3. Accompanied by murder, homicide, physical injuries, rape. **HMIR**

1. Anti-Piracy and Anti-Highway Robbery (PD 532)

a) Definition of Terms [Sec. 2]

(a) Piracy

1. (i) Attack upon or seizure of vessel; or (ii) taking of vessel, or its cargoes, equipment, personal

<p>belongings of complement or passengers, regardless of value;</p> <ol style="list-style-type: none"> 2. By means of VAIP, FUA 3. Committed by anyone, including passengers and complement; 4. In the Ph waters – internal, archipelagic, territorial. <p>**Only the attack or seizure need to be committed in Ph waters even if disposition made outside.</p>	
Under RPC	Under PD 532
High seas or Ph waters	Ph waters
Stranger	Anyone, even complements or passengers
Qualified seizure, firing, abandonment, commission of HMIR	Same + other crimes, not limited to HMIR

(b) Highway robbery/brigandage

1. (i) Seizure of a person for ransom, extortion, other unlawful means; (ii) taking of property of another by means of VAIP, FUA;
2. Committed by any person;
3. On any Ph highway.

b) Punishable Acts [Sec. 4]

(a) Piracy
(b) Highway robbery/brigandage
(c) Knowingly aid or protect pirates, highway robbers/brigands, e.g., giving information on police movement
(d) Acquisition or receipt of property taken by them; derivation of benefit
(e) Directly or indirectly abet
**Aiding, benefiting, abetting renders persons liable as accomplice.

2. Anti-Terrorism Act of 2020 (RA 11479, See ATA ruling in *Calleja v. Executive Secretary, G.R. No. 252578, et al.*)

a) Punishable Acts of Terrorism [Secs. 4-12]

(a) Terrorism; (b) Threat to commit; (c) Planning, training, preparing, facilitating; ¹⁵ (d) Conspiracy; (d) Proposal; (e) Inciting; ¹⁶ (f) Recruitment to and membership in terrorist organization; (g) Foreign terrorist; ¹⁷ (h) Providing material support to terrorists. ¹⁸
(a) Terrorism §4;
1. Has extraterritorial application. Filipinos committing Terrorism abroad may be prosecuted in Ph.
2. Punished regardless of state of execution. But mere mental act is not punishable, there must overt act.
3. Three parts: (i) actus reus; (ii) mens rea; (iii) proviso. Parts 1 and 2 are declared constitutional. "Non-intended" clause of part 2 declared unconstitutional.
Actus reus
1. (i) Causing death, serious bodily injury; (ii) endangering a person's life;
2. Causing extensive damage to government public facility, public place, private property;
3. Causing extensive interference with damage to critical infrastructure;
4. Developing, manufacturing, possessing, acquiring, transporting, supplying using weapons (including

¹⁵ Including: (i) possession of objects related to preparation; (ii) collection/making documents.

¹⁶ (i) Did not take part in terrorist activities; (ii) but incites another using speeches, emblems, representations.

¹⁷ Travelling or facilitating the travel of persons to foreign countries to commit, plan, prepare, participate in terrorist

biological, chemical, nuclear, radiological) and explosives
5. (i) Releasing dangerous substances; (ii) causing fire, flood, explosions.
Mens rea CIPESU
1. Creation of atmosphere or spreading message of fear;
2. Intimidation of general public;
3. Provocation of government or international organization;
4. Creation of public emergency;
5. Serious destabilization of political, economic, social structures of the country;
6. Undermining public safety.
Proviso
1. Terrorism excludes: PADISO protest, advocacy, dissent, industrial or mass action, stoppage of work, other similar exercise of civil and political rights. Constitutional.
2. Non-intended clause. (i) to be excluded, the PADISO must not be intended to cause death, serious physical harm, endanger life, create serious risk to public safe; (ii) declared unconstitutional – ACS (a) ambiguous and vague, no judicial standard and gives law enforcers unbridled discretion; (b) chilling effect; (c) shifts burden to citizens to explain his intent, contrary to rule that government has burden on proving the unconstitutionality of free speech.
(f) Recruitment to and membership in terrorist organization §10;
1. Two crimes: (i) Recruitment to terrorist organization; (ii) Membership in terrorist organization
Recruitment
1. Punishable acts: (i) Recruitment of persons to join, support an individual terrorist or organization, group, association OGA (a) proscribed in §26, (b) designated by UNSC as TO, (c) OGA organized for the purpose of engaging in terrorism OPET .
2. May be done through recruitment to serve in armed forces of foreign state, publication of ads.
Membership
1. Elements: (i) voluntarily and knowingly joining an OGA; (ii) with knowledge that the OGA is prohibited.
2. Prohibited OGA: (a) those declare TO under §26; (b) designated by UNSC as TO; (c) OPET . (a) and (b) are constitutional, (c) is unconstitutional .
3. (a) §26 – (i) DOJ may apply with CA for the declaration of an OGA as TO; (ii) standards: OGA commits acts of terrorism, or OPET; (iii) OGA must be given due notice and opportunity to be heard.
4. (c) Unconstitutional – (i) impermissibly vague, no judicial standards to determine when an OGA is OPET; (ii) gives law enforces unbridled discretion; (iii) facilitates fabrication of charges.
Designation and proscription
Designation
1. Designation – classifying groups as Anti-Terror Groups
2. 3 modes – (i) Automatic adoption of UNSC Consolidated List; (ii) Upon request for designation to ATC based on criteria laid down by UNSC; (iii)

activities. Including travel of any person to Ph for the same purposes.

¹⁸ (i) Requires knowledge that the persons given support are committing or planning to commit terrorist activities; (ii) provider shall be liable as principal.

<p>By ATC upon probable cause to make such designation.</p> <p>3. Only the first mode was constitutional. Modes 2/3 was declared unconstitutional as (i) there was no standard in denying/granting request [ii], also no discernible criteria as to what constitutes probable cause [iii]; (ii) there was no remedy in case of improper designation; (iii) means employed is not narrowly tailored; (iv) produces chilling effect against freedom of association.</p>	
<p>Proscription</p> <p>1. Judicial declaration of persons, organizations, or terrorists upon petition to CA.</p> <p>2. This is constitutional since due process requirements are observed.</p> <p>3. It passes through three levels of investigation even before the filing of application with CA – (i) when DOJ asks for authority from ATC to file the application; (ii) when ATC asks NICA to give its recommendation; (iii) executive determination by ATC before authorizing the DOJ to file the petition.</p> <p>4. 18</p>	

b) Who are Liable [Secs. 3 (l) & (m), 14]

<p>(a) Terrorist individuals – natural persons committing terrorist activities;</p> <p>(b) Terrorist AGO – (i) Under §26; (ii) Designated by UNSC as TO; (iii) OPET (unconstitutional)</p> <p>(c) Accessories</p> <p>1. (i) Those who have knowledge of commission of terrorist activities but did not participate in commission; (ii) participate by subsequent acts.</p> <p>2. Subsequent acts: (i) profiting or assisting; (ii) concealing, destroying crime, effects, instruments to prevent discovery; (iii) harboring, concealing, assisting the escape of principals.</p> <p>3. No exemption provided.</p>	
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c) Surveillance of Suspects and Interception and Recording of Communications [Sec. 16]

<p>Allows by wiretapping, interception, recording of private communications, data, information</p> <p>1. Between members of judicially declared TO §26;</p> <p>2. Between members of designated persons defined in Sec. 3(e) of RA 10168;</p> <p>3. Any person charged or suspected of committing terrorist activities.</p> <p>XPNS:</p> <p>1. Lawyer-client</p> <p>2. Doctor-patient</p> <p>3. Journalist-confidential source</p> <p>Requirement – Law enforcer or military agent must apply ex-parte with CA with notice to NTC for issuance of Order</p>	
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d) Detention Without Judicial Warrant [Sec. 29]

<p>Sec. 29 of ATA constitutes an exception from CML for the delay of delivery of prisoners under Art. 125 RPC.¹⁹</p> <p>1. But not an additional ground for warrantless arrest. There must be a prior valid arrest (either with warrant or warrantless).</p> <p>2. Declared constitutional.</p> <p>Requirements:</p> <p>1. Taking in custody a person suspected to committing terrorist activities;</p> <p>2. Authorization in writing by ATC to detain the person up to 14 days before delivering to judicial authorities from time of taking to custody.</p>	
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¹⁹ Prescribes time period for delivery of arrested persons to judicial authority of 12, 18, 36 hours for offense punished by

<p>3. Authorization is obtained by submitting a sworn statement indicating the (i) details of the person; (ii) circumstances of taking him in custody.</p> <p>4. Extension allowed if: (i) not more than 10d; (ii) necessary for (a) preservation of evidence, (b) completion of investigation, (c) prevention of commission of further acts of terrorism; (iii) investigation is being conducted without delay.</p>	
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e) No Torture or Coercion in Investigation and Interrogation [Sec. 33]

<p>Torture, other cruel, inhuman, degrading treatment or punishment during investigation or interrogation is absolutely prohibited.</p> <p>Effects of violation</p> <p>1. Prosecution under Anti-Torture Act;</p> <p>2. Exclusion/inadmissibility of evidence obtained in any judicial, QJ, legislative administrative proceeding.</p>	
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B. Crimes Against the Fundamental Laws of the State (Arts. 124-133)

<p>**Offender is generally public officer/EE since these crimes consist in the violation of Bill of Rights, which is intended to protect the individual from arbitrary acts of the State.</p> <p>Sec. 1: (a) Arbitrary detention; (b) Delay in delivery of prisoners; (c) Delaying release; (d) Expulsion</p> <p>Sec. 2: (e) Violation of domicile; (f) Search Warrant Maliciously Obtained; (g) Abuse in the service of legally obtained warrants; (h) Searching domicile without witness</p> <p>Sec. 3: (i) Prohibition, interruption, dissolution PID of peaceful meetings</p> <p>Sec. 4: (j) Interruption of religious worship; (k) Offending religious feelings</p> <p>(a) Arbitrary detention</p> <p>1. Elements – (i) Offender is public officer/EE having the duty to make the arrest or detention; (ii) he detains a person; (iii) the detention is without legal ground.</p> <p>2. Legal grounds for detention – (i) commission of crime; (ii) detention of persons suffering from violent insanity or has contagious ailment; (iii) valid warrantless arrests under CrimPro.</p> <p>3. A private person may also be held liable if he conspires with the public officer.</p> <p>4. c.f.: kidnapping</p>									
<table border="1"> <thead> <tr> <th>Arbitrary detention</th><th>Kidnapping</th></tr> </thead> <tbody> <tr> <td>Crime against fundamental laws of the State</td><td>Crime against personal liberty and security</td></tr> <tr> <td>Offender is public officer or EE</td><td>Offender is a private person</td></tr> <tr> <td>Offender may be a private person if he conspires with the public officer</td><td>Offender may be a public officer if – (i) he is not authorized under the law to make an arrest; (ii) he did not act in pursuant with his duties under the law (acted in private capacity); (iii) he conspired with private person; (iv) if the purpose is to extort ransom.</td></tr> </tbody> </table>	Arbitrary detention	Kidnapping	Crime against fundamental laws of the State	Crime against personal liberty and security	Offender is public officer or EE	Offender is a private person	Offender may be a private person if he conspires with the public officer	Offender may be a public officer if – (i) he is not authorized under the law to make an arrest; (ii) he did not act in pursuant with his duties under the law (acted in private capacity); (iii) he conspired with private person; (iv) if the purpose is to extort ransom.	
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<p>(b) Delay in delivery of prisoners</p> <p>1. Elements – (i) offender is a public officer having the duty to make an arrest under the law and deliver the detainee to the proper judicial authorities; (ii) he detained a person for some legal ground; (iii) he failed to deliver the person to proper legal authorities within the prescribed periods.</p>									

light, correctional, afflictive penalties. Otherwise, officer is liable for arbitrary detention.

2. Prescribed periods: 12-18-36 – (i) 12h for offenses punishable by light penalties; (ii) 18 by correctional penalties; (iii) 36h by afflictive or capital penalties.
3. Delivery to property judicial authority means the filing of information in court after PI/inquest, not physical delivery of the person.
4. Non-office days are not counted.
5. The nature of the offense precludes participation of private persons.
6. Under ATA, suspected terrorists may be detained for up to 14d, extendible for up to 10d upon proper approval. This is considered an XPN to Art. 125 RPC but did not constitute additional ground for warrantless arrest.

(e) Violation of domicile

1. Elements – (i) Accused is a public officer/EE having the duty to conduct searches and seizure or implement a search warrant; (ii) he was not authorized by judicial warrant; (iii) he performs any of the prohibited acts.
2. Prohibited acts – (i) he enters some domicile against the will of the owner; (ii) he searches papers, other effects in the house without previous consent of the owner; (iii) he refuses to leave upon being required to do so after having entered the house surreptitiously.
3. Modes of commission – (i) entering the dwelling of a person against his will, or making search without his previous consent; (ii) maliciously obtaining search warrants and committing abuses in the service of those legally obtained; (iii) searching domicile without witnesses.

Violation of domicile	Trespass to dwelling
Crime against the fundamental Laws of the State	Crime against fundamental liberty and security
Offender is a public officer or EE having the duty to conduct searches and seizure or implement a search warrant	Offender is a private person

(j) Interruption of religious worship

1. Elements: (i) offender is public officer/EE; (ii) religious ceremonies or manifestations are ongoing or about to take place; (iii) he prevents or disturbs the same
2. Bible study is not religious ceremony. Crime committed in PID of peaceful meetings.
3. May or may not offend the feelings of the faithful. Not an element.

(k) Offending religious feelings

1. Elements: (i) offender is private person or public officer/EE; (ii) he commits acts notoriously offensive to the feelings of the faithful **NOFF**; (iii) (a) in a place of worship or (b) during celebration of religious ceremony
2. Acts in place of worship – e.g., passage of funeral in Church yard despite opposition.
3. Acts **NOFF** must be directed against the religious belief or dogma for purposes of ridicule, mockery, scoffing, destroying religious icon. Prompted by religious hatred. E.g., prevention of persons from participating in religious procession.
4. Question of fact based on the perception of the faithful who belongs in the religious congregation.
5. Not **NOFF** – (i) constructing a fence which disrupts pabasa; (ii) slapping a priest is slander by deed.

1. Anti-Torture Act of 2009 (RA 9745)

a) Acts of Torture [Sec. 4]

Inflicted by person in authority or agent of a person in authority upon another in his/her custody.

(a) Physical torture

1. Causing severe pain, exhaustion, disability or dysfunction of one or more parts of the body.

2. Includes: food deprivation, feeding spoiled foods, rape, sexual abuse, mutilation, extraction of teeth, fingernails, use of psychoactive drugs to change the perception, memory.

(b) Mental/Psychological Torture

1. Calculated to affect or confuse the mind and/or undermine a person's dignity and morale.
2. Includes: threatening the person's relatives, solitary confinement, prolonged interrogation, denial of sleep, shame infliction.

(c) Rule on non-absorption

1. Torture shall not absorb or shall not be absorbed by any other crime of felony committed as a consequence, as a means of in the conduct or commission thereof. It shall not also be complexed with such crimes.
2. It shall be treated as a **separate and independent criminal act** whose penalties shall be imposable **without prejudice** to any other criminal liability provided for by domestic and international laws.

c.f.: Maltreatment of prisoners

1. Elements – (i) offender is public officer/EE having charge of detention/prisoner; (ii) overdo himself in the correction or handling such prisoner (a) by imposing punishment not authorized by the regulations, or (b) by inflicting such punishment in a cruel and humiliating manner; (iii) purpose is to extort confession or obtain some information from the prisoner.
2. CML shall be **in addition** to the liability for the physical injuries caused to the victim.
3. E.g., If a police officer tries to extort confession from a detention prisoner by punching the latter causing him to lose his left eye – the offenses committed include: (i) serious physical injuries; (ii) maltreatment of prisoners; (iii) torture.

b) Who Are Criminally Liable [Sec. 13]

(a) As principals

1. By previous or simultaneous acts through – (i) actual participation, (ii) inducement; (iii) indispensable cooperation.
2. By issuing orders – superior military, police or law enforcement officer or senior government official who issued an order to any lower ranking personnel to commit torture.
3. By immediate superiors – (i) if by their act or omission, or negligence have led, assisted, abetted or allowed the commission of torture by his/her subordinates; (ii) if they know or ought to know the acts of torture, but failed to take preventive or corrective actions when he/she has the authority to do so, whether deliberately or due to negligence.

(b) As accessory

1. Public officer or employee without having participated, takes part subsequent to its commission with the abuse of the official's public functions.
2. Subsequent participation – (i) profiting from or assisting the offender to profit from the effects; (ii) concealing the act of torture; (iii) HCA in the escape of the principal/s,

C. Crimes Against Public Order (Arts. 134-160)

Sec. 1: (a) Rebellion or insurrection; (b) Coup d'etat; (c) Disloyalty of public officers/EEs; (d) Sedition

Sec. 2: (e) Act tending to prevent the meeting of Congress and other similar bodies; (f) Disturbance of proceedings; (g) Violation of parliamentary immunity;

Sec. 3: (h) Illegal assemblies; (i) Illegal associations

Sec. 4: (j) Assault; (k) Disobedience to summons; (l) Resistance or disobedience

Sec. 5: (m) Disturbance of public order; (n) Tumults; (o) Unlawful publication or utterance; (p) Alarms and scandal; (q) Delivering persons from jail

Sec. 6: (r) Evasion of service of sentence; (s) Other cases of ESS

Sec. 7: Commission of another crime during service of penalty imposed for another previous offense (quasi-recidivism)

(a) Rebellion

1. Elements – (i) There is public uprising; (ii) there is taking of arms against the government; (iii) for any of the purposes of rebellion.
2. Purposes of rebellion. – (i) to remove from the allegiance of the government or its laws (a) the territory of the Ph or any part thereof; (b) any body of land, naval or other armed forces; or (ii) to deprive the Chief Executive or Congress of their powers or prerogatives, wholly or partially.
3. There is not attempted rebellion. – once there is taking arms against the government for the purposes indicated, the crime is already consummated, even if there is no actual clash between the rebels and the officers of the government.
4. Mere membership in a group dedicated to the furtherance of rebellion is not sufficient for conviction. c.f.: under ATA, mere membership in a terrorist group is already punishable.
5. All common crimes committed in the course or in furtherance of the rebellion are absorbed, whether punished under the RPC or SPL. – (i) they cannot be prosecuted separately; (ii) they cannot be complexed; (iii) the burden to prove that the common crime was committed with political or social motivation is upon the accused, even if the person is a member of a rebellious group.
6. Continuing crime. – an accused previously charged of rebellion may be arrested even without the benefit of a warrant since the crime for past arrest is deemed to continue to the present.
7. Conspiracy and proposal to commit rebellion or insurrection are already punishable.

(b) Coup d' etat

1. Elements – (i) Offender is a person belonging to the military/police, or holding any public office or employment, with or without civilian support or participation; (ii) committed by means of swift attack, accompanied by violence, intimidation, threat, strategy, stealth VITSS, singly or simultaneously carried out anywhere in the Ph; (iii) attack is directed against (a) duly constituted authorities of the RP; (b) any military camp or installation; (c) communication networks; (d) public utilities or other facilities needed for the exercise and continued possession of power; (iv) purpose of the attack is to seize or diminish state power.
2. Doctrine of absorption also applies. XPN: Service-connected punitive acts under the Articles of War applicable to enlisted personnel of the AFP which are sui generis proceedings intended for the discipline of the ranks.

(d) Sedition

1. Elements – (i) Offenders rise (a) publicly and (b) tumultuously, (ii) they employ force, intimidation,

other means outside of legal methods; (iii) for one of the objectives of sedition.

2. Objectives – (i) To prevent the promulgation or execution of any law or the holding of any popular election; (ii) To prevent the national/local government, or any public officer from freely exercising his functions; prevent the execution of any administrative order; (iii) To inflict any act of hate or revenge upon the person or property of any public officer/EE; (iv) To commit any act of hate or revenge against private persons or any social class, for any political or social end; (v) To despoil any person, municipality or province or the national government or its properties, for any political or social end.

Sedition	Rebellion
(a) public uprising; (b) purposes of sedition; taking of arms against the government is generally not required	See elements
Social or political purposes	Always political purpose
Not continuing crime	Continuing crime

Inciting to sedition

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

(j) Assault

1. Persons in authority PIA – (i) persons directly vested with jurisdiction; (ii) includes barangay captain or chairman; (iii) local chief executives, judges, prosecutors, members of lupong tagapamayapa (iv) teachers, in-charge of schools; (v) lawyers in actual performance of professional duties or on its occasion.
2. Agent of PIA – (i) persons charged with the maintenance of public order, protection and security of life or property; (a) by direct provision of law, election, or appointment; (b) includes barangay councilman, barrio policeman, barangay leader; (ii) persons coming to the aid of person in authority.
3. Either direct or indirect.

Direct assault

1. Two forms:²⁰ Form 2 is relevant.
2. Elements: APEKN (i) offender (a) attacks, (b) employs force, (c) seriously intimidates or (d) seriously resists; (ii) a PIA or his agent; (iii) while engaged in the performance of official duties EAPOD, or by reason of past performance of official duties; (iv) offender knew that the person is PIA or agent; (v) no public uprising.
3. EAPOD – (i) need not be performing actual duties at time of assault; (ii) if in the office or work premises, or even going to office.
4. Importance of motive – (i) if EAPOD, not material; (ii) if by occasion of performance, material since the PIA or agent is not in the EAPOD.
5. If PIA – (i) direct assault, if there is serious intimidation or resistance; (ii) qualified direct assault, if there is laying of hands.
6. If agent – (i) direct assault, if there is laying of hands or employment of serious force; (ii) resistance or serious disobedience, if not serious.

²⁰ Form 1: (i) employment of force/ intimidation; (ii) to attain purposes of rebellion/ sedition; (iii) no public uprising.

7. Qualifying circumstances – (i) committed by weapon; (ii) offender is public officer/EE; (iii) offender lays hand on PIA.
8. Complex crime: (i) the resulting crime must have causal connection with the direct assault; (ii) if resulting in death, qualifying circumstance may be appreciated, e.g., “direct assault with murder”

Indirect assault

1. Elements: (i) PIA or agent is subject to assault; (ii) a person comes to aid; (iii) offender uses force or intimidation to person coming to aid of PIA or agent.

(l) Resistance or serious disobedience

1. Elements: (i) PIA or agent is EAPOD or issues a lawful order to offender; (ii) offender resists or seriously disobeys the PIA or agent; (iii) crime is not in/direct assault, or disobedience to summons.
2. “Lawful order” – (i) pertains only to direct orders to offender and not laws of general character; (ii) also not applicable to judicial decisions.

Employed	PIA	Agent of PIA
Serious intimidation or resistance	Direct assault	Resistance and disobedience to agents of PIA
Serious force or laying of hands	Qualified direct assault	Direct assault

(p) Alarms and scandal

1. Elements – (i) Offender performs an act or behaves disorderly in public; (ii) his act tends to cause public alarm and scandal.
2. N.B.: Use of firearm is no longer a mode of committing the crime.

(q) Delivering persons from jail

1. Elements: (i) there is a person confined in jail or penal establishment; (ii) a person (a) removes said person from jail or (b) helps him escape.
2. Qualifying circumstances – use of force, intimidation, bribery. If bribery is used as means, no separate crime of bribery.
3. Offender – usually an outsider, not a prisoner or person having custody of the escapee;
4. Crime committed by escapee: (i) if convict by final judgment serving sentence, evasion of service of sentence; (ii) if detention prisoner, no CML.
5. Hospital or asylum where prisoner is detained is extension of jail.
6. c.f.: acts of accessory in harboring, concealing, assisting the escape of a person (a) guilty of TAMP; (b) habitually guilty of other crimes. If the crime is one of the foregoing, the offender is an accessory in the crime not a principal in delivering persons from jail.
7. c.f.: infidelity in the custody of prisoners – (i) the offender is an officer having custody of the escapee; (ii) he consented to or connived in the escape.

(r) Evasion of service of sentence

1. Elements – (i) the offender is a person convicted by final judgment; (ii) he is serving sentence in a penal establishment; (iii) he evades the service of his sentence.
2. A person under preventive detention cannot be held liable.

Other forms of evasion

1. On occasion of disorder resulting from a conflagration, earthquake, explosion, or similar catastrophe, or during a mutiny in which he has not participated – (i) if the convict fails to surrender within 48h proclaiming the passage, he

shall suffer increase of penalty of 1/5 of the remaining time to be served, not exceeding 6m; (ii) if he returns within the same 48h, he shall be entitled to a STAL of reduction of 1/5 of his remaining sentence; (iii) if he did not leave, he shall be entitled to a STAL of reduction of 2/5 of his remaining sentence.

2. Violation of conditions of a pardon. – if the penalty remitted is >6y, he shall suffer the unexpired portion of his original sentence.

1. Comprehensive Firearms and Ammunition Regulation Act (RA 10591)

(a) Unlawful acquisition, possession of firearms and ammunition

1. Proof of lack of license to carry firearm – (i) negative certification from PNP; (ii) testimony of PNP representative; (iii) judicial admission of accused; (iv) other means admissible under ROC. Negative certification from PNP is not the only means to prove lack of license.
2. Firearms obtained by virtue of search incident to warrantless arrest (buy-bust) is admissible in evidence for the prosecution of illegal possession of firearms.
3. If the firearm is loaded with ammunition, the penalty is increased by one degree.

(b) Use of loose firearm in the commission of a crime

1. Loose firearm – (i) unregistered; (ii) obliterated or altered; (iii) lost, stolen, destroyed, illegally manufactured; (iv) registered but in the possession of an individual other than licensee; (v) with revoked license.
2. Aggravating; (i) if inherent in commission of crime RPC SPL; (ii) under RPC discharge of firearms; (iii) penalty is higher between the penalty for illegal use of firearms and maximum penalty under the law, whichever is higher. If equal, additional penalty of prison mayor.
3. Distinct offense, if not inherent
4. Absorbed, in rebellion, insurrection, attempted coup d' etat. **RIAc**

(c) Absence of permit to carry outside residence

(d) Unlawful manufacture, importation, sale, disposition; including tools, instruments for manufacture;

(e) Arms smuggling

1. Cross-border import, export, acquisition, sale, delivery, movement or transfer of firearms; parts and components and ammunition
2. Not authorized in the domestic law of either country

(f) Tampering, obliteration, alteration of firearms identification

(g) Use of imitation firearms

(h) Planting evidence

1. Willful, malicious insertion, placement, attachment of firearms in persons, houses, effects
2. To incriminate an innocent person

(i) Failure to notify lost or stolen firearm, light weapon

(j) Illegal transfer/registration of firearms

D. Crimes Against Public Interest (Arts. 161-187)

Sec. 1(1): (a) Counterfeiting Great Seal of GRP, (b) Forging signature or stamp of CE.

Sec. 1(2): (c) Making, importing, uttering false coins; (d) Mutilation of coins, IU of mutilated coins; (e) Selling false, mutilated coins.

Sec. 1(3): (f) Forging TBNODPB, IU false TBNODPB; (g) Counterfeiting instruments not PB; IU; (h) Illegal possession or use of FTBN and other credit instruments; (i) Forgery.

Sec. 1(4): (j) Falsification of legislative documents; (k) Falsification of public documents; (l) falsification of private or commercial documents.

Sec. 1(5): (m) False certificates.

Sec. 1(6): (n) MIP instruments or implements for falsification

Sec. 2(1): (o) Usurpation of authority or official functions; (p) Using fictitious names, concealing of true name; (q) Illegal use of uniform, insignia.

Sec. 2(2): (r) False testimony

Sec. 3(1): (s) Machinations in public auctions; (t) Monopolies, CIRT.

Sec. 3(2): (u) Importation, disposition of articles made of precious metals; (v) Substituting, altering TM, TN, service marks; (w) Unfair competition.

(k) Falsification of public documents

1. May be committed with abuse of official position, or by private person.

Acts of falsification

1. Counterfeiting, imitating handwriting, signature, rubric.
2. **Causing it to appear that a person participated in any act, proceeding when they did not in fact so participate.** E.g., making it appear that the owner of the property sold his land, being named in the deed of sale, when he did not in fact sold his property.
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them.
4. **Making untruthful statements in a narration of facts** – must not be in the form of an affidavit; may be in the police report or blotter. Elements: (i) offender makes in a public document untruthful statements in a narration of facts; (ii) s/he has legal obligation to disclose the truth of the facts narrated; (iii) the facts narrated are absolutely false.
5. **Altering true dates** – But if a person altered the entry in a cedula to correct his date of birth, there is no falsification of public document.
6. Making any alteration or intercalation in a genuine document which changes its meaning.
7. Issuing in an authentic form, a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original.
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

With abuse of official position

2. Elements 171[2]– (i) offender is public officer/EE, NP or ecclesiastical minister; (ii) he takes advantage of his official position; (iii) he commits acts of falsification under Art. 171.
3. Taking advantage of official position – (i) they had the duty to make/prepare/intervene MPI in the preparation of the document; or (ii) they had official custody of the falsified document. If public officer not holding the mentioned position, he may still be convicted of falsification of public document by private person.
4. Intentional felony which cannot be committed by negligence. There is no falsification of documents through reckless imprudence. E.g., Signing DTRs indicating that they worked from 8:00am to 5:00pm as requirement for the payment of wages as advised by the accounting department does not constitute the crime of falsification of public document absent malicious intent.
5. ITG is not an element, as what is punished is the damage to the public character of the document.

6. Private document which was falsified before it was notarized does not negate the nature of crime as falsification of public document if the person who falsified the same had the same notarized, or some person who had knowledge of the falsification.
7. Affidavit is an ex parte declaration by a person of certain facts. It is merely a narration or assertion of something – not considered a document for purposes of applying Art. 171.

(r) False testimony

Perjury

1. Elements: (i) Statement or affidavit upon a material matter done under oath; (ii) done before a competent officer authorized to receive and administer oaths; (iii) willful and deliberate falsity; (iv) the statement or containing falsity is **required by law**
2. Modes of commission: (i) by giving false testimony; (ii) by making false affidavit.
3. Applicable to: SALNs, affidavits, PDS (CS Law), or even if the execution of document is not required by law if its submitted for a legal purpose
4. Not applicable to: Counter-affidavits
5. Answer to complaint – (i) not applicable, if filed under regular procedure which is not required to be verified (>2M); (ii) applicable, if filed under RSP which is required to be verified (≤2M)
6. Material fact: (i) tend to prove; (ii) corroborate; (iii) affect the credibility of a witness.
7. **Mere contradictory statements** are not sufficient proof of perjury. Prosecution must prove: (i) which of the statements is false; (ii) proof of falsity other than the contradictory statements.
8. If a document containing untruthful statement in a narration of fact was notarized, the crime committed is perjury. Otherwise, falsification.

E. Crimes Relative to Opium and Other Prohibited Drugs

1. Comprehensive Dangerous Drugs Act of 2002 [RA 9165, as amended by RA 10640; Section 21 of the Implementing Rules and Regulations (IRR) only]

(a) Illegal possession of dangerous drugs

1. Malum prohibitum
2. Requires animus possidendi – knowing, free, intentional, conscious **KFIC** possession. N.B.: if the driver merely followed the instruction of a passenger to drop off the package without knowing the package and without any suspicious circumstance, he cannot be held liable.
3. Actual or constructive possession
4. Prosecution to prove: (i) elements of the crime; (ii) corpus delicti.
5. Use of illegal drugs is absorbed in the crime of illegal possession. The accused cannot be charged separately for possession and use. If he tested positive, he shall be charged of illegal possession only since he was caught in the act of possession, not of use.
6. If drugs were found in shared cabinet, the co-owners is deemed to have possession of the same.

(b) Use of illegal drugs – cannot be prosecuted if the act was not committed in the Ph.

(c) Importation of regulated drugs

1. Committed by bringing a regulated drug in the Ph without legal authority.
2. Illegal possession necessarily includes importation. The owner of the item at the time it enters Ph territory is the importer and possessor.
3. Possession is an element of importation.
4. Possession may be actual, legal or constructive.

(d) Sale of illegal drugs

<ol style="list-style-type: none"> 1. Elements – (i) identity of buyer and seller, object of sale, consideration; (ii) delivery of thing sold and payment. 2. There must be proof of consummation of the sale. 3. It is not sufficient to prove the elements of the sale, the corpus delicti must be presented, and its identity and integrity must be duly established <p>(e) Availability of probation</p> <ol style="list-style-type: none"> 1. Drug trafficking or pushing – not available §24. 2. Possession or use – available. BUT if the accused already appealed his judgment of conviction, he is no longer entitled to probation.²¹ 3. Policy of the law is to impose harsher penalties to traffickers who are considered predators, and leniency in favor of youthful users or possessors. <p>(f) Minor offenders</p> <ol style="list-style-type: none"> 1. GR: RPC provisions are not applicable in R.A. No. 9165 prosecutions (express provision under Sec. 98). 2. XPN: Minor offenders – (i) if penalty imposed is LI to death, the proper penalty should be reclusion perpetua to death §98; (ii) penalty can be graduated; (iii) minority can be appreciated as privileged mitigating circumstance (one degree lower, RT); (iv) Indeterminate Sentence Law also applicable, minimum period shall be the penalty next lower in degree and maximum shall be medium period of RT. <p>(g) Entrapment v. Instigation</p> <ol style="list-style-type: none"> 1. Entrapment – (i) employment of means to trap or capture the offender in the act of committing the crime; (ii) the criminal intent or design originates from the offender without inducement; (iii) accused cannot justify his conduct. 2. Instigation – (i) means by which the accused is incited or lured in the commission of an offense to prosecute him; (ii) the accused has no criminal intent and would not have committed the offense were it not for the inducement, police officers act as co-principals; (iv) accused should be acquitted. <p><i>Buy-bust operation</i></p> <ol style="list-style-type: none"> 1. Valid form of entrapment, whereby a police agent disguised as buyer undertakes a sales txn with a seller of illegal drugs. 2. Offender is caught in flagrante delicto dispensing with the need for warrant for his arrest and search; 3. Objective test for validity – details of transaction must be established (a) initial contact between poseur-buyer and offender; (b) offer to buy; (c) payment or promise; (d) delivery of illegal drugs (consummation); 4. If the seller was able to receive money from the poseur-buyer but did not deliver the illegal drugs, the sale was not consummated. Hence, the prosecution can only be for illegal possession but not for illegal sale. 5. Shall be subject to strict scrutiny by courts. <p>(h) Chain of custody rules</p> <ol style="list-style-type: none"> 1. Definition and nature <ol style="list-style-type: none"> i. Duly recorded authorized movement and custody of seized drugs, controlled substances of related equipment in each stage of the link, from seizure, to receipt by forensic laboratory, to safekeeping, to presentation to court for destruction. ii. As a means of authenticating evidence, it requires that the admission of an exhibit be preceded by presentation of evidence to establish that it is what it purports to be. Such evidence would include the 	<p>testimony of every person in the chain who handled the seized items from seizure up to presentation in court, testifying as to: (a) how they received; (b) from whom; (c) where; (d) what they did with the item while at their custody; (e) condition of the item at receipt and at time of delivery to the next link in the chain.</p> <ol style="list-style-type: none"> iii. Applies to dangerous drugs, as well as paraphernalia. <p>2. Purpose</p> <ol style="list-style-type: none"> i. To preserve the integrity and evidentiary value of the seized items by preventing its contamination of switching considering its fungible and indistinct character. IEV ii. To ensure that the drugs seized, tested and presented in court are the same. <p>3. Chains: (i) from accused to seizing officer; (ii) from seizing officer to forensic laboratory; (iii) from forensic laboratory to presentation in court.</p> <p>4. Marking, inventory, photograph MIP</p> <ol style="list-style-type: none"> i. seizing officer must immediately mark, inventory, photograph (initial custody requirements) ii. done at place where warrant was served, place of seizure or nearest police station (only if there are justifiable grounds); iii. marking is done by placement of initials in the presence of violator; iv. inventory and photograph shall be done in presence of (a) violator or representative; (b) elected public official; (c) NPS or media representative (insulating witnesses mandatory, they must also be present at time of seizure); v. must be sealed in evidence bag and signed by seizing officer and turned over to forensic laboratory within 24h from seizure. <p><i>**Non-compliance shall not render invalid the seizure if: (a) there are justifiable grounds; (b) the integrity and evidentiary value of seized items were preserved; (c) the justifications and steps taken to preserve the integrity and evidentiary value must be stated in a sworn statement by the seizing officer.</i></p> <ol style="list-style-type: none"> i. If there is no justifiable reason, the seized drugs are inadmissible; ii. The accused shall be acquitted for failure to establish corpus delicti. <p>5. Laboratory examination, custody, and report</p> <p>6. Filing of complaint, destruction of seized items</p> <p><i>**Regularity in the performance of official duties cannot prevail over the constitutional presumption of innocence.</i></p> <p>F. Crimes Against Public Morals (Arts. 200-202)</p> <p>Ch. 1: (a) Grave scandal; (b) Immoral doctrines, obscene publications and exhibitions and indecent shows; (c) Prostitution</p> <p>(a) Grave scandal</p> <ol style="list-style-type: none"> 1. Elements – (i) Act must be highly scandalous; (ii) publicly committed or within the knowledge and view of the public; (iii) act offends against decency of good customs; (iv) the scandalous conduct does not expressly fall within any other article of the RPC. 2. E.g., Having sex in public. 3. Public place – place where anyone can freely go, even if there are no persons at the time of the act – e.g., park, movie theatres.
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²¹ Accused who appeals may be entitled to probation if the appellate court modifies his penalty to probationable.

4. The act may be in a private place but within the view and knowledge of public – e.g., veranda of the house viewable to passersby.

(c) Prostitution

1. Elements – (i) Offender is a woman; (ii) she habitually indulges in sexually or lascivious conduct; (iii) for gain and profit.
2. Only the woman can commit the crime of prostitution, but not the man who avails her services.
3. c.f.: prostitution under R.A. No. 9208. – Any act, transaction, scheme, design involving use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit, any other consideration – the law punished acts short of sexual intercourse.

1. Anti-Gambling Act (PD 1602, as amended by RA 9287)

a) Definition of Terms [Sec. 2, RA 9287]

Illegal Numbers Game **ING** – any form illegal gambling activity which uses numbers or combinations thereof as factors in giving out jackpots.

1. Jueteng – local lottery bet involving two sets of 37 numbers.
2. Masiao – winning combination is derived from the results of the last game of Jai Alai of fictitious game thereof.
3. Last Two – winning combination is derived from the last 2 numbers of the first prize of the winning Sweepstakes ticket drawn by PCSO.

b) Punishable Acts [Sec. 3, RA 9287]

Participation in any illegal numbers game as:

1. bettor – any person who places bets for himself or in behalf of another, other than the personnel or staff of any ING operation.
2. personnel or staff in operation – person who acts in the interest of the maintainer, manager or operator.
3. allowing his vehicle, house, building or land to be used in the operation.
4. collector or agent – person who collects, solicits or produces bets in behalf of his/her principal for any ING who is usually in possession of gambling paraphernalia ("Cabo", "Cobrador", "Coriador" etc.)
5. coordinator, controller, or supervisor – person exercising control and supervision over the collector or agent.
6. maintainer, manager, or operator – person who maintains, manages or operates any ING in a specific area and who gives orders to the coordinator, controller or supervisor, and collector or agent take orders.
7. financier or capitalist.
8. protector or coddler – person who lends or provides protection, or receives benefits in any manner in the operation of any ING.

G. Crimes Committed by Public Officers (Arts. 203-245)

Sec. 2(1): (a) Rendering unjust judgment or order; (b) Malicious delay in administration of justice; (c) Refraining from prosecuting offenses; (d) Revelation of secrets

Sec. 2(2): (e) Bribery; (f) Corruption of public officials

Sec. 3: (g) Frauds against public treasury; (h) Other frauds against public treasury; (i) Prohibited transactions; (j) Possession of prohibited interest

Sec. 4: (k) Malversation; (l) Failure to render accounts; (m) Failure to deliver public funds or property

Sec. 5(1): (n) Conniving with or consenting to evasion of prisoners; (o) Evasion of prisoners through negligence; (p) Escape or prisoner in custody or private person

Sec. 5(2): (q) Removal, concealment, destruction of documents; (r) Officer breaking seal; (s) Opening of closed documents

Sec. 5(3): (t) Revelation of secrets by officer

Sec. 6(1): (u) Disobedience; (v) Refusal of assistance; (w) Refusal to discharge elective duty; (x) Maltreatment of prisoners

Sec. 6(2): (y) Anticipation of duties of public office; (z) Prolonging performance of duties and powers; (aa) Abandonment of office or position

Sec. 6(3): (bb) Usurpation of legislative powers; (cc) Usurpation of executive functions; (dd) Usurpation of judicial functions; (ee) Disobeying request for disqualification; (ff) Order of requests by executive officer to judicial authority; (gg) Unlawful appointments

Sec. 6(4): (hh) Abuses against chastity

Public officers

1. Those who take part in the performance of public functions in the GRP, or who perform public duties as EE, agent, subordinate official
2. By direct provision of law, election, or appointment

(e) Bribery

1. May be direct, indirect, or qualified;
2. May be committed only by public officers, or private individuals performing public functions

Direct bribery

1. Offender is a public officer/EE
2. By doing any of the following acts: **PAR** (i) **Performing** or agreeing to perform crime in connection with the performance of his official duties **CPOD**, in consideration of promise, offer, gift, present **POGiP**; (ii) **Accepting** a gift in consideration for the performance of an unjust act; (iii) **Refraining** of agreeing to refrain from performing an act which is his official duty to do, in consideration of **POGiP**
3. Acceptance of gift is indispensable – (i) acceptance means taking the gift and considering it as one's own (intent), including acts of putting away, safekeeping, pocketing; (ii) but mere physical receipt of the gift without any other sign is insufficient to establish acceptance; otherwise, it would be easy to frame-up public officials; (iii) acceptance must be unequivocal; (iv) duration of possession is not controlling, determinative is intent to consider the gift as one's own.
4. Consideration – (i) anything of value, including use of briber's vehicle by offender; (ii) may be given directly to public officer, family, associates; (iii) may be given before, at time of commission, or afterwards pursuant to an agreement.
5. Balato of defense lawyer to prosecutor is not direct bribe.
6. c.f.: robbery – crime is robbery if the public officer pretends that a crime was committed and threatens a person of prosecution if he will not give the demands
7. c.f.: dereliction of duty – (i) both involves a public officer refraining from performing an act which is his official duty to do, e.g., prosecution of offense; (ii) but **POGiP** is not an element in dereliction of duty.
8. Distinct from requesting gifts punished under Sec. 3(b) RA 3019 – (i) in Sec. 3(b) mere demand is sufficient, in bribery, the public officer must accept; (ii) Sec. 3(b) is limited to contracts or transactions with monetary consideration, direct bribery is broader (illegal, unjust, refrain).

- Return of bribe does not negate CML which was already consummated upon its acceptance.

Indirect bribery

- Elements: (i) offender is a public official; (ii) he accepts gifts given to him; (iii) the gifts were by reason of his position.
- Usually in view of future favors. But the officer is not required to do any particular act at the time of receipt.
- If the act committed in return for the consideration is not illegal or unjust but in CPOD.
- Element of acceptance (same as Direct)
- No attempted or frustrated bribery as mere acceptance of gift consummates the crime.

Qualified bribery

- Elements: (i) offender is a public official charged with the enforcement of law (ii) he refrains from prosecuting or arresting a person who committed a crime; (iii) the crime was punishable by RP or death; (iv) the omission was in consideration of POGIP
- Public officers charged with law enforcement – (i) prosecutors: in addition, he may be charged with dereliction of duty; (ii) police officers.
- If there is no consideration, the officer may be charged as accessory to the crime by HCA escape.
- The offender must have been convicted before the public officer can be prosecuted.

(f) Corruption of public officials

- A person makes offer/promise, gives gift/present to a public officer;
- Under circumstances as to make the public officer liable for in/direct bribery.

(k) **Malversation**

- May be malversation or technical malversation
- Elements: (i) offender is public officer; (ii) public officer is accountable for fund or property; (iii) funds or property as public; (iv) he (a) appropriates, (b) takes or misappropriates; (c) consents, or through abandonment or negligence, allowed other to take them; (d) otherwise guilty of misappropriation.
- Two modes of commission: (i) intentional where the public officer himself misappropriates the public funds; (ii) through negligence where another person misappropriates the public funds with the consent of the public officer or due to his abandonment or negligence.
- May be committed through dolo or culpa. Variance in information and proof will not prevent conviction. E.g., if charged with willful malversation, but it was proven that the accused committed malversation through negligence, he may still be held liable as dolo or culpa are mere modes of commission
- Consenting to malversation – if public officer lends public money.
- Public officer – (i) student member of the UP Board of Regents is a public officer; (ii) President of a sequestered company.
- Accountable officer – (i) one having custody or control of PFP by reason of the duties of his office; (ii) need not be bonded; (iii) nature, not denomination of position is determinative; (iv) he receives PFP which is he bound to account for; (v) e.g., barangay captain who signs as custodian of confiscated logs, colonel of military who receives the logs, municipal mayor and treasurer, vice governor, accountant, cashier, school principal. The nature of the position or duties determine whether the officer is an accountable officer.

- Who may commit – (i) public accountable officer; (ii) those conspiring with him (a) private person; (b) public officer not accountable for PFP
- Presumption of malversation: (i) if upon demand, the public accountable officer fails to have the PFP duly forthcoming; (ii) **demand is not an element** of malversation, it only establishes a **presumption** of misappropriation; (iii) there can be conviction even without direct evidence; (iv) accused has burden to explain the whereabouts of PFP; (v) if immediately accounted for and duly explained, the presumption does not arise.
- What must be proven is: (i) public accountable officer received PFP; (ii) PFP not in his possession when demanded; (iii) no satisfactory explanation given for failure to account.
- Not defenses: (i) restitution: (a) it is not one of the modes of extinction, (b) damage is not an element; (c) crime was already consummated, (d) may be mitigating circumstances analogous to voluntary surrender; (ii) separation from public service: if public officer at time of misappropriation, even if already separated at time of demand
- c.f.: estafa – (i) offender is private person, or public officer who is not accountable for PFP; (ii) property involved is private.
- c.f.: theft or robbery. – if the officer is not accountable for the public funds he has taken, he may be held liable for theft or robbery.

Technical malversation (diversion of earmarked funds)

- Illegal use of public funds.
- Elements: (i) offender is public officer; (ii) he administers PFP; (iii) the PFP has been appropriated by law or ordinance for a particular public purpose; (iv) he uses the PFP to a public purpose other than that for which it was appropriated
- Malum prohibitum. No presumption of intent.
- Public purpose ~ public interest.
- Authorization issued by DBM is not appropriation.
- Savings cease to be appropriated for their original purpose. Hence, its use for another purpose does not amount to technical malversation.
- c.f.: malversation – (i) in technical malversation, the offender does not benefit as the PFP was used for public purpose; (ii) in malversation, the public officer or 3p benefits.
- TM is not necessarily included in Malversation. They are distinct offenses.

Infidelity in the custody of prisoners

- Involves three crimes: (i) Conniving with or consenting; (ii) Evasion through negligence; (iii) Escape in custody of private person.
- c.f.: delivering prisoners from jail. – the offender may be any other person or public officer not charged with the custody of the prisoner.

(n) Conniving with or consenting to evasion of prisoners

- Elements – (i) Offender is a public officer having a prisoner in his custody or charge; (ii) he consented or connived to the escape of the prisoner in his custody or charge.
- The offense is committed whether PDL is convicted by final judgment serving sentence, or detention prisoner. The penalty depends on the nature of detention.

(o) Evasion of prisoners through negligence

- Elements – (i) Offender is a public officer having charge of a prisoner's custody or conveyance; (ii) a prisoner in his custody or charge escaped through his negligence.
- The negligence must be inexcusable negligence. If simple, the officer may be held administratively liable only.

- (p) Escape or prisoner in custody or private person
1. Elements – (i) Offender is a private person having charge of the custody or conveyance of a prisoner or a person under arrest; (ii) he committed the two foregoing acts.
 2. He shall be punished with the penalty next lower in degree.

1. Anti-Graft and Corrupt Practices Act (RA 3019, as amended)

a) Definition of Terms [Sec. 2]

- (a) Government
1. Includes NG, LG, GOCCs, and other instrumentalities, agencies of RP and their branches.
- (b) Public officer
1. Elective or appointive officials or EEs
 2. Permanent or temporary
 3. Classified or unclassified or exempt service
 4. Receiving compensation from the government, even nominal
- (c) Receiving any gift
1. Accepting a gift (d/i), which is manifestly excessive under the circumstances;
 2. From any person other than immediate family member;
 3. On behalf of (i) himself; (ii) his family; (iii) relative with the 4th civil degree;
 4. Even on occasion of celebration.
 5. With exception (see Sec. 14 below)

b) Corrupt Practices of Public Officers [Sec. 3]

- (a) (i) Persuading another public officer to (1) violate rules; (2) commit an offense connected with his official duties; or (ii) allowing himself to be persuaded to commit the violation or offense.
- (b) (i) Receiving or requesting (d/i) gift, present, other pecuniary or material benefit **GP-PMB**; (ii) for himself of another; (iii) in connection with any contract or transaction **C/T** between the government and other party; (iv) where the public officer has duty to intervene under the law in his official capacity
1. Mere receipt without demand, or mere demand without receipt, is sufficient.
 2. Value of GP-PMB is immaterial. What is punished is its receipt or request. Variance between amount of gift alleged and proven is not ground for dismissal.
 3. "Transaction" – (i) limited to those with monetary consideration; (ii) must be described with particularity; (iii) preliminary investigation is not transaction.
 4. Acceptance must be proven – (i) public official must consider the gift as his own property; (ii) but mere receipt unaccompanied by other sign is insufficient.
 5. Not bar to prosecution for bribery and vice versa. Distinct offenses. The same act gives rise to two separate offenses. No double jeopardy. Offenses not included nor includes the other.
 6. If the accused misrepresented that he can influence a public officials when, in fact, he can't, he will also be liable for estafa.

Sec. 3(b)	Bribery
Mere request or demand is sufficient	(Direct) Acceptance of offer/promise, receipt of gift/present is required
Limited to txn with monetary consideration	Wider scope: (i) performance of crime, (ii) of unjust act not amounting to crime; (iii) refraining to do a legal duty
Malum prohibitum	Malum in se

(c) (i) Receiving or requesting (d/i) GP-PMB; (ii) for himself of another; (iii) from any person for whom the public officer [will] secured any government permit or license; (iv) in consideration for the help given

(d) (i) Accepting employment in a private enterprise; (ii) which has official business with him; (iii) during its pendency or within 1y from termination; (iv) by himself or family member

(e) (i) **Causing undue injury** to any party, including Government, or (ii) **giving unwarranted benefits, advantage, preference**, (iii) in the discharge of official functions; (iv) through **MP EB GIN** manifest partiality, evident bad faith, gross inexcusable negligence

1. Elements – (i) accused is a public officer discharging administrative, judicial, official functions, or private individual acting in conspiracy with him; (ii) he acted with MP EB GIN; (iii) the act caused undue injury to any party, including the government, or gave any private party unwarranted benefits.
2. MP: Clear, notorious, plain inclination or predilection to favor one side over the other
3. EB: (i) State of mind motivated by self-interest, ill-will, or for ulterior motives; (ii) GF is defense; (iii) mere relationship is not determinative of liability, improper use of the relationship must be shown
4. GIN: (i) want of slightest care; (ii) willful, intentional act or failure to act with conscious indifference to consequences
5. Conspiracy with private individuals renders the latter liable under Sec. 3(e). If corporate actor, the representative can be held liable (piercing the veil; used to perpetrate fraud). RPC has suppletory application to SPL.
6. Damage to government is not indispensable element. The crime can be committed without such damage if there are unwarranted benefits given to 3p.
7. Must be in relation to office – (i) the relation must be direct and not accidental; (ii) the crime cannot exist without the office; (iii) office is a constituent element of the crime.
8. Not bar to prosecution for malversation and vice versa.

(f) (i) Unjustly neglecting to act (1) after demand and within reasonable time on any matter pending before him to (2) obtain some PMB, or (3) favor his own interest; or (ii) giving undue advantage; or (iii) discriminating against other party

(g) (i) Entering any C/T on behalf of government, (ii) manifestly and grossly disadvantageous to the same, (iii) w/n he profited

1. Elements – (i) accused is public officer; (ii) he entered into C/T on behalf of government; (iii) the C/T is grossly and manifestly disadvantageous to the government.

(h) (i) Having pecuniary interest (d/i) (ii) in any business, C/T in which he intervenes in official capacity, or (iii) which is prohibited by Constitution or law

(i) (i) Being interested for personal gain (ii) in any txn/act requiring approval of board or group (1) which he is a member and (2) which exercises discretion in the approval;

1. Applies even if he (i) did not participate; (ii) voted against txn or act;
2. Presumption of interest for personal gain: if he is responsible for approving manifestly unlawful, inequitable, irregular txn/act by board or group where he belongs

(j) Knowingly approving license in favor of unqualified person, or a person not legally entitled, or a mere dummy of them

1. Liga ng Mga Barangay is not qualified for license to operate cockfighting.

(k) (i) Divulging valuable and confidential information acquired (1) by his office or (2) on account of official position (3) to unauthorized person, (ii) or releasing said information in advance before its authorized release

***Acts penalized under Sec. 3 are without prejudice to prosecution of other crimes committed by the public officer, e.g., those provided for in RPC.*

c) Prohibition on Private Individuals [Sec. 4]

(a) (i) Taking advantage of familial or close personal relations with public officer (ii) by requesting or receiving GP-PMB (iii) from other person having official business with government (iv) in which the public officer has to intervene

(b) Knowingly induce or cause a public officer to commit any acts under Sec. 3.

d) Prohibition on Certain Relatives [Sec. 5]

Prohibition

1. Spouse, relatives within 3rd degree of President, VP, Senate President, House Speaker
2. Are prohibited from intervening in any business, txn, contract, application with government

XPNS:

1. If relative has been already dealing with government along the same line of business prior to the official's assumption of office;
2. Re: txn/contract/application already pending at the time of assumption;
3. Re: applications filed by relative whose approval is not discretionary on the official but upon compliance with law, rules, regulations
4. Any act lawfully performed in official capacity or in exercise of profession

e) Exceptions [Sec. 14]

Exempt gifts

1. Unsolicited gifts;
2. Small or insignificant value;
3. Offered or given as mere ordinary token of gratitude of friendship;
4. According to local customs or usage.

***Gifts given by immediate family members of the public officer also allowed by Sec. 3(c).*

2. Anti-Plunder Act (RA 7080, as amended by RA 7659)

a) Definition of Terms [Sec. 1, RA 7080]

(a) Public officer. – Any person holding any public office in the GRP by virtue of an appointment, election or contract.

(b) Ill-gotten wealth IGW. – Any asset, property, business enterprise or material possession of any person acquired through dummies, nominees, agents, subordinates and/or business associates by any combination or series of overt criminal acts under Sec. 1(d).

b) Definition of Crime of Plunder [Sec. 2, RA 7080 as amended by RA 7659]

Plunder is committed when:

1. A **public officer** – (i) by himself or (ii) in connivance with members of family, relatives by affinity or consanguinity, business associates, subordinates, or other persons.
2. **Amasses**, accumulates, acquires ill-gotten wealth.
3. Through a **combination** or series of overt criminal acts under Sec. 1(d). **CS OCA**

²² (a) Committed by a public officer or EE, for himself or for another, in connivance with certain individuals

(b) Acquiring, accumulating or amassing ill-gotten wealth in an amount more than 50M

4. In the aggregate amount of at least **50M**. **PAC50**

c) Series and Combination

1. Through **misappropriation**, conversion, misuse, or malversation of public funds or raids on the public treasury;
2. By **receiving**, directly or indirectly, any **commission**, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any **government contract** or project or by reason of the office or position of the public officer concerned;
3. By the **illegal** or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;
4. By obtaining, receiving or accepting directly or indirectly any shares of stock, **equity** or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;
5. By establishing agricultural, industrial or commercial **monopolies** or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
6. By taking **undue** advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

MRcelMU

Notes

1. A single act will not constitute the crime of plunder.
2. Plunder (SPL) is mala in se – because of the seriousness of the crime, and especially since most of its predicate crimes are mala in se²² (Estrada v. SB)

d) Pattern

For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a **pattern of overt or criminal acts** indicative of the overall unlawful scheme or conspiracy.

3. Prohibition of Child Marriage Law (RA 11596)

a) Facilitation of Child Marriage by Public Officer [Sec. 4]

(a) Facilitation of Child Marriage

1. (i) Causing, fixing, facilitating, or arranging a child marriage; (ii) producing, printing, issuing and/or distributing fraudulent or tampered documents such as birth certificates, affidavits of delayed registration of birth and/or founding certificates to misrepresent the age of a child to facilitate child marriage or evade liability.
2. Aggravated if – (i) offender is an ascendant, parent, adoptive parent, stepparent, guardian of the child; (ii) ground for loss of parental authority.
3. Without prejudice to other penalties that may be imposed under RPC or other laws e.g., falsification of public documents.
4. If offender is public officer – (i) he shall be dismissed from the service and (ii) may be perpetually disqualified from holding office, at the discretion of the courts.

(c) Through a series or combination of overt acts, among which are malversation, conversion, or misappropriation of public funds or raids of the public treasury

H. Crimes Against Persons (Arts. 246-266)

Sec. 1: (a) Parricide; (b) Death under exceptional circumstance; (c) Murder; (d) Homicide; (e) Tumultuous affray; (f) Giving assistance of suicide; (g) Discharge of firearms.

Sec. 2: (h) Infanticide; (i) Abortion

Sec. 3: (j) Duel

Sec. 4: (k) Mutilation; (l) Physical injuries

Sec. 5: (m) Rape

(a) Parricide

1. Elements: (i) a person was killed by the accused; (ii) the victim is offender's parent (L/I), children (L/I), other as/descendants (L), spouse (L)
2. Proof of marriage: (i) marriage certificate; (ii) uncontested testimony of witnesses since marriage is presumed from the deportment of man and woman as husband and wife; (iii) admission by accused.
3. Proof of filiation: (i) birth certificate; (ii) admission by accused.
4. Annulment of marriage or declaration of nullity is not prejudicial question – (i) marriage subsists during marriage, its subsequent dissolution will have no effect on CML of accused; (ii) issues are not intimately related as to be determinative of guilt or innocence of accused.
5. Killing child by parent due to harsh punishment is parricide. (i) he should be liable for all the NDL consequence of the felonious act; (ii) parent is not entitled to mitigating circumstances of no intention to commit so grave a wrong as that committed.
6. Complex crimes – (i) parricide with unintentional abortion
7. There is parricide in the following, different penalty is imposed: (i) error in personae; (ii) death under exceptional circumstances; (iii) parricide through reckless imprudence
8. A conspirator-stanger is liable for homicide or murder

(b) Death under exceptional circumstance

1. Does not define a crime but merely provides an **absolutory cause**. The offender is merely punished with destierro which is not really a penalty but merely intended for his protection. If the injury caused is less than serious, accused is exempt.
2. Purpose is vindication of man's honor.
3. Requisites: (i) accused surprised his wife (L) or minor daughter living with him having sex with another; (ii) he kills or inflicts serious physical injuries upon any or both while **in the act or immediately thereafter**; ²³ (iii) he did not promote or facilitate the prostitution, nor consented to the infidelity.
4. Accused has burden to prove elements.
5. The killing of SPI must have **proximately resulted** (need not be instantaneous) from the outrage overwhelming the accused or blind impulse upon surprising the sexual act, not motivated by external factors. The discovery, escape, pursuit, killing/inflicting must form part of one continuous act.
6. Consent to the infidelity may be shown by an agreement of separation between H&W. Although the agreement is void in point of law, the same can be used to establish consent.
7. Privilege is available to either spouse – H or W

8. Sexual intercourse must be proven. Not proven if – (i) man was jumping out the window and woman was begging for forgiveness; (ii) wife rising up and paramour buttoning his pants; (iii) covered with blankets; (iv) foreplay; (v) seated talking; (vi) sleeping together; (vii) laying on sides.
9. If other persons were injured, accused may be liable for injuries through imprudence.
10. The other person with whom the spouse is having sex need not be of opposite sex since the Code says "with any person".
11. The spouses must be legally married. If not, the accused will be liable for homicide with mitigating circumstance of passion or obfuscation.

(c) Murder

1. Elements: (i) a person was killed by accused; (ii) the killing was attended by QAC; (iii) the killing does not constitute parricide or infanticide.
2. QAC: **TICESA Mwa** (i) treachery; (ii) inundation, fire, poison, explosion, shipwreck, other means involving great waste or ruin; (iii) consideration, price, reward; (iii) evident premeditation; (iv) taking advantage of superior strength; (v) aid of armed men; (vi) employment of means to weaken defense; (vi) employment of means to afford or insure impunity.
3. Use of unlicensed firearm – (i) absorbed in rebellion, insurrection, coup d etat; (ii) but under the new rule, use of unlicensed firearm is considered as an aggravating circumstance only where such use is inherent in the commission of the crime (i.e., discharge of firearm); (iii) in murder, the use of loose firearm is not an aggravating circumstance but a separate offense since such use is not inherent in the offense.

(d) Homicide

1. Elements: (i) a person was killed by accused; (iii) the killing does not constitute parricide, murder, or infanticide.
2. A person may be held liable for homicide even if he has no intention of killing the victim if such killing is a DNL consequence of his unlawful act.
3. Stages – (i) consummated; (ii) frustrated; (iii) attempted.
4. Frustrated – if mortal injuries were inflicted.
5. Attempted – if non-mortal injuries were inflicted, or no injuries were inflicted so long as there is ITK.
6. No ITK – if accused fired a single close-range shot but did not hit any vital part of victim's body, after which, he immediately fled the scene. If there is ITK, he could have shot the victim additionally.
7. There is ITK – if accused fired several shots to the victim but failed to hit him. This is already attempted homicide even if no injury was caused.

Homicide as constituent crime of special complex crime

1. Homicide shall be considered in its generic sense.
2. QAC for murder shall be appreciated only as GAC.
3. Relationship shall be considered as a mitigating circumstance (alternative) since relationship is always mitigating in crimes against property [even though it qualifies the offense to parricide in case of crimes against persons].
4. Additional killings are absorbed.
5. Other crimes committed are deemed absorbed, e.g., physical injuries, mutilation, rape.
6. Robbery with homicide, kidnapping with homicide, kidnapping with homicide.

Arson resulting in death

1. Murder, if there is ITK qualified by use of fire.

²³ Most important element.

<p>2. Arson with homicide, if there is no ITK but someone died by reason or on occasion of arson (2020 ruling).</p> <p>(e) Tumultuous affray TMA</p> <ol style="list-style-type: none"> 1. Quarrel among several persons, engaging in a confused and tumultuous manner, in the course of which, someone was (i) killed or (ii) injured, and the author of the death or injury cannot be ascertained; 2. Two kinds: (i) death in TMA; (ii) physical injuries inflicted in TMA 3. Death in TMA – (i) involves several persons; (ii) they did not organize for the purpose of reciprocal assault or attack; (iii) they quarreled and assaulted each other in a confused and tumultuous manner; (iv) someone died; (v) it cannot be determined who killed the victim; (vi) those who inflicted SPI or violence upon him can be identified. <i>Those who inflicted SPI shall be liable for the death. In their default, the persons who used violence on the victim.</i> 4. Physical injuries in TMA – (i) there is tumult; (iv) someone suffered serious PI or LSPI; (v) it cannot be determined who inflicted the injuries; (vi) those who inflicted violence upon him can be identified. Those who used violence on the victim shall be liable for the injuries. None liable if only slight PI. 5. The person killed need not be a participant in the affray. 6. If the fight was between two distinct identifiable groups, no tumult. Definite attack on identified group is not tumult. If committed by a fraternity, the fraternity members are co-principals and all liable as such. <p>(f) Giving assistance to suicide</p> <ol style="list-style-type: none"> 1. Assisting another to commit suicide, consummated or not. 2. Lending assistance to another to commit suicide to the extent of doing the killing himself. <p>(g) Discharge of firearm</p> <ol style="list-style-type: none"> 1. Elements – (i) Discharge of firearm or equivalent device against or at another person or willful or indiscriminate discharge of the same; (ii) without ITK. 2. ITK cannot be inferred from the mere fact that the use of firearms is danger to life. It must be PBRD. 3. Aggravate if (i) committed by member of military or law enforcement agency authorized to bear firearms, and (ii) the discharge is not in the performance of official duties. Penalty next higher in degree shall be imposed + administrative liability. 4. This is the only crime under the RPC where the use of firearm is an inherent element. Under the firearms law, the use of loose firearm in a crime where use of firearms is an inherent element will constitute an aggravating circumstance. <p>(h) Infanticide</p> <ol style="list-style-type: none"> 1. Elements: (i) a child was killed by the accused; (ii) the child is <3d or 72h. 2. Child was born alive, viable, capable of independent existence. If IU life is <6m, crime is abortion since the child is not viable, even if born alive. 3. If offender is parent, crime is infanticide, not parricide. 4. Penalty: (i) if parent – that for parricide; (ii) if not – that for murder. 5. May be committed intentionally or through reckless imprudence. In the latter, the offender must have acted voluntarily, consciously, freely. <p>(i) Abortion</p>	<ol style="list-style-type: none"> 1. Essence: killing of a child before birth 2. Kinds based on nature: (i) intentional; (ii) unintentional. Both are forms of intentional felonies. 3. Kinds based on offender: (i) by mother; (ii) her parents; (iii) by physician. <p><i>Intentional INA</i></p> <ol style="list-style-type: none"> 1. Intentional abortion: (i) there is a pregnant woman; (ii) accused acts upon her by exertion of violence, administration of drugs or beverage; (iii) the fetus dies on the womb or after expulsion due to the violence or administration; (iv) accused intended abortion. 2. Intentional abortion can be committed by the pregnant woman, but not unintentional abortion. 3. There is frustrated abortion if the fetus is viable despite performance of all acts that will produce abortion as a result but did not produce it because of a cause of accident independent of offender's will. 4. The woman must have given his consent. 5. Knowledge of pregnancy is material. <p><i>Unintentional UNA</i></p> <ol style="list-style-type: none"> 1. Unintentional abortion: (i) there is a pregnant woman; (ii) violence (not mere intimidation) is used upon her without intending abortion; (iii) violence is intentionally exerted; (iv) the fetus dies on the womb or after expulsion due to the violence. Not committed by administration of substances. 2. Complex crimes – Parricide with UNA; Homicide with UNA; Murder with UNA 3. UNA may be committed through reckless imprudence. 4. Knowledge of pregnancy is not material – a person committing a felonious act shall be liable for the all the NDL consequences of his acts. 5. May be committed only by 3p if his intention is other than the expulsion of the fetus from the womb. <p>Mitigation</p> <ol style="list-style-type: none"> 1. If committed by mother or maternal grandparents to conceal dishonor 2. The mother must be of good repute, not prostitute <p>(I) Physical injuries</p> <ol style="list-style-type: none"> 1. May be serious, less serious, slight. 2. Formal crime – always committed in the consummated stage, no attempted or frustrated, since penalty is imposed based on the extent of injuries actually sustained by the victim. <p><i>Serious PI ILDI</i></p> <ol style="list-style-type: none"> 1. Causing insanity, imbecility, impotency, blindness 2. Causing (i) loss of speech; power to hear or smell; loss of an eye, hand, foot, arm, leg; (ii) loss of use of any such member/limb; (iii) incapacity to work which one is habitually engaged (permanent incapacity). 3. Causing (i) deformity; (ii) loss of other member of his body; (iii) loss of use of such other members; (iv) illness or incapacity to the work which he is habitually engaged for more than 90 days (temporary incapacity). 4. Causing illness or incapacity for labor for more than 30 but not more than 90 days. 5. **Deformity must be (i) permanent, and (ii) visible or conspicuous – e.g., scar. But the losing of front tooth which can be remedied by dental science is not deformity. Hence, the crime is only slight physical injuries. <p><i>Less serious PI</i></p>
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	<ol style="list-style-type: none"> 1. Causing incapacity for 10 days, but not more than 30 days; or needing medical attendance for the same period. 2. Not constituting those described as serious physical injuries.
<i>Slight PI</i>	<ol style="list-style-type: none"> 1. Causing incapacity from 1 to 9d; or requiring medical attendance for the same period. 2. Not preventing the offended party from engaging in his habitual work, or not requiring medical attendance. 3. Ill-treatment of another by deed without causing any injury.
(m) Rape	<ol style="list-style-type: none"> 1. Two kinds – (i) Rape by Sexual Intercourse RSI; (ii) Rape by Sexual Assault RSA (genderless rape) 2. Accused may be convicted upon sole testimony of victim. Medico-legal report is not indispensable as it is merely corroborative. 3. Rape is already a public crime which can be prosecuted de oficio. 4. Pardon extended to the accused does not extinguish criminal action – XPNs: (i) Subsequent valid marriage between the offender and offended party extinguishes the CML of the former, but the same does not extend to co-accused; (ii) pardon by wife in case of marital rape extinguishes the CML of the husband. 5. There is no frustrated rape. In attempted rape, the pressing of chemical-soaked cloth on the mouth of the victim while on top of her does not constitute an overt act of rape. The accused cannot be prosecuted for attempted rape. At most, unjust vexation.
<i>RSI</i>	<ol style="list-style-type: none"> 1. RSA – committed by a man having carnal knowledge of a woman through (i) FIT, (ii) when the offended party is DR or OU; (iii) by means of FM or GAA; (iv) when the offended party is below 16y, or demented (statutory rape) 2. Full penetration is not required. Even slightest penetration consummates the crime. No frustrated stage. 3. Exemption from statutory rape – (i) age difference <3y; (ii) sex in proven consensual, non-abusive, non-exploitative CNAe. XPN: victim is <13y. 4. Reclusion perpetua. 5. Qualified if: (i) Obtaining carnal knowledge of a woman; (ii) Through FIT, without consent; (iii) woman is <18y; (iv) offender is PAG SRC parent, ascendant, guardian, stepparent, relative up to 3rd degree, common law spouse of parent. In one case, the SC held that actual force, threat or intimidation is not necessary. 6. Rape with homicide – (i) accused had CK of victim; (ii) through FIT; (iii) woman was killed by reason or on occasion of the rape. Homicide is used in generic sense. 7. The absence of hymenal laceration in the medical report is immaterial since this is not an element of the crime of rape.
<i>RSA</i>	<ol style="list-style-type: none"> 1. (i) Committed through any of the means under RSA; (ii) by a person (a) inserting his penis in the mouth or anal orifice of another; (b) inserting instrument or object in the genital or anal orifice. 2. Prison mayor. 3. RSA is not necessarily included in RSI. If RSI is alleged, the accused cannot be convicted of RSA.

1. Anti-Trafficking in Persons Act of 2003 (RA 9208, as amended by RA 11862)

Three categories: (a) Acts of Trafficking; (b) Acts that Promote Trafficking; (c) Qualified Trafficking

Gravamen: The act of recruiting, or using, with or without consent, a fellow human being for exploitation through coercive, abusive, deceptive means.

a) Acts of Trafficking in Persons [Sec. 4, RA 11862]

Elements: (a) Acts of trafficking; (b) Purpose is exploitation; (c) Committed through coercive, abusive, deceptive means.

Means of commission

- (a) Threat, force, coercion
- (b) Abduction, fraud, deception, abuse of power or position
- (c) Taking advantage of vulnerability
- (d) Giving, receiving payment or benefit to obtain consent of one having control of another person.

Purposes for trafficking

- (a) Prostitution, pornography, sexual abuse/exploitation SAE
- (b) Production, creation, distribution of child SAE materials
- (c) Forced labor, slavery, involuntary servitude, debt bondage
- (d) Removal or sale of organs
- (e) Engagement in armed activities
- (f) Deployment abroad as migrant worker.

Acts of trafficking

- (a) Recruitment, transportation, or transfer
 1. With or without victim's consent. Trafficking may be committed even if the victim consents, especially in case of minors.
 2. Sexual act need not be consummated, mere solicitation for sex and handing of bust money is sufficient.
 3. Presence of the trafficker's client was not required – e.g., two minor males were made to have sex with each other.
- (b) Introduce of Filipino to foreigner for marriage, for consideration
- (c) Offering or contracting marriage
- (d) Organization of tour/travel plans
- (e) Maintenance or hiring
- (f) Adoption
- (g) Organizing, supporting, directing persons to commit trafficking.

b) Acts that Promote Trafficking in Persons [Sec. 5, RA 11862]

- (a) Leasing establishment, vehicles, computers
- (b) Falsification and use of government certificates
- (c) Advertising trafficking
- (d) Assistance to secure pre-departure certificates
- (e) Assistance in exit and entry of persons in borders
- (f) Concealment, destruction of personal travel documents
- (g) Knowingly benefiting or using forced labor
- (h) Tampering with evidence
- (i) Concealment, destruction of personal travel documents to restrict a person's liberty
- (j) Obstruction of investigation by abuse of office
- (k) Allowing use of internet infrastructures
- (l) Allowing use of internet Wi-Fi
- (m) Allowing use of financial facilities
- (n) Assisting in the entry in Ph of convicted sex offenders
- (o) Facilitating encounter between sex offender and a child

c) Qualified Trafficking in Persons [Sec. 6, RA 11862]

As to victim **MIP**

- (a) Trafficking of minors.

<ol style="list-style-type: none"> 1. Minor's consent is not a defense, since the law presumes that a minor is incapable of giving consent. 2. More so given the employment of coercive, abusive, deceptive means, or taking advantage of victim's vulnerabilities or offer of financial gains. <p>(b) Victim is member of IP or religious minority. (c) Victim is PWD.</p> <p>As to offender</p> <p>(d) Offender is spouse, ascendant, parent, sibling, guardian, other persons exercising authority; or public officer or EE.</p> <p>(e) Prostitution to members of military or law enforcement agencies.</p> <p>(f) Offender is members of military or law enforcement agencies.</p> <p>As to manner</p> <p>(g) Done through Inter-Country Adoption</p> <p>(h) (i) Syndicated – committed by 3 or more conspirators; (ii) large-scale – committed against 3 or more persons</p> <p>(i) Trafficking over a period of at least 60 days, continuous or not</p> <p>(j) Directing or managing acts of the victim</p> <p>(k) (i) Trafficking during emergency or conflict situations; (ii) Victim is survivor of disaster or conflict</p> <p>(l) Use of ICT or computer system</p> <p>As to result</p> <p>(m) Death, insanity, mutilation, infliction of AIDS to offended party by reason or on occasion of trafficking;</p> <p>(n) Victim was impregnated;</p> <p>(o) Victim sustained mental or emotional disorder.</p>	
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2. Anti-Violence Against Women and Their Children Act of 2004 (RA 9262)

a) Definition of Terms [Sec. 3]

<p>(a) VAWC</p> <ol style="list-style-type: none"> 1. Acts or series of acts committed by any person 2. Against (i) a woman (a) who is his wife or former wife; (b) with whom he has or had sexual or dating relationship with, or (c) with whom he has a common child; or (ii) his child, whether legitimate, illegitimate, within or without family abode 3. Which result in (i) physical, sexual, psychological harm or suffering, (ii) economic abuse 4. Includes: (i) physical violence; (ii) sexual violence; (iii) psychological violence; (iv) economic abuse <p><i>Physical violence</i></p> <ol style="list-style-type: none"> 1. Bodily or physical harm 2. Battery – infliction of physical harm resulting in physical, psychological, emotional distress <p><i>Sexual violence</i></p> <ol style="list-style-type: none"> 1. Acts sexual in nature committed against the woman or her child; 2. Includes: rape, sexual harassment, AOL, prostitution, etc. <p><i>Psychological violence</i></p> <ol style="list-style-type: none"> 1. Acts/omissions causing mental or emotional suffering; 2. Includes: intimidation, harassment, stalking, verbal abuse, infidelity, deprivation of lawful custody or visitation of common children, etc. 3. Stalking – following woman or child, or placing them under surveillance. <p><i>Economic abuse</i></p> <ol style="list-style-type: none"> 1. Acts to make the woman financially dependent 	
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<ol style="list-style-type: none"> 2. Includes: withdrawal of financial support, preventing her from engaging in profession/business/work, controlling her property of conjugal properties. <p>(b) BWS – Scientifically defined pattern of psychological, behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.</p> <p><i>Battered woman</i></p> <ol style="list-style-type: none"> 1. One who has been subjected to forceful physical or psychological behavior to coerce her to do something she does not want to do without concern for her rights. 2. Includes wives or women having any form of intimate relationship with men. 3. He must go through at least two battering cycles. <p>(c) Dating relationship</p> <ol style="list-style-type: none"> 1. Situation where parties live as husband and wife without marriage. 2. Romantic involvement over a time and on a continuing basis. 3. Casual acquaintance or ordinary socialization in business or social context is not dating. 4. Can exist even without sexual intercourse. 5. **Subsistence of relationship at the time of commission of offense is not material so long as there is proof of past or present existence of such relationship. <p>(d) Sexual relations – single sexual act which may or may not result in the bearing of common children.</p> <p>(e) Children</p> <ol style="list-style-type: none"> 1. As defined in RA 7610. 2. Includes biological children of the victim or other children under her care. <p>Notes:</p> <ol style="list-style-type: none"> 1. Subsistence of relationship is not relevant for prosecution under Anti-VAWC Law 2. Who may be held liable – (i) husband or father; (ii) those with dating or sexual relationship, male or female; (iii) those who conspire with them, e.g., woman's mother-in-law. Principle of conspiracy under RPC applies. 	
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b) Acts of Violence Against Women and Their Children [Sec. 5]

<p>(a) Causing, (b) threatening to cause, (c) attempting to cause physical harm, or (d) placing woman or child in fear of imminent physical harm</p> <p>(e) Control or restriction of conduct</p> <ol style="list-style-type: none"> 1. Compelling woman/child to engage in conduct which they have right to desist; or compelling them to desist from conduct which they have right to engage; 2. Restricting their freedom of movement by force, threat, harm, intimidation – (i) deprivation of child custody; (ii) deprivation of financial support; (iii) deprivation of legal right; (iv) prevention to engage in profession <p><i>Economic violence (Sec. 5[e][2])</i></p> <ol style="list-style-type: none"> 1. Willful deprivation of financial support 2. Intended to control or restrict the woman's conduct. 3. Mere failure or inability to give financial support is not sufficient if not shown to be intended to control or restrict the woman's conduct. <p>(f) Infliction of harm on oneself to control her actions or decisions</p>	
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(g) Causing them to engage in sexual activity no constituting rape, by force, threat, harm, intimidation

(h) Engaging in conduct which alarms or causes substantial emotional or psychological distress to woman/child – stalking, trespassing, destruction of property, harrasment

(i) Causing mental or emotional anguish, public ridicule, or humiliation – repeated verbal or emotional abuse, **denial of financial support**

Psychological violence through denial of financial support (Sec. 5[f])

1. Willful denial of financial support
2. Intended to inflict mental or emotional anguish.
3. **Mere failure or inability to give financial support is not sufficient to rise to the level of criminality, even if causing mental or emotional anguish to the woman if the denial is not shown to be deliberate.**
4. E.g., failure to give support due to incapacity is not punishable.

Psychological violence through public ridicule or humiliation

1. Public verbal abuse, pulling of her pants in public view

Psychological violence

1. May be committed through infidelity – even if the act does not amount to concubinage.
2. Transitory/continuing crimes – the element of mental anguish happens in Ph where the woman was and may be prosecuted therein, even if the man committed the infidelity abroad;
3. Proof of psychological illness is not required, what is required is only mental or emotional anguish;
4. Mental anguish must be established by **testimony** of the victim since it is personal to her;
5. Proof of physical violence is not required. It is not an element of psychological violence. XPN: if the source of mental or emotional suffering is the physical violence, in which case, the latter must be proven. Acts of physical violence may also constitute psychological violence.

****Sec. 5(e)(2)²⁴ is not included in Sec. 5(i).²⁵ If what is alleged is Sec. 5(i), the accused cannot be convicted of Sec. 5(e)(2).**

c) Protection Orders [Secs. 8-16]

Issued to prevent further acts of **physical violence** against the woman or her child.

Kinds: (a) Barangay BPO; (b) Temporary TPO; (c) Permanent PPO

(a) BPO

1. Issued by Punong Barangay upon ex-parte application.
2. Effective for 15 days only.

(b) TPO

1. Issued by Family Court upon ex-parte application;
2. Effective for 30 days only. Before expiration, must conduct hearing to determine propriety of issuance of PPO. May be extended for 30 days for each instance.

(c) PPO

1. Issued by Family Court only upon notice and hearing;

2. If defendant fails to attend, applicant may present evidence ex-parte, and court shall render judgement based on evidence presented.
3. Effective until revoked upon application of applicant (woman).

****Ex-parte issuance of BPO TPO not violative of due process clause.** (i) other laws already allowed the same; (ii) nature and purpose requires; (iii) temporary in nature, notice and hearing required for PPO.

Nature of protection orders

1. Unlike summons, protection orders are not procedural mechanisms to acquire jurisdiction over the person of defendant, but a substantial relief in itself which prevents further acts of violence against the woman or her child.

d) Battered Woman Syndrome as a Defense [Sec. 26]

Victim-survivors found by courts to be suffering from BWS do not incur CML or CVL despite absence of any elements for justifying circumstance of self-defense.

1. The repeated abuse against the woman/child may be considered continuing aggression for purposes of appreciating the justifying circumstance of self-defense;
2. The woman must have suffered at least two cycles of violence.
3. Expert opinion (psychologist, psychiatrist) is essential to establish BWS.

Cycles of violence

1. Tension-building phase – escalation of tension, heated arguments, verbal or slight physical abuse where the woman tries to pacify the abuser;
2. Acute battering phase – characterized by brutality, violence, destructiveness, sometimes leading to death, the woman has no control over the acts of abuse and only the latter can put an end to the violence;
3. Tranquil loving phase – cessation of violence, reconciliation, the abuser shows tender and nurturing behavior asking for forgiveness and promising never to beat her again; the woman convinces herself that the man has changed, may even include self-blaming.

3. Anti-Child Pornography Act of 2009 (RA 9775)

a) Definition of Terms [Sec. 3]

(a) Child

1. Person below 18 years.
2. Person over 18 years, but unable to fully take care of himself from abuse, neglect, exploitation, discrimination because of a physical or mental disability or condition (same with R.A. No. 7610).
3. Person who is presented, depicted, portrayed as a child as defined, regardless of age.
4. Computer-generated, digitally or manually crafted images or graphics of a person represented or who made to appear to be a child as defined.

(b) Child pornography

1. Any representation of child engaged or involved in real or simulated explicit sexual activities.
2. Representation may be by visual, audio, written, or combination, by electronic, mechanical, digital, optical, magnetic or any other means.

(c) Explicit Sexual Activity – Actual or simulated

1. sexual intercourse or lascivious act of the same or opposite sex.
2. bestiality
3. masturbation
4. sadistic or masochistic abuse

²⁴ Economic violence by deprivation of financial support to control or restrict the woman's conduct.

²⁵ Psychological violence through deprivation of financial support.

5. lascivious exhibition of private parts
6. use of any object or instrument for lascivious acts.

b) Unlawful or Prohibited Acts [Sec. 4]

1. Employment of child in pornography
2. Production of child pornography
3. Dealing with child pornography – including to publish, offer, transmit, sell, distribute, broadcast, advertise, promote, export, or import child pornography.
4. Possession of child pornography with intent to sell – possession of 3 or more articles of child pornography of the same form is prima facie evidence of intent to sell.
5. Provision of venue for prohibited acts – e.g., dens, private rooms, cubicles, cinemas, houses, establishments purporting to be a legitimate business.
6. Distribution of child pornography by film distributors, theaters, and telecommunication companies.
7. Allowing child to participate in pornography by parent, legal guardian or person having custody or control of a child.
8. Child grooming and luring. (i) grooming means preparing a child for sexual activity/relationship by communicating any form of child pornography; (ii) luring means communicating, by means of a computer system, with a child to facilitate the commission of sexual activity or production of any form of child pornography.
9. Pandering child pornography – offering, advertising, promoting, representing, or distributing any material intended to cause another to believe that the material contains any form of child pornography, regardless of the actual content.
10. Accessing child pornography
11. Conspiracy to commit prohibited acts
12. Possession of child pornography

****Aggravated if committed with the use of computers/ICT under Cybercrime Prevention Act. Penalty shall be one degree higher.**

4. Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act (RA 7610, as amended)

a) Definition of Terms [Sec. 3, RA 7610]

(a) Children

1. Under 18;
2. Over 18, but unable to fully take care and protect themselves against abuse, cruelty, neglect, exploitation, discrimination **ACNED** because of physical or mental disability or condition.

(b) Child abuse – maltreatment of child, whether habitual or not

1. Physical or psychological ACN emotional maltreatment sexual abuse
2. Any act or deed which debases, degrades, demeans **BGM** the intrinsic worth or dignity of the child as a human being;
3. Unjustified deprivation of his basic needs for survival
4. Failure to give immediate medical attention resulting in (i) serious impairment of his growth and development; (ii) permanent incapacity; (iii) death

Notes

1. Acts already covered by RPC are excluded from the coverage of R.A. No. 7610 (mutually exclusive). There is no crime of grave oral defamation under RPC in relation to R.A. No. 7610,

2. Mala in se – specific criminal intent to debase, degrade, demean the intrinsic worth and dignity of the child as human being must be proven.
3. Not every act of laying hands against a child is child abuse. If threats or invectives are uttered in the heat of anger or spur of the moment, the prosecution must prove specific criminal intent to debase, etc. the child. Otherwise, the act is not considered child abuse, but may constitute another crime under RPC. E.g., (i) father who hits another child after the latter hits his child; during emotional outrage; (iii) pushing a minor in the floor to prevent children from fighting.
4. Criminal intent to debase, etc. the child may be inferred from the manner of commission – e.g., (i) **cruelty** as hitting the child in the neck with wet shirt; (ii) **maltreatment** by teacher to student by inflicting grave corporal punishment causing trauma to the child; (iii) “napagtripan” which shows intent to debase or degrade not resulting from an unexpected event; (iv) masturbation in the presence of child is psychological abuse. If the person was prosecuted for child abuse, he may no longer be prosecuted for physical injuries. The latter is deemed absorbed in the former.
5. *Patulot v. People*. **Aberratio ictus** applies in SPL. Accused threw boiling cooking oil to his neighbor. Children were unintentionally hit. Accused held liable for the natural, direct, logical consequence of his unlawful acts. In this case, lack of intent to debase, etc. the child is not defense in prosecution for child abuse.

b) Child Prostitution and Other Sexual Abuse [Sec. 5, RA 7610, as amended by RA 11648]

Child exploited in prostitution or OSA is a child, male or female, who indulges in sexual intercourse or lascivious conduct (i) for consideration (prostitution); (ii) due to coercion of an adult, syndicate, group (OSA)

Persons liable: (a) Pimp or panderer; (b) Those committing acts of sexual intercourse or acts of lasciviousness with the child or subject him to OSA; (c) Those deriving profit or advantage

(a) Pimp or panderer

1. Procures child for prostitution – by inducement, threats, taking advantage, or giving consideration
2. Induces a person to be a client of child prostitute

(b) Those committing sexual acts

1. Sexual intercourse, lascivious acts, OSA
2. Crime was consummated upon (i) commission of sexual act, or (ii) giving consideration.
3. Acts of lasciviousness – (i) child below 16: “Statutory Acts of Lasciviousness as defined in Art. 336 RPC, in relation to Sec. 5(b) of R.A. No. 7610”²⁶; (ii) child is ≥16 but <18: “Lascivious conduct under Sec. 5(b) R.A. No. 7610”.
4. Rape – (i) child below 16: crime is Statutory Rape under Art. 266-A(d) of RPC; (ii) child is ≥16 but <18: (a) Child prostitution under Sec. 5(b) of R.A. No. 7610 if made for consideration; (b) Rape under Art. 266-A of RPC, if done through FIT, DR OU, FM GAA; (c) No crime if the child consented and other circumstances not present.

(c) Those deriving profit

1. Owners of establishments

c.f.: Trafficking of persons

1. Recruitment of minor for prostitution (qualified trafficking of persons under Sec. 5[a]) has common elements with child prostitution;
2. Penalties are not cumulative;

²⁶ For purposes of imposing higher penalty

3. Prosecution for one bars another on ground of double jeopardy.

c) Attempt to Commit Child Prostitution [Sec. 6, RA 7610]

(a) Attempt to commit Child Prostitution under Sec. 5(a)

1. A person not a relative of a child is found alone with the latter;
2. Inside a room, vehicle, or hidden or secluded area; N.B.: if they are found in a public place like Luneta Park, the crime is not committed
3. Under circumstances that would lead a reasonable person to believe that the child is about to be exploited in prostitution or OSA.

(b) Attempt to commit Child Prostitution under Sec. 5(b)

1. Person receiving services from a child;
2. In a sauna, parlor, bath, other similar establishments.

Penalty: 2 degrees lower.

d) Child Trafficking [Sec. 7, RA 7610, as amended by RA 11648]

Act of trading or dealing with children, including buy and sell for consideration. Qualified if the child is below 16y where penalty is imposed in the maximum.

e) Attempt to Commit Child Trafficking [Sec. 8, RA 7610]

- (a) Child travelling alone without (i) valid reason, (ii) clearance from DSWD, (iii) written parental permit or justification;
- (b) Recruitment of women or couples to bear children;
- (c) Simulation of birth;
- (d) Child searching in low-income families, hospitals, clinics, child-rearing institutions.

f) Obscene Publication and Indecent Shows [Sec. 9, RA 7610, as amended by RA 11648]

(a) Punishable acts:

1. Hiring, using, inducing, coercing child to (i) perform in obscene exhibitions and indecent shows; (ii) model on obscene publications or materials;
2. Selling, distribution such materials

(b) Qualification

1. Child below 18
2. Penalty imposed in the maximum period.

g) Employment of Children [Sec. 12, RA 7610 as amended by RA 9231]

GR: Child below 15 shall not be employed.

XPNS:

1. In family undertakings – (i) child works directly under the sole responsibility of his parents/guardian; (ii) only members of his family are employed
2. In public entertainment or information – (i) where child's participation is essential; (ii) employment contract is approved by DOLE

Requirements for child employment

1. Work permit from DOLE
2. Work conditions – (i) ensure protection, health, safety, morals, normal development, (ii) measure to prevent child exploitation; (iii) continuing training and skills development program.

5. Prohibition of Child Marriage Law (RA 11596)

a) Definition of Terms [Sec. 3]

(a) Child

1. Person under 18y.
2. Person 18y or over but unable to fully take care and protect oneself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

(b) Child marriage

1. Marriage where one or both parties are children, and solemnized in civil or church proceedings, or in any recognized traditional, cultural or customary manner.
2. Includes an **informal union** or cohabitation outside of wedlock between an adult and a child, or between children.

b) Unlawful Acts [Sec. 4]

(a) Cohabitation of an Adult with a Child Outside Wedlock

1. Punishes an adult partner who cohabits with a child outside of wedlock.
2. Penalty imposed under the law is without prejudice to higher penalties that may be imposed under the RPC or other SPL. The crime is not absorbed by other crimes committed under RPC or other SPL.

(b) Facilitation of Child Marriage

1. (i) Causing, fixing, facilitating, or arranging a child marriage; (ii) producing, printing, issuing and/or distributing fraudulent or tampered documents such as birth certificates, affidavits of delayed registration of birth and/or foundling certificates to misrepresent the age of a child to facilitate child marriage or evade liability.
2. Aggravated if – (i) offender is an ascendant, parent, adoptive parent, stepparent, guardian of the child; (ii) ground for loss of parental authority.
3. Without prejudice to other penalties that may be imposed under RPC or other laws e.g., falsification of public documents.

(b) Solemnization of Child Marriage

1. Punishes the solemnizing officer who officiates the child marriage.
2. Solemnizing officer is person authorized to officiate a marriage FC or recognized customs.

If offender is public officer – (i) he shall be dismissed from the service and (ii) may be perpetually disqualified from holding office, at the discretion of the courts.

c) Public Crimes [Sec. 5]

Prohibited acts above are public crimes and be initiated by any concerned individual.

6. An Act Providing for Stronger Protection Against Rape and Sexual Exploitation and Abuse, Increasing the Age for Determining the Commission of Statutory Rape (RA 11648)

a) Amendment on Rape [Sec. 1]

1. Increased age for statutory rape to 16y.
2. Provided for exemption from criminal liability if – (i) the age difference between the offender and the offended party is $\leq 3y$, and (ii) the sexual act is shown to be (a) consensual, (b) non-abusive and (c) non-exploitative. XPN: if the victim is under 13 years.

***See discussion under Crime Rape.*

b) Amendment on Qualified Seduction [Sec. 2]

Adjustment in age of minor victim from 12 to 16.

***See discussion under Crime Seduction.*

I. Crimes Against Personal Liberty and Security (Arts. 267-292)

Sec. 1(1): (a) Kidnapping and serious illegal detention; (b) Slight illegal detention; (c) Unlawful arrest

Sec. 1(2): (d) Kidnapping and failure to return minor; (e) Inducing minor to abandon home

Sec. 1(3): (f) Slavery; (g) Exploitation of child labor; (h) Debt bondage

Sec. 2(1): (i) Abandonment of persons; (j) Exploitation of minors

Sec. 2(2): (k) Trespass to dwelling; (l) Other forms of trespass

Sec. 2(3): (m) Threats; (n) Coercions; (o) Formation, maintenance, prohibition of combination of capital or labor through violence or threats

Sec. 3: (o) Discovering secrets; (p) Revealing secrets

(a) Kidnapping and serious illegal detention

1. Elements: (i) offender is private person; (ii) he kidnaps, detains, otherwise deprives another of liberty; (iii) k/d is illegal; (iv) attended by: **SLIME** (a) **simulation** of public authority; (b) **lasted** >3d; (c) **infliction** of serious physical injuries, threats to kill; (d) victim is **minor**, female, public officer; (e) **extortion** for ransom. In case of minor, the offender must not be his parents.
2. 3d is not required if (i) victim is minor, female, public officer; (ii) for ransom.
3. Essence: actual confinement + without consent + intent to detain or restrain movement
4. Accused must have forcefully transported, locked-up, or restrained a person.
5. No illegal detention if – (i) there is consent; (ii) victim is allowed to leave.
6. When physical restraint not required – (i) if because of fear, the victim is forced to limit his own actions; (ii) in case of minor who is left in place where he did not know the way home even though he can freely roam the place of detention.
7. No impossible crime of kidnapping since impossible crimes apply only in crimes against persons/property.
8. Serious illegal detention once there is deprivation of liberty for the purpose of extorting ransom. It is not required that the ransom note be received.
9. c.f.: arbitrary detention – offender is public officer having duty under the law to detain a person. If public officer without such duty, K/SID
10. c.f.: inducing a minor to abandon home – offender is the parent and victim is minor.
11. The intent must be to deprive the victim of his liberty and not to make him do some other act where the deprivation of liberty is merely incidental. – (i) if with lewd design, seduction; (ii) may also be grave coercion.

Special Complex crimes §267, last par. – When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

1. Kidnapping with homicide/murder – (i) when the victim was killed or died in the course of detention, **regardless of whether the killing was purposefully sought or was mere afterthought.** (ii) if the victims were killed after raping or after infliction of injuries, crime is Kidnapping with homicide/murder.
2. Kidnapping with SPI – when injuries were inflicted on the victim in the course of kidnapping.
3. Kidnapping with rape – (i) if deprivation of liberty is intended and without lewd designs, and victim was raped in the course of detention; (ii) rape is generic. If with lewd design, forcible abduction with rape. In latter, only the first rape is complexed with forcible abduction where it is necessary; additional rape treated as separate crimes.
4. No crime of illegal detention with rape, or rape with serious illegal detention under Art. 48.

(b) Slight Illegal Detention

1. Elements: (i) offender is private person; (ii) he kidnaps, detains, otherwise deprives another of liberty; (iii) k/d is illegal; (iv) not attended by SLIME.

(c) Unlawful arrest

1. c.f.: arbitrary detention

Unlawful arrest	Arbitrary detention
Crime against personal liberty and security	Crime against fundamental laws of the State
Officer is any person	Offender is a public officer
If committed by public officer, he is not authorized under the law to make the arrest or detention	The public officer must have duty to make the arrest or detention

(k) Trespass to dwelling

1. Elements – (i) Offender is a private person; (ii) he entered the dwelling of another; (iii) against the latter's will.
2. Exceptions – entry made to (i) prevent serious harm to himself, the occupants or third persons; (ii) render some service to humanity or justice; (iii) an open public house.
3. Qualified if made with violence or intimidation.
4. Dwelling may be inhabited or uninhabited.
5. Not defenses – (i) The fact that the door was already open. That the door was closed is not an element of the crime; (ii) that the tenant did not oppose the entry. The prohibition to enter may be express or implied.; (iii) that the entry was not made against the tenant's will since the latter tenant did not know of the same.
6. (i) Absorbed if entry to the house is for the purpose of committing another crime where such entry is necessary, e.g., Robbery in an inhabited or uninhabited place. (ii) GAC If the entry is not necessary for the commission of the crime.

(l) Other forms of trespass

1. Offender enters the closed premises or fenced estate of another.
2. Entrance is made while either of them is uninhabited.
3. The prohibition to enter is manifest.
4. The trespasser has not secured permission of the owner or caretaker.

(m) Threats

1. Three kinds – (i) grave threats; (ii) light threats; (iii) other light threats.

Grave threats

1. Three modes: (i) the offender attains his purpose; (ii) the offender fails to attain his purpose; (iii) the threat was made without condition.
2. [i] Elements – (i) Offender threatens another person with the infliction upon his person, honor, or property, or upon his family, **PHPF** any wrong; (ii) the wrong amounts to a crime; (iii) there is demand for money or any other condition imposed, even though not unlawful (absent in [iii]); (iv) offender attains his purpose (absent in [ii][iii]).
3. c.f.: robbery. Based on immediacy of the threat and gain. In grave threats, both are not immediate. In robbery, both are immediate.

Light threats

1. Elements – (i) Offender makes a threat to commit a wrong; (ii) The wrong **does not constitute a crime**; (iii) There is demand for money or any other condition imposed, even though not unlawful; (iv) The offender either attained or failed to attain his purpose.
2. Always coupled with demand for money or other condition, w/n the objective was accomplished.

3. E.g., threat to report another to BIR for non-filing of ITR in exchange of money. This is light threat since the threat does not amount to an unlawful act.

Other Light threats

1. Threats not covered by any of the above.
2. Categories – (i) Threatening another with a weapon, drawing such weapon in quarrel, unless it be in lawful self-defense; (ii) Orally threatening another, in the heat of anger, with some harm not constituting a crime, without persisting with the idea involved in the threat; (iii) Orally threatening to do another any harm not constituting a felony.
3. E.g., Drawing and cocking of gun during a fight

(n) Coercions

1. Three kinds – (i) grave coercion; (ii) light coercion; (iii) other light coercion/unjust vexation.

Grave coercion

1. Modes of commission – By compulsion, or by prevention.
2. Elements – (i) The offender prevents another from doing something that is not prohibited by law, or compels him to do something against his will, whether right or wrong; (ii) The prevention or compulsion is effected through violence; (iii) Restraint of another's will and liberty was not made under authority of law or in the exercise of any right.
3. Violence may be by material force, or its display as to intimidate and control the will of the victim.

Light coercion

1. Offender is a creditor.
2. He seizes anything belonging to the debtor.
3. Seizure of the thing is accompanied by means of violence or a display of material force producing intimidation.
4. The purpose of the offender is to apply the same to the payment of debt.

Other light coercion/unjust vexation

1. Any human conduct not producing any physical or material harm which unjustly annoy or vex an innocent person.
2. E.g., stalking, voyeurism, person trying to open the door of one's house where the intent cannot be determined.

1. Cybercrime Prevention Act of 2012 (RA 10175)

a) Cybercrime Offenses [Sec. 4]

(a) Offenses against the confidentiality, integrity and availability of computer data and systems

1. Illegal Access
2. Illegal Interception – unauthorized interception of non-public transmission of computer data through technical means.
3. Data Interference – unauthorized alteration, damaging, deletion or deterioration of computer data, e-doc, or EDM. Includes the introduction or transmission of viruses – may be committed intentionally or through reckless negligence.
4. System Interference – unauthorized hindering or interference with the functioning of a computer or computer network through data interference.
5. Misuse of Devices – (i) dealing with device/program or password/access codes/data for use in committing prohibited acts under the law; (ii) possession of such for purposes of committing offense under this section.
6. Cyber-squatting – acquisition of domain name in to profit, mislead, destroy reputation, and deprive others from registering the same, if (i) such a domain name is identical, confusingly/similar with

a registered TM, or name of a person, or (ii) acquired with right or intellectual property interest.

(b) Computer-related Offenses

1. Computer-related Forgery – unauthorized alteration computer data resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic.
2. Computer-related Fraud – unauthorized alteration, or deletion of computer data or program or interference in the functioning of a computer system, causing damage thereby with fraudulent intent.
3. Computer-related Identity Theft – intentional acquisition, use, misuse, transfer, possession, alteration, or deletion of identifying information belonging to another, whether natural or juridical, without right.

(c) Content-related Offenses

1. Cybersex – willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.
2. Child Pornography – see separate discussion. Child pornography through computer system is punished 1 degree higher.
3. Cyberlibel – see separate discussion.

b) Other Offenses [Sec. 5]

1. Aiding or Abetting in the Commission of Cybercrime.
2. Attempt in the Commission of Cybercrime.

Provisions declared unconstitutional (Disini v. SOJ)

1. Unsolicited commercial communications – (i) provision prohibiting the transmission of commercial electronic communication using computer system which seek to advertise, sell, offer for sale products and services; (ii) commercial communications are also covered by freedom of speech.
2. Real-time collection of traffic data – (i) With due cause, authorizes law enforcement officers to collect or record traffic data in real-time associated with specified communications transmitted by means of computer system; (ii) "with due cause" is vague and susceptible to various interpretations, and given law enforcement authorities unbridled discretion in the implementation of the law. Traffic data pertains to the communication's origin, destination, route, time, data, size, duration, type of underlying service but not the content or identities.
3. Restricting or blocking access to computer data – (i) when a computer data is prima facie found to be in violation of the provisions of the law, the DOJ shall issue and order to restrict or block access to the computer data; (ii) unconstitutional for violating the people's right against unreasonable searches and seizures. The order contemplated in this case amounts to a warrant not issued by a judge but by an executive officer.

J. Crimes Against Property (Articles 293-332)

Sec. 1: (a) Robbery
 Sec. 2: (b) Brigandage
 Sec. 3: (c) Theft
 Sec. 4: (d) Usurpation
 Sec. 5: (e) Culpable insolvency
 Sec. 6: (f) Estafa; (g) Other forms of swindling; (h) Other deceits
 Sec. 7: (i) Chattel mortgage;
 Sec. 8: (j) Arson; (k) Other crimes involving destruction
 Sec. 9: (l) Malicious mischief
 Sec. 10: (m) Exemptions

(a) Robbery

1. Elements: (i) PPBA; (ii) unlawful taking; (iii) ITG; (iv) With VAIP, FUA. ITG may be presumed from the unlawful taking.

2. Kinds: (a) Robbery with VAIP; (b) Robbery with FUA

Robbery with VAIP

1. Kinds: (i) w/ homicide; (ii) w/ rape; (iii) w/ intentional mutilation; (iv) w/ arson; (v) w/ serious physical injuries; (vi) simple robbery
2. Aggravating circumstances: (vii) in an **uninhabited** place or (viii) by a **band**, or (ix) by **attacking** a moving train, street car, motor vehicle or airship, or (x) by **entering** the passenger's compartments in a train or, in any manner, taking the passengers thereof by surprise in the respective conveyances, or (xi) on a **street**, road, highway, or alley, and (xii) the **intimidation** is made with the use of a firearm. **ABUSEI**
3. The consequences need not be committed by the robbers themselves. XPN: (i) rape, intentional mutilation, arson (accompanied by); (ii) SPI 263[3][4] (offender shall have inflicted); (iii) attempted robbery with homicide (Art. 297)

(i) With Homicide

1. SCC under Art. 294. Single, special, indivisible felony. Penalty is imposed based on gravity of consequence not on value of property taken.
2. Homicide is committed by reason or on occasion of **BROO** robbery. (i) to facilitate; (ii) to preserve PPBA; (iii) to prevent discovery; (iv) to remove witnesses.
3. ITG (or rob) must be primary and must precede the taking of life or ITK. ITG/R is inferred from the violent unlawful taking. Killing is incidental only. If killing is the main purpose and taking is incidental, crime committed in murder/homicide + theft.
4. Immaterial – identity of victim²⁷ or perpetrator,²⁸ timing,²⁹ manner,³⁰ or place of commission.³¹ If there is nexus.
5. Both robbery and homicide must be consummated. – (i) if robbery not consummated: attempted robbery with homicide, provided the robbers committed the homicide; (ii) if homicide not consummated (no death): (a) separate crimes of robbery + attempted/frustrated homicide/murder, if killing not necessary for robbery; (b) complex crime of robbery with attempted/frustrated homicide/murder under Art. 48, if killing necessary for robbery. ITK required. There is no SCC of robbery with attempted/frustrated homicide since the constituent crime must be consummated homicide as expressly provided.
6. Homicide is generic.³² – (i) includes, parricide, murder, infanticide; multiple deaths; reckless imprudence; physical injuries short of death; attempt or frustration; rape (GAC); (ii) other QAC proven shall be considered GAC which may be appreciated in determining penalty. (iii) So long as there was death, crime is RWH, other crimes committed BROO are absorbed.
7. All conspirators for robbery are liable for the SCC of robbery w/ homicide even if they did not actually participate in the killing or did not benefit. XPNs: (i) if they only agreed to the robbery, did not participate in the killing, and endeavored to prevent it (presupposes opportunity to prevent and awareness) or could not have prevented it (no

opportunity, aware). He will be liable for robbery only.

8. Dwelling is aggravating. If robbery with FUA, dwelling is inherent.
9. Arson is absorbed in RWH.
10. If the accused has ITK the victim, after which, he took his property as an afterthought, he is liable for two offenses: homicide/murder, and theft.

(ii) With Rape

1. Robbery **accompanied with** rape (not BROO). There must be a connection between the robbery and rape.
2. The robbers themselves must commit the rape.
3. ITG (or rob) must be primary and must precede the rape. ITG/R is inferred from the violent unlawful taking. Rape is incidental only. If rape is the main purpose and taking is incidental, crime committed in rape + theft/robbery.
4. Immaterial – identity of victim,³³ timing,³⁴ or place of commission.³⁵ If there is nexus. If there is no connection, two separate crimes were committed: robbery and rape.
5. Separate crimes: robbery was already consummated and conspirators already parted and one committed the rape.
6. Both robbery and rape must be consummated.
7. Rape is generic – additional rapes considered GAC of ignominy.
8. Same rule in RWH in case of conspiracy.
9. Robbery with intentional mutilation or arson – robbery must also be accompanied with constituent crimes. Robbers committed.
10. If the accused has intent to rape the victim, after which, he took her property as an afterthought, he is liable for two offenses: rape, and robbery/theft.
11. Sexual assault is not the same as the constituent crime of rape in the SCC of robbery with rape. If the robbery is attended by sexual assault, the crimes committed are separate crimes of robbery and sexual assault.
12. If the robbery is attended by attempted rape or AOL, it falls under simple robbery under Art. 294[4], where the robbery was carried to a degree clearly unnecessary for the commission of the crime.

(v) With Serious Physical Injuries

1. Kinds: (i) Under 263[1]; (ii) Under 263[2]; (iii) With use of unnecessary violence or under 263[3][4]
2. 263[1] – blindness, insanity, imbecility, impotency
3. 263[2] – loss of speech, hearing, smell; loss of an eye; loss of hand, foot, arm, leg; loss of use of such members; permanent incapacity for habitual work
4. 263[3] – deformity; loss of other members; loss of use of such members; temporary illness or incapacity for habitual work ≤90d.
5. 263[4] – temporary illness or incapacity for labor ≤30d.
6. 263[1][2] – (i) BROO; (ii) need not be inflicted by robbers themselves. 263[3][4] under par. 4 must be inflicted by robbers themselves – “in the course of execution, the *offender* shall have inflicted xxx”
7. SPI is inflicted by reason or on occasion of robbery.
8. Applies if no killing intervened. Otherwise, RWH.

²⁷ Need not be the same victim as robbery, may be a robber, police officer, bystander.

²⁸ Need not be the robbers, killing may be done by the victim of robbery of a police officer.

²⁹ Before, during, after.

³⁰ Intentional or accidental.

³¹ Even if homicide and rape were committed in different places, crime is RWH aggravated with rape.

³² Regardless of number and QAC. Other physical injuries inflicted are absorbed.

³³ Need not be the same victim as robbery, may be a robber, police officer, bystander.

³⁴ Before, during, after.

³⁵ Even if homicide and rape were committed in different places, crime is RWH aggravated with rape.

(vi) Simple robbery

1. Simple robbery – (i) robbery in other cases as when less serious or slight physical injuries were inflicted, or there is only employment of intimidation; (ii) if the accused demands sex in blackmailing the victim and the victim offered to pay money instead, there is robbery with VAIP since the counteroffer merely substitutes the prior demand. There is still taking of property w/o consent. This was held by the court to be the crime of robbery with intimidation.
2. Qualified robbery – (i) applies only in robbery with SPI (under 294[2][3][4]) and simple robbery; (ii) in robbery with HRIA SPI[1], merely generic aggravating; (iii) effect is to impose penalty in maximum period; (iv) circumstances: **ABUSEI** (a) attack of moving vehicle; (b) by band (>3, considered co-principals); (c) in uninhabited place; (d) on street, highway, road, alley; (e) entry in passengers compartments and taking them by surprise in conveyances; (f) intimidation with use of firearms
3. If robbery was not consummated but killing intervened – SCC of attempted robbery with homicide.
4. Robbery has no frustrated stage.
5. If robbery is by band and one of the robbers raped someone. The crime is Robbery by Band. The rapist is liable for the separate crime of rape.
6. c.f.: grave threats (robbery through intimidation) – (i) intimidation if for future injury; (ii) conditional and not actual, immediate; (iii) need not be personal to victim, may be threat against his relatives, honor, property; (iv) purpose is not taking of PPBA but some other thing.
7. c.f.: grave coercion – main purposes is to control the will of another and make him do something against his will and not the taking of PPBA with ITG.

Execution of deeds by means of violence or intimidation

Robbery by execution of deeds

1. Akin to grave coercion, what distinguishes is the intent to defraud the victim.
2. A forced B to execute a PN – (i) if B is not indebted to A, and A will use the PN to defraud B, A is liable for robbery by execution of deeds; (ii) if B is indeed indebted to A, the crime is grave coercion by compulsion.

(viii) Robbery by a band

1. When 4 or more armed malefactors take part in the commission of a robbery.
2. All members of the band present at the time of the commission of the offense shall be liable for the resulting crime. XPNs: (i) if they can establish that they endeavored to prevent the commission of the additional crime, or (ii) they are not in the position to do so, having no knowledge of such commission.
3. If the crime committed in RWH, commission by band is considered GAC.

Robbery with FUA

1. Kinds – (i) in inhabited house, public building, edifice devoted to worship **IPE**; (ii) in uninhabited place, private building **UPPB**. Modes of commission are the same, except simulation of public authority applicable only in IPE.
2. In IPE – (i) entry in IPE; (ii) through (a) opening not intended for purpose; (b) breaking doors, windows, roof, floor; (c) use of false keys, picklocks, similar tools; (d) use of fictitious names, pretending exercise of public authority; or by (e) breaking of door, wardrobes, chests, locked/sealed furniture, or (f) taking the locked or sealed

furniture to be broken or forced open outside; (iii) taking of PPBA with ITG

3. In UPPB – same as IPE, except use of fictitious names, pretending exercise of public authority.
4. Dwelling is inherent.
5. Taking personal property in a parked car by breaking in is not Robbery with FUA since the latter contemplates entry to buildings. In the former, the crime committed in the former is simple theft.
6. Manufacturing and possession of picklocks or similar tools are preparatory acts which are already punishable. Also, the manufacturing and possession of implements for falsification.

(b) Brigandage

1. Elements: (i) involves >3 persons; (ii) formed into a band of robbers; (iii) purposes are: (a) highway robbery; (b) kidnapping for ransom; (c) attain any other purpose by means of violence.
2. Mere formation is punished. Actual robbery need not be committed. Prosecution has to prove (i) organization of band; (ii) **purpose** of band.
3. At least 4 members of the band must be armed with deadly weapons.
4. Presumption of brigandage: carrying of unlicensed firearm.
5. c.f.: highway robbery under PD 532 – (i) number of robbers is not material; (ii) purpose is to commit indiscriminate highway robbery; (iii) Brigandage is for purposes of highway robbery, kidnapping for ransom, other purpose by means of violence; (iv) in ordinary robbery, the victim is predetermined, i.e., particular robbery.
6. c.f.: robbery by band – (i) purpose of robbery by band is particular robbery, not necessarily in highway; (ii) the robbery must be actually committed, whereas mere formation of band already constitutes brigandage.

(c) Theft

1. Elements: PUVIC (i) SM is PPBA; (ii) unlawful taking; (iii) w/o VAIP, FUA; (iv) w/ ITG; (v) without owner's consent
2. PPBA need not be taken from the owner, may be from person having lawful right to possess. (i) Value of property used in imposition of penalty is that proven during trial, not what is alleged in information. (ii) PPBA must be capable of appropriation, not necessary asportation (taking away).
3. Belonging to another: (i) no theft if property was taken under claim of ownership in GF, even if claim is mistaken or untenable; (ii) no ITG; (iii) if property turned out to be offender's own property, no theft.
4. Unlawful taking: (i) unconsented deprivation of possession + intention to withhold with character of permanency; (ii) consummated once offender gains full possession of the property, even w/o opportunity to dispose (disposition not an element). No frustrated theft; (iii) possible even if possession was lawful in the beginning, e.g., after a car lease contract expired, the borrower lent the car to another. If the latter knew of the prior arrangement, he shall be liable for fencing.
5. ITG – (i) presumed from unlawful taking; (ii) actual gain is not required, only intent; (iii) use of property without consent constitutes gain, e.g., taking car for joyride is theft since the person derives utility, satisfaction, enjoyment, pleasure.
6. Without consent, need not be against the will of victim.
7. If money was entrusted to a person for purchase of airline tickets, his failure to purchase the ticket or return the money constitutes theft (not estafa) as there was no transfer of the juridical possession of the money.

8. Acquittal for the crime of theft does not automatically exonerate the person of CVL.
9. Kinds: (i) theft; (ii) theft of lost property TLP; (iii) qualified theft

Theft of lost property

1. There is theft if the person who finds lost property fails to return it to owner if known, or to public authorities.
2. Finder in law includes one who is not the actual finder but induced the latter to appropriate the lost object, or one who received the object from actual finder. Furtive taking of lost property with knowledge of its ownership.
3. Even if the person is not the actual finder, he may still be prosecuted for theft for being the finder in law.
4. The essence of the crime is not the finding of lost property, but its appropriation.
5. If the owner found his property in the hands of another, the latter may be charged with violation of anti-fencing law. Mere possession of stolen goods is prima facie evidence of fencing.
6. If the owner took his property from another's house, he does not commit theft but trespassing only. No ITG since it is his own property.

Qualified theft

1. PUVIC + ADMO (i) with abuse of confidence; (ii) committed by domestic servant; (iii) SM is motor vehicle, mail matter, large cattle, coconuts in plantation, fish from fishpond; (iv) on occasion of calamity, accident, disturbance.
2. GAC – relation by reason of dependence, guardianship vigilance creating a high degree of confidence, which the accused abused.
3. E.g., managerial positions, guards, drivers given access to entrance/exit of premises, salesclerk, sales lady, cashier, legal secretary, liaison officer, collector, accountant, bookkeeper, pawnshop EE, one having access to vault.
4. If committed by domestic servant, abuse of confidence is already presumed.
5. The penalty imposed is 2 degrees higher than simple theft.

(d) Usurpation

1. Elements: (i) SM is RPBA, or real rights; (ii) unlawful taking of RPBA, or usurpation of RRBA; (iii) w/ VAIP; (iv) ITG; (v) without consent.
2. Usurpation: taking RPBA, or usurpation of RRBA.
3. Additional penalty is imposed in addition to results of the acts of violence. Threats is not absorbed if committed through intimidation (294[5]).³⁶ Threat is the consideration contemplated and does not constitute distinct crime. [?] p. 201.
4. VAIP is the same as used in Robbery. Crime would be robbery had the SM been PPBA. Only difference is the SM.
5. If other crimes was committed in the act of occupying the real property, e.g., killing a person or inflicting injuries, the accused will be prosecuted only for usurpation of real property but he may be made to suffer additional the penalties of the additional crimes committed.
6. c.f.: grave coercion – there is no ITG.

(f) Estafa (criminal deceit + damage)

1. Elements: (i) the accused defrauded another (a) with unfaithfulness or abuse of confidence; (b) by means false pretenses or fraudulent acts; (c) by fraudulent means; (ii) victim suffered damage capable of pecuniary estimation.
2. The amount of damage is the basis for the imposition of penalty in estafa.

3. Dolo incidente (not causante) may give rise to the criminal liability.

Estafa with unfaithfulness or abuse of confidence

1. Modes of commission: **AMT** (i) By **altering** the substance, quality, quantity of goods to be delivered by virtue of an obligation, even if proceeding from illegal or immoral consideration; **(ii) by misappropriating, converting, denying receipt of money, goods, property, MGO received in trust, on commission or administration, or under any other obligation to make delivery or return the same TCAO**; (iii) by taking advantage of a signature in blank by writing any document above the signature causing prejudice.
2. Elements of [ii]: **EMPD** (i) MGO is entrusted to the offender in trust, or on commission or administration or under any other obligation to make delivery or return the same; (ii) offender (a) misappropriates, (b) converts, (c) denies receipt of the MGO; (iii) prejudice to offended party as a result of **MCD**; (iv) demand by offended party.
3. There must be transfer of both material and juridical possession of MGO. (i) the person receiving MGO acquires title independent from transferor which he can assert even as against the former. (ii) there is transfer of juridical possession if property is received in TCAO. (iii) agent acquires juridical possession over objects of the agency which he can retain if principal fails to reimburse him of advances or to indemnify him for damages. If only material possession is transferred, crime is qualified theft. (iv) disposition of leased object during the lease period since at the time, the lessee had juridical possession of the object; but if disposed after termination of lease period, the crime committed is theft since the possession is merely material (mere tolerance).
4. Nature of possession distinguishes estafa with qualified theft. In the former, the accused acquires juridical possession of the object. In the latter, only physical or material possession.
5. Misappropriation or conversion means – (i) disposition; (ii) devotion to purpose different than that agreed. Treatment of MGO as if it is one's own property. (ii) misappropriation involves very attempt to dispose property without right.
6. Presumption of misappropriation: (i) failure to deliver proceeds or return the items; (ii) failure to give account of their whereabouts.
7. Money received by EE on behalf of ER transfers only material possession. (i) bank teller – bank; (ii) payment to EE is payment to ER with EE as mere custodian not having independent right; (iii) EE recognizes possession by ER.
8. No estafa if: (i) prior settlement or accounting is required before return of fund (either by agreement or by court order); (ii) MGO delivered, there being no prohibition to appoint sub-agent. But if there is prohibition, or there conspiracy with sub-agent, transfer constitutes estafa.
9. Agents withholding commission – (i) liable for estafa if not authorized to withhold; (ii) not liable if authorized.
10. Damage – (i) need not be actual as long as capable of pecuniary estimation; (ii) may be by: deprivation of MGO, disturbance of property rights; temporary prejudice. (iii) the person prejudiced need not be the owner.
11. Demand – (i) not an element, but circumstantial evidence of misappropriation; (ii) no required form, may be oral/writing, judicial/EJ, prior EJ is not required before judicial demand; (iii) if misappropriation is proven, demand is no longer

³⁶ Simple robbery.

- required; (iv) if there is fixed period for the delivery of proceeds, failure to return the MGO during such period raises the presumption of misappropriation.
12. Return or reimbursement does not negate criminal liability. The fact of deposit beyond 90d does not have any effect on the CML. This affects only the prima facie knowledge of insufficiency of funds under B.P. 22.
 13. Trust receipt agreements are indicative of trust relationship.

Estafa by means false pretenses or fraudulent acts

1. Modes: **FABP** (i) using fictitious names or falsely pretending to possess power, influence, qualifications; (ii) altering the quality, fineness, weight of anything involved in his art or business; (iii) pretending to have bribed a government officer; **(iv) post-dating a check without sufficient funds.**
2. Elements: **FPRD** (i) False pretense or fraudulent representation as to offender's power, influence, qualifications; (ii) Prior or simultaneous with commission of fraud; (iii) Reliance by offended party on the FPFR which induced him to part with his money; (iv) Damage.
3. Elements of estafa through false pretenses by post-dating check: **PNS** (i) offender postdates a check; (ii) when he has no or has insufficient funds in the bank; (iii) obligation was incurred **simultaneous** with the issuance of check.
4. The issuance of check must be the **efficient cause** of defraudation. (i) The issuance of check must have been the reason for the victim to part with his MGO. (ii) Check have been issued as inducement for the surrender of MGO but not in payment of pre-existing obligation. (iii) What is punished is the criminal, not the non-payment of debt.
5. Prima facie evidence of deceit: failure to fund the check within 3d from notice of dishonor. Notice must come from bank or payee/holder.
6. Not estafa if: (i) check issued as evidence of indebtedness, e.g., promissory note; (ii) as guarantee or collateral (XPN: if deceit attended, e.g., check was not hers and not sufficiently funded); (iii) as payment for pre-existing debt (obligation must be incurred simultaneously with check)
7. Refund does not extinguish CML, only CVL. Full payment is not a defense but may be considered as mitigating circumstances analogous to confession of guilt. The offer of compromise may even be admitted as evidence of guilt against the accuse since estafa is not one of the crimes which may be compromised.
8. Intent is element. GF is defense.
9. c.f.: B.P. 22 – (i) deceit and damage are not elements; (ii) applicable even if check issued for pre-existing obligation; (iii) crime against public interest; (iv) malum prohibitum; (v) intent is not essential; what is punished in the issuance of worthless check; (vi) demand prior to the institution of criminal action is both an element. However, it is more compelling in BP 22 since notice of dishonor and failure to fund the check within 5d gives rise to the presumption that at the time of issuance, the drawer was aware that the check was not funded. Without demand, the prosecution will not prosper; (vii) full payment is a defense if made prior to the filing of information in court. No double jeopardy.³⁷

10. If the check was issued in payment of a pre-existing obligation, it cannot be said that it is attended by deceit.
11. E.g., (i) if the accused misrepresented to another that he has selling the property of another person leading the offended party to part with his money as downpayment, when in truth, the accused was not so authorized by the property owner; (ii) if the accused misrepresented that he can provide employment to the offended party as a result of which the latter paid him money for tickets, other processing fees (separate prosecution for illegal recruitment may lie as there is no DJ).

Estafa by fraudulent means

1. Modes: (i) inducement of another to sign a document by means of deceit; (ii) resorting to fraudulent practice to ensure success in gambling game; (iii) removal, concealment, destruction of any record, file, document.

Syndicated estafa

1. Estafa under Art. 315 or 316 RPC, qualified by: (i) commission by syndicate; (ii) misappropriation of funds (a) contributed by members, or (b) obtained from general public.
2. Syndicate – (i) 5+ persons; (ii) organized into an association; (iii) with intention of defrauding its own SH, members, depositors. May be in the form of rural banks, cooperatives, samahangnayan, farmers' association.
3. Who are liable: those who formed, managed the association; received, misappropriated the funds.
4. Regardless of amount involved.

(j) Arson

1. Malicious destruction of property by fire.
2. Elements: (i) offender destroys property; (ii) with deliberate intent; (iii) by use of fire.
3. Types: (i) destructive (Art. 320); (ii) simple (PD 1613)
4. If death results – (i) crime is arson, if main intent is burning a building, and death results BROO (GAC);³⁸ (ii) crime is murder, if main intent is to kill a person (QAC; qualified by use of artifice involving great waste or ruin);³⁹ (iii) separate crimes, if death is not BROO of fire but resorted to cover up the death. If ITK is not shown, crime is purely arson.
5. However, in a recent case, the SC affirmed the conviction of the accused for the crime of arson with homicide where there is no ITK but a person dies BROO of arson.
6. Stages of commission – (i) attempted, if he fails to light a match; (ii) frustrated, if the rags were put to fire but put out; (iii) consummated, if contents of the building were set on fire even if no part of the building was burned. Once the fire was started, the consummation does not depend on the extent of damage caused.
7. Conspiracy to commit arson is punishable.

(k) Other forms of destruction

1. Causing destruction by means of **explosion**, discharge of electric current, inundation, sinking or stranding of a vessel, intentional damaging of the engine of said vessel, taking up the rails from a railway track, maliciously changing railway signals for the safety of moving trains, destroying telegraph wires and telegraph posts, or those of any other system, and, in general, by using any other agency or means of destruction as effective

³⁷ Single act may produce two offenses. Prosecution of same act is not prohibited. It is prosecution of same offenses that is barred.

³⁸ Homicide is absorbed.

³⁹ Use of fire.

as those above enumerated, w/n the safety of any person is endangered.

2. If death resulted from the explosion of building. The crime committed is OCC of destruction with homicide is an ordinary complex crime. – (i) homicide is not generic; (ii) there can be destruction with multiple homicide.

(l) Malicious mischief

1. Elements – (i) Deliberately causing damage to property of another; (ii) Act does not constitute arson or other crimes involving destruction; (iii) Act of damaging was done merely for the sake of damaging the property.
2. Scratching parked cars, breaking neighbor's windows, killing another person's dog.
3. Destruction of improvement on property allegedly belonging to them. Assuming they own the property, they should not have placed the law upon their own hands. Such summary destruction was unjustified.

(m) Exemptions

1. Exemption from CML but not CVL;
2. Persons exempt: **SWS** (i) **SADR** Spouse, ascendant, descendant, relatives by affinity in the same degree; (ii) widowed spouse with respect to the property of the deceased spouse before its possession is transferred to another; (iii) siblings, siblings-in-law, if living together.
3. Covers only the simple crimes of theft, swindling and malicious mischief. Does not cover complex crimes, e.g., estafa through falsification of public documents.
4. Common law spouses are considered spouses.
5. Death does not terminate the exemption created by marriage (continuing affinity view).

1. Anti-Fencing Law (PD 1612)

a) Fencing

(1) Definition [Sec. 2]

(a) Fencing

1. Act of any person with ITG of buying, selling, possessing, disposing, otherwise dealing with an article, item, object **AIO**, or anything of value
2. Known or should have known to him as derived from proceeds of robbery or theft.

(b) Fence – any person, natural or juridical, who commits fencing

Elements of fencing

1. The crime of robbery or theft was committed – (i) ownership of property must be established; (ii) principal need not be convicted only the corpus delicti needs to be established;⁴⁰ (iii) fence need not have conspired or participated in commission of R/T. Conviction for theft or robbery is not essential.
2. A person who did not participate in the robbery/theft buys, sells, possesses, disposes, otherwise deals with object, article item or anything of value – N.B.: this establishes the presumption of fencing.
3. Accused knew or should **know** that the object, article, item was derived from proceeds of R/T – (i) “should know” means the ascertainment of fact in the performance of legal duty to another by a person of reasonable prudence or intelligence; (ii) actual knowledge is not required; (iii) mere possession of stolen item raises the presumption of fencing.
4. ITG – (i) presumed from the overt act of dealing with the AIO.

Notes:

1. Fencing is malum prohibitum;
2. Not continuing crime;
3. Distinct from robbery/theft;
4. The State may choose between prosecuting the fence (i) as accessory to the crime of R/T or (ii) as principal in the crime of fencing.
5. Preference is prosecution for fencing since (i) malum prohibitum; (ii) establishment of presumption; (iii) harsher penalty.
6. Defenses – (i) GF is not defense; (ii) Clearance/Permit from PNP to Sell Used/Secondhand Articles is viable defense.
7. If the objects were the proceeds of malversation, but not theft or robbery, the accused may not be held liable for fencing.
8. c.f.: accessory to theft

Accessory to theft	Fence
Malum in se	Malum prohibitum
Accessory	Principal
Lighter penalty	Graver penalty
No presumption	Possession of object of robbery or theft is prima facie presumption of fencing

Anti-carnapping Act

1. Theft/Robbery of motor vehicle.
2. The purchaser of a stolen vehicle may be held liable for fencing since Carnapping is essentially theft/robbery.

(2) Presumption of Fencing [Sec. 5]

Mere possession of AIO or anything of value derived which has been the subject of robbery/theft is prima facie evidence of fencing.

***Establishment of presumption is not unconstitutional for violating constitution presumption of innocence.*

Requirement: rational connection between the fact proved and fact presumed, which is present in this case.

b) Exception

(1) With Clearance or Permit to Sell [Sec. 6]

Requirement: Clearance/Permit to Sell Used/Secondhand Articles

1. Applies to stores dealing in buy/sell of goods, AIO, anything of value from unlicensed dealer or supplier
2. Clearance must be obtained from station commander of PNP;
3. PNP to promulgate rules;
4. Non-compliance renders the person liable as fence.

K. Crimes Against Chastity (Arts. 333-334, 336-346)

Sec. 1: (a) Adultery; (b) Concubinage

Sec. 2: (c) Acts of Lasciviousness

Sec. 3: (d) Seduction; (e) Corruption of Minors; (f) White Slave Trade

Sec. 4: (g) Abduction

Sec. 5: (h) Common provisions

Common characteristics

1. Private crimes
2. Lewd designs

(a) Adultery **ADY**

1. Punishes: (i) a married woman who shall have sex with another man (not another woman); (ii) a man

⁴⁰ Confession of accused without proof of corpus delicti is insufficient to establish the crime of R/T.

<p>who shall have sex with a married woman knowing her to be such.</p> <ol style="list-style-type: none"> Elements: (i) woman is married; (ii) she had sex with a man other than her husband; (iii) the other man knew her to be married Annulment of marriage does not bar prosecution. Each sexual act is a separate crime. Not continuing. No frustrated ADY. Pari delicto not applicable – (i) applies only in contracts with illicit consideration; (ii) filing of ADY case shows non-acquiescence and lack of consent. Regardless of the circumstances of the sexual encounter, even if discreet. The woman is entitled to special mitigating circumstance if she had been abandoned by her husband without justification. This is not available to the married man.
<p>(b) Concubinage CBG</p> <ol style="list-style-type: none"> Elements: (i) man is married; (ii) (a) he keeps a mistress in the conjugal dwelling; (b) he has sex with a woman other than his wife under scandalous circumstances; (c) he cohabits with such woman in any other place; (iii) the other woman knew the man to be married. Scandalous – (i) offensive to public conscience, sets bad example; (ii) dependent on moral standards of the community; (iii) residents must testify as to the moral standards; (iv) cannot be proven by testimony of private investigator. <p><i>Provision common to ADY/CBN</i></p> <ol style="list-style-type: none"> Complaint must be initiated only by offended spouse – (i) if foreigner H already filed for divorce, he is no longer considered offended spouse and loses standing; Must be filed against both parties – (i) but acquittal of man for ignorance of the woman's married status does not necessarily carry acquittal of woman nor bar her prosecution or conviction; (ii) prosecutor may dismiss case against man; (iii) joint criminal act is required to consummate adultery, but not necessarily joint criminal intent, i.e., man may be innocent; (iv) death or escape of either party will not affect prosecution of the other Bar to institution: (i) non-inclusion of both offenders, (ii) consent/pardon. <p>(c) Acts of Lasciviousness</p> <ol style="list-style-type: none"> Elements: (i) offender commits AOL or lewdness; (ii) the victim is a wo/man; (iii) committed through: (a) FIT; (b) victim is DR OU; (c) by means of FM GAA; (d) victims is below 16y or demented. Not all lewd acts are AOL. Must be committed under circumstances same as rape. Hence: lewd designs + circumstances of rape. If no lewd designs, or not under circumstances of rape, unjust vexation. No attempted or frustrated AOL. There is no sexual intercourse. <p><i>AOL with consent of offended party</i></p> <ol style="list-style-type: none"> Elements: (i) offender commits AOL or lewdness; (ii) victim is (a) virgin, single, widow of good reputation, >16y but <18y; (b) sister or descendant, regardless of age or reputation; (iii) perpetrated by abuse of confidence, relationship, or deceit. Similar with qualified and simple seduction, provided there is no sex. <p>(d) Seduction SDN</p> <ol style="list-style-type: none"> Kinds: (i) Qualified; (ii) Simple <p><i>Qualified seduction</i></p>

1. Kinds: (i) Seduction of virgin, >16y but <18y by PIA, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the minor; (ii) Seduction of sister by brother, descendant by ascendant, regardless of age or reputation.
2. Elements: (i) woman is a virgin (presumed if unmarried and of good reputation); (ii) she is >16y but <18y; (iii) offender had sex with her; (iv) with abuse of authority, relationship, or confidence.
3. The woman need not be a virgin.
4. There was sexual intercourse but without circumstances attending rape, but the same was obtained by taking abuse of confidence.

Simple seduction

1. Elements: (i) woman is of good reputation, single or widow; (ii) she is >16y but <18y; (iii) offender had sex with her; (iv) with deceit (usually unfulfilled promise to marry).

(g) Abduction **ABN**

1. Kinds: (i) forcible abduction; (ii) consented abduction
2. Forcible: (i) a woman was abducted, regardless of age, civil status, or reputation; (ii) without her consent; (iii) with lewd designs. If the victim is <12y (16?), the crime is still forcible abduction even if not against the victim's will.
3. Consented: (i) victim is woman who is a virgin or of good repute; (ii) she is >16y but <18y; (iii) taking is with her consent after solicitation or cajolery; (iv) with lewd designs.
4. Essence: restraint of liberty + lewd designs.
5. Lewd: (i) indecent, obscene, intended to excite crude sexual desire; unchaste design; intent to abuse or corrupt the woman; (ii) inferred from the nature of accused's overt acts; (iii) intent to seduce is sufficient, direct proof not required; (iv) may be shown by the promise to marry the minor to get her consent to carnal knowledge. AOL, attempted rape are deemed absorbed.
6. The lewd intent must be known to all accused who cooperated in the commission of felony.
7. Lewd design must be alleged – to “take” or “carry away” is sufficient allegation.
8. Sexual intercourse is not an element.
9. If main objective is to have carnal knowledge of woman who was then kidnapped, the crime committed is rape and forcible abduction is absorbed.
10. Forcible abduction with rape – (i) when forcible abduction is necessary means to commit the rape; (ii) only as to first rape, additional rapes are prosecuted separately (separate counts of rape); (iii) simple complex crime c.f.: kidnapping with rape is special complex crime. Hence, other rapes are absorbed.
11. No complex crime of forcible abduction with attempted rape. Attempted rape is absorbed.

Forcible abduction	Kidnapping
Deprivation of liberty is merely incidental; the primary intent being the lewd design	Deprivation of liberty is the main intent

Provision common to SND/ABN/AOL

1. Exclusive and successive rule: complaint must be initiated only by (i) offended party; (ii) if absent or incapacitated, parents, grandparents, guardian.
2. Bar to institution of criminal action: (i) pardon; (ii) marriage. Subsequent valid marriage extinguishes CML of principals, co-principals, accessories, accomplices.

1. Anti-Photo and Video Voyeurism Act of 2009 (RA 9995)

a) Definition of Terms [Sec. 3]

(a) Photo or video voyeurism	
1.	The act of taking photo or video coverage of a person or group of persons performing sexual act or any similar activity.
2.	The act of capturing an image of the private area of a person or persons without the latter's consent, under circumstances in which such person/s has/have a reasonable expectation of privacy.
3.	The act of selling , copying, reproducing, broadcasting, sharing, showing or exhibiting the photo or video coverage or recordings of such sexual act or similar activity through VCD/DVD, internet, cellular phones and similar means or device without the written consent of the person/s involved, notwithstanding that consent to record or take photo or video coverage of same was given by such person's.
(b) Under circumstances in which a person has a reasonable expectation of privacy	
1.	Belief that he/she could disrobe in privacy, without being concerned that an image or a private area of the person was being captured.
2.	Circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public, regardless of whether that person is in a public or private place.

b) Prohibited Acts [Sec. 4]

(a) Taking of photo or video	
1.	To take photo or video coverage of a person or group of persons performing sexual act or any similar activity.
2.	To capture an image of the private area of a person/s (i) without the consent and (ii) under circumstances in which the person/s has/have a reasonable expectation of privacy.
(b) Copying, reproduction	
1.	Of photo/video referred above with or without consideration.
(c) Sale, distribution	
1.	Of photo/video referred above whether original copy or reproduction.
(d) Publication, broadcasting	
1.	Exhibition of such photo/video through VCD/DVD, internet, cellular phones and other similar means or device.
2.	Broadcast means to make public, by any means, a visual image with the intent that it be viewed by a person or persons.

2. Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act (RA 7610, as amended)

a) Child Prostitution and Other Acts of Abuse [Sec. 5, RA 7610, as amended by RA 11648]

**Age of victim determines proper nomenclature of the crime.		
Circumstances	Child <16y	Child ≥16y but <18y; or ≥18y ⁴¹
Generally	Statutory Rape or AOL under RPC	Lascivious Conduct or Sexual Abuse under RA 7610
With sex	Statutory Rape under Art. 266-	Rape under Art. 266-A(1)(a)(b)(c) of RPC, if through FIT, DR OU, FM GAA ^A

⁴¹ But unable to fully protect or take care of him/herself from ACNED.

	A(1)(d) of RPC ^D	Sexual Abuse under Sec. 5(b) of RA 7610, if done for consideration; or due to coercion or influence
No sex	Statutory AOL under Art. 336 of RPC, in relation to Sec. 5(b) of RA 7610 ^C	Lascivious Conduct ^B or Sexual Abuse under Sec. 5(b) of RA 7610, if through coercion or influence without consent
No sex but with insertion	Statutory Rape by Sexual Assault under Art. 266-A(2) in relation to Sec. 5(b) of RA 7610	Lascivious Conduct under Sec. 5(b) of RA 7610 (see B)
Virgin or woman of good repute		Other AOL under Art. 339 RPC

A – In case of mistake in allegation

- If information alleges both “force or intimidation” and “coercion or influence”; or mistakenly denominate the offense as Rape under Art. 266-A(1)(a) of RPC in relation to Sec. 5(b) of RA 7610, the accused shall be prosecuted for Rape under Art. 266-A(1)(a);
- The latter imposes higher penalty.

B – Includes acts considered as rape by sexual assault under Art. 266-A(2) RPC. If the act is covered by both Rape by Sexual Assault (Art. 266-A(2)) and Lascivious Conduct (Sec. 5[b], RA 7610), the accused shall be liable for Lascivious Conduct under Sec. 5[b], RA 7610, since the latter imposes a higher penalty

C – Both the element of Statutory AOL under RPC and Lascivious Conduct under RA 7610 must be proved.

D – If a person asks another to get a child so he can have the carnal knowledge of the child, the person who gets such child is liable either as principal by indispensable cooperation or accomplice in the crime of Statutory Rape

****Hence, when act is covered both by RPC and RA 7610, the accused shall be prosecuted under the law which imposes a higher penalty.** (i) State policy of special protection and stronger deterrence against child abuse.

Elements of Sexual Abuse under RA 7610

- Accused commits acts of sexual intercourse or lascivious conduct;
- The act is performed in a child exploited for prostitution or subject to sexual abuse;
- Child is below 18y, whether male or female.

Elements of AOL under RPC

- Accused commits any act of lasciviousness or lewdness;
- Under the following circumstances: (i) FIT; (ii) DR OU; (iii) FM GAA; (iv) <16, demented

Other AOL under RPC

- Done with consent of offended party
- Under same conditions as above
- Committed against: (i) virgin >16y but <18y by public authority, or person entrusted with her education or custody; (ii) single or widow of good repute committed through deceit, >16y but <18y.

(1) Compare Prosecution for Acts of Lasciviousness Under Art. 366, RPC, and RA 7610, as amended

**See above.

L. Crimes Against the Civil Status of Persons (Arts. 347-352)

Sec. 1: (a) Simulation of births; (b) Substitution of one child to another; (c) Concealment or abandonment of legitimate child; (d) Usurpation of civil status

Sec. 2: (e) Bigamy; (f) Marriage contracted against provisions of law; (g) Performance of illegal marriage ceremony

(e) Bigamy

1. Elements: (i) offender is legally married; (ii) first marriage has not been legally dissolved, or spouse not declared presumptively dead; (iii) he contracts a second marriage; (iv) the second marriage had it not been for the prior subsisting marriage
2. Absolute nullity of the former marriage may be raised as defense in the prosecution for bigamy without need of securing a judicial declaration of its nullity.
3. Public crime. (i) Any person can file the complaint, including offended spouse by the former marriage; (ii) offended spouse can also file for the declaration of nullity of the bigamous marriage (real party in interest), or petition for the recognition of judgment nullifying the bigamous marriage; (iii) pardon will not bar prosecution.
4. Both parties to second marriage need not be charged. The other party to marriage shall be included in information only if s/he knew of the prior marriage. Second spouse is considered accomplice.
5. Defenses: (i) that second marriage lacked essential requisites; (ii) non-existence of former marriage;⁴² (iii) judicial declaration of presumptive death of spouse absent

(g) Performance of illegal marriage ceremony

1. Elements: (i) the offender is a duly authorized solemnizing officer; (ii) he performed or authorized an illegal marriage
2. If offender is unauthorized, the crime committed is usurpation of authority or official functions.
3. Illegal performance is construed in relation to requirement of marriage ceremony under NCC – no required form, provided that there is personal appearance of spouses before solemnizing officer, and their personal declaration that they take each other as husband and wife before the same and not less than two witnesses.
4. If the ceremony was denominated as mere “blessing” but falls within the definition of marriage ceremony under NCC, the crime is committed.
5. E.g., performing marriage ceremony without license, signing marriage contract without license, if known to the solemnizing officer. GF is defense.

M. Crimes Against Honor (Arts. 353-364)

Ch. 1: (a) Libel; (b) Oral defamation; (c) Slander by Deed

Ch. 2: (d) Incriminating innocent persons; (e) intriguing against honor

(a) Libel (public malicious imputation)

1. Elements: (i) imputation of crime, vice/defect, act/omission, condition, status, circumstance; (ii) done publicly; (iii) done **maliciously**; (iv) directed against natural or juridical person, or one who is dead; (v) tends to cause discredit, dishonor, contempt of the person, or blacken the memory of dead

2. Done through publication – (i) writing, similar means, internet; (ii) connotes permanency; (iii) making known the imputation someone – e.g., through mailing of unsealed letter.
3. Truth is defense in: (i) imputations of crime; (ii) imputations made against government EEs with respect to the discharge of official duties.
4. Venue: (i) place of first printing or publication; (ii) place of residence of offended party; (iii) if offended party is government officer, place where he holds office.
5. Persons liable: (i) author; (ii) editor; (iii) publisher; (iv) business manager; (v) owner of printing press. If the author was found not liable, the other persons are also not liable.

Malice

1. Malice – intent to injure the reputation of the person defamed. (i) Reckless disregard standard – there is libel if the publication was done (a) with knowledge that it is false, or (b) with reckless disregard as to whether it is false or not. Requires high degree of awareness of its probable falsity to prove malice.
2. Kinds of malice: (i) malice in fact – ill-will; (ii) malice in law – presumed from defamatory imputation. Effect of presumption of malice is to dispense with the need to prove actual malice.
3. Every defamatory imputation is presumed malicious. Malice need not be proven. XPNs: Privileged communications – (i) absolute APC, (ii) qualified QPC.

Absolute Privileged Communication

1. Not actionable, even if the author acted in BF;
2. (i) statements made by Congress in discharge of functions as such; (ii) official communications by public officers in discharge of official duties; (iii) statements and allegations in pleadings; (iv) answers of witnesses in the course of proceedings, provided relevant and responsive.

Qualified Privileged Communication – Not actionable, unless malice in fact can be proven.

1. Private communication made pursuant to legal, moral, social, duty. Requisites: (i) legal, moral, social duty on part of the person making the communication; (ii) addressed to an officer having the power to furnish the protection sought; (iii) GF
2. Fair and true report without commentaries, made in GF of: (i) official proceedings not confidential in nature; (ii) statement, report, speech delivered in said proceedings; (iii) other acts performed by public officers in the performance of their functions (RPC XPNs);
3. Fair comment doctrine – fair commentaries on matters of public interest; E.g., acts of public officers in public capacity subject of news articles. Requirements: (i) must be based on established facts. It is immaterial that the opinion is mistaken; (ii) the reporter must not have entertained a high degree of awareness of its probable falsity.
4. Remarks directed against public figures/celebrities. If the offended party is a public officer or public figure, prosecution has burden to prove actual malice.

***QPC merely prevents presumption of malice from arising. If malice in fact proven, accused can be convicted.*

(b) Oral defamation

(c) Slander by Deed

⁴² If no marriage ceremony was celebrated, the marriage did not exist and not merely void.

1. Perform any act not included and punished in this title, which shall cast dishonor, discredit or contempt upon another person.

1. Cybercrime Prevention Act of 2012 (RA 10175)

a) Libel [Sec. 4 (c)(4)]

1. Libel as defined in the RPC, committed through the use of computer systems or other similar means that may be devised in the future.
2. The person who liked or shared a defamatory post will not be held liable, only the one who posted the same.
3. Cyberlibel shall be prosecuted as the crime is defined under the RPC, but the use of computer system shall be appreciated as a qualifying aggravating circumstance under Sec. 6 of the law (use of ICT) [?], where the penalty imposed shall be one degree higher (>6y).
4. Venue – (i) Residence of offended party, or place where he holds office if public officer (Art. 360); (ii) the place where the article was first accessed cannot be considered as the place of first publication.
5. Prescription – 12y. c.f.: libel under RPC prescribes in 1y.
6. E.g., circulation of e-mail stating that two partners of a law firm were having an affair.

A libelous material published on print or online cannot be the subject of two separate libels.

1. Libel under RPC and Cyberlibel RA 10175 involve essentially the same elements and are in fact one and the same offense.
2. Cyberlibel is not a new crime but is one already punished under Article 353. Section 4(c)(4) merely establishes the computer system as another means of publication.
3. Charging the offender under both laws would be a blatant violation of the proscription against double jeopardy (*Disini v. SOJ*).

N. Criminal Negligence (Article 365)

Elements

1. Offender does or fails to do an act.
2. Doing or failure to do is voluntary.
3. Without malice.
4. Material damage results – (i) to persons or property; (ii) amounting to less/grave, light felony had it been committed intentionally.
5. Inexcusable lack of precaution on the part of the offender taking into consideration the offender's employment or occupation, intelligences, physical condition, and other circumstances regarding person, time, place **EIP CPTP**.

Nature

1. The imprudence is a crime in itself and not merely a mode of committing a crime.
2. What is punished is the mental attitude or condition behind the acts of dangerous recklessness and lack of care or foresight, although such mental attitude might have produced several effects or consequences.
3. Only one crime is committed which arises from the single act, that is reckless imprudence.
4. The resulting injuries or damages from the imprudence is relevant only for purposes of determining the imposable penalty – (i) cannot be prosecuted separately. If so, DJ can be invoked; (ii) they cannot be complexed with imprudence.
5. UPLC – negligence is **both** a crime in itself punished under Art. 365, and a mode of committing an offense resulting in a culpable felony under Art. 3.

Kinds of imprudence

1. Reckless – Voluntarily, but without malice, doing or failing to do an act which causes material damage to another by reason of inexcusable lack of precaution on the part of the person doing or failing to do an act taking into consideration his employment or occupation, intelligences, physical condition, and other circumstances regarding person, time, place **EIP CPTP**.
2. Simple – Consists in the lack of precaution under circumstances when the damage impending to be caused is not immediate, or the danger is not clearly manifest.

Penalty

1. Generally, one degree lower than that of the intentional crime.
2. Penalty shall be imposed separately for **each** of the resulting offense alleged and proven. **Complexing is not allowed**, otherwise, only one penalty will be imposed for all the result of the negligent act, i.e., the penalty for the most serious offense in the maximum period.
3. If the result of the imprudence is only damage to property, the penalty imposable is fine only depending on the value of the property and not imprisonment.
4. If the penalty for the resulting offense is equal to or lower than that imposed under Art. 365, the penalty one degree lower than that imposable for the resulting offense shall be imposed. Reason: to preserve the difference of one degree between intentional and unintentional crimes.

Notes

1. Proper denomination: reckless imprudence "resulting in" homicide/physical injuries/ damage to property.
2. Article 48 cannot be applied to quasi-offenses and their resultant acts to preserve the conceptual distinction between quasi-crimes and intentional felonies.

2023 BAR REVIEW NOTES ON AND MATRIX OF
SELECTED CRIMES UNDER THE REVISED PENAL CODE

Prepared by: Atty. Modesto A. Ticman, Jr.

August 2023

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2023 BAR REVIEW NOTES ON AND MATRIX OF SELECTED CRIMES UNDER THE REVISED PENAL CODE

By: Prof. MODESTO A. TICMAN, JR.

I.

CRIMINAL LIABILITY IN CASES WHERE A PERSON KILLS OR CAUSES THE DEATH OF ANOTHER.

Crime	Manner of Causing Death/ Extenuating Circumstance/s	Parties	Intent	Nature
PARRICIDE (Art. 246, RPC)	Except for relationship, which is inherent, qualifying Circumstances in Murder or under Art. 14 are treated as generic aggravating circumstances.	Offender (<u>Ofr</u>): Any person. Offended Party (<u>OP</u>): The offender's father, mother, or child or any of his legitimate ascendants, or descendants, or his spouse.	➤ With intent to kill, in any of its stages, OR ➤ Without intent to kill, in case where accused is committing an intentional felony which resulted to the death of any of the victims in Parricide. (See Arts. 4 [1] and/or 49, RPC)	Crime Against Persons
MURDER (Art. 248, RPC)	Qualifying Circumstances (QC): 1. Treachery... 2. Price, reward, or promise. 3. Inundation, fire, poison, explosion, xxx, or with the use of any other means involving great waste and ruin. 4. On occasion of calamities xxx. 5. evident premeditation. 6. Cruelty, xxx, or outraging or scoffing at his person or corpse.	<u>Ofr</u> : Any person. <u>OP</u> : Any person, except victims in Infanticide.	With intent to kill in any of its stages.	Crime Against Persons
HOMICIDE (Art. 249, RPC)	Must not be attended by any of the QC in Murder.	<u>Ofr</u> : Any person. <u>OP</u> : Any person, except victims in Parricide and	➤ With intent to kill, in any of its stages; OR	Crime Against Persons

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		children below three (3) days old (Infanticide).	➤ Without intent to kill, in case where accused is committing an intentional felony which resulted to the death of any person other than those victims in Parricide or Infanticide. (See Arts. 4 [1] and/or 49, RPC)	
DEATH CAUSED IN A TUMULTUOUS AFFRAY (Art. 251, RPC) [Tumultuous affray - when several persons, not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each other in a confused and tumultuous manner.]	A person is killed during a tumultuous affray, and it cannot be ascertained who actually killed the victim. The person who may be identified to have inflicted serious physical injuries or used violence upon the deceased is liable for DCTA.	<u>Ofr</u> : Any person. <u>OP</u> : Any person killed in a tumultuous affray.	Intent to kill is not essential. Intent to cause physical injuries or use violence is enough.	Crime Against Persons
GIVING ASSISTANCE TO SUICIDE (Art. 253, RPC)	Assisting another to commit suicide or doing the killing of one who wants to commit suicide.	<u>Ofr/OP</u> : Any person.	With intent to kill or cause death.	Crime Against Persons
INFANTICIDE (Art. 255, RPC)	QC in Murder are treated as generic aggravating circumstances.	<u>Ofr</u> : Any person. <u>OP</u> : Any child who is 3 days old or below .	➤ With intent to kill, in any of its stages, OR ➤ Without intent to kill, in case where accused is committing an intentional felony which resulted to the death of the child. (see Arts.	Crime Against Persons

			4 [1] and/or 49, RPC)	
DUEL (Art. 260, RPC)	A person is killed or dies in a duel.	<u>Ofr/OP</u> : Any person	With or without intent to kill	Crime Against Persons
(Attempted or Consummated) RAPE WITH HOMICIDE (Art. 266-B, RPC)	By reason or on the occasion of the rape, the victim dies or is killed.	<u>Ofr</u> : Any person. <u>OP</u> : Woman (rape through sexual intercourse), or any person in case of sexual assault.	With or without intent to kill	Crime Against Persons/ Special Complex Crime
KIDNAPPING WITH HOMICIDE (Art. 267, RPC)	As a consequence of the detention, the victim dies or is killed.	<u>Ofr</u> : Any private individual. <u>OP</u> : Any person	With or without intent to kill	Crime Against Personal Liberty/ Special Complex Crime
ROBBERY WITH HOMICIDE (Art. 294 [1], RPC)	By reason or on the occasion of the robbery, any person dies or is killed. QC in Murder may be appreciated as generic aggravating circumstances, while relationship as an alternative circumstance (Art. 15) is mitigating.	<u>Ofr</u> : Any person <u>OP</u> : Any person, whether or not a victim of robbery.	With or without intent to kill	Crime Against Property/ Special Complex Crime
ATTEMPTED ROBBERY WITH HOMICIDE (Art. 297, RPC)	By reason or on the occasion of the robbery in its attempted stage, any person dies or is killed. QC in Murder may be appreciated as generic aggravating circumstances, while relationship as an alternative circumstance (Art. 15) is mitigating.	<u>Ofr</u> : Any person <u>OP</u> : Any person, whether or not a victim of attempted robbery.	With or without intent to kill	Crime Against Property/ Special Complex Crime
DIRECT ASSAULT WITH HOMICIDE/ MURDER (Arts. 148 and	Without public uprising, by attacking a person in authority or his agent resulting to his death,	<u>Ofr</u> : Any person <u>OP</u> : Person in authority or his	With (<i>Murder and Homicide</i>) or without intent to kill	Ordinary Complex crime. ➤ If the

248/249, RPC)	while the victim is engaged in the performance of official duties, or on the occasion of such performance, i.e., by reason of the past performance thereof.	agent, as defined under Art. 152, RPC.	(Homicide).	victim does not die, it could be DA w/ Att. or Frust. Homicide [if there is intent to kill]; otherwise, it could be DA w/ SPI or LSPI only. Sl. PI is however absorbed in DA, it being inherent.
INDIRECT ASSAULT WITH HOMICIDE/ MURDER (Arts. 149 and 248/249, RPC)	By killing any person coming to the aid of persons in authority or their agents who are victims of Direct Assault.	<u>Ofr/OP</u> : Any person	With or without intent to kill.	Ordinary Complex crime. ➤ If the victim does not die, it could be IDA w/ Att. or Frust. Homicide [if there is intent to kill]; otherwise, it could be IDA w/ SPI or LSPI only.
ARSON WITH HOMICIDE (Art. 320, RPC)	As a consequence of arson, death results; QC in Murder may be appreciated as generic aggravating circumstances, while relationship as an alternative circumstance (Art. 15) is mitigating.	<u>Ofr</u> : Any person <u>OP</u> : Any person, whether or not a victim of arson.	Without intent to kill	Crime Against Property/ Special Complex Crime
CARNAPING WITH HOMICIDE (R.A.	By reason or on the occasion of carnapping,	<u>Ofr</u> : Any person	With or without intent to kill	Special Complex

10883)	a person dies or is killed.	<u>OP</u> : passenger or occupant of carnapped vehicle.		Crime
RECKLESS NEGLIGENCE/IMP-RUDENCE RESULTING IN HOMICIDE (Art. 365, RPC)	By reason or as a result of lack of precaution in performing or failing to perform an act, a person dies or is killed. QC : failure to lend help on the spot to the injured party	<u>Ofr/OP</u> : Any person	Without intent to kill	Quasi-Offense/ Criminal Negligence

DEATH/SERIOUS PHYSICAL INJURIES INFLICTED UNDER EXCEPTIONAL CIRCUMSTANCES (Art. 247, RPC)	<ul style="list-style-type: none"> ➤ offending and offended spouses must be legally married to each other. ➤ offending spouse and/or paramour or concubine must have been surprised by offended spouse committing sexual intercourse or acts preparatory thereto. ➤ offended spouse kills or inflicts Serious PI to offending parties while in the act or immediately thereafter. ➤ “immediately thereafter” – lapse of time is allowed for as long as <i>“the discovery, escape, pursuit and killing form part of one continuous act”</i> and <i>“the death caused be the proximate result of the outrage overwhelming the accused after chancing upon his spouse in the basest act of infidelity.”</i>¹ ➤ also APPLICABLE to parents killing their minor daughter (still living with them) and her seducer under the foregoing circumstances. ➤ NOT APPLICABLE if offended spouse/parent promotes or facilitates the prostitution of his wife or daughter or has consented to the infidelity of the other spouse. ➤ an absolutory cause akin to a Justifying Circumstance as despite killings, the culprit is sentenced to <i>destierro</i> only. ➤ <i>Destierro</i>, not a penalty but serves to protect the offending spouse from retaliatory acts of relatives of offending spouse and/or paramour or concubine.
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¹People vs. Abarca, 153 SCRA 735

II.

CRIMINAL LIABILITY IN CASES WHERE A PERSON INFLECTS PHYSICAL INJURIES UPON, OR PHYSICALLY MALTREATS ANOTHER.

Crime	Manner of Commission/ Extenuating Circumstance/s	Parties	Intent	Nature
INTENTIONAL MUTILATION (Art. 262, RPC)	By intentionally mutilating another by depriving him, either totally or partially, of some essential organ for reproduction or any part of the victim's body.	<u>Ofr/OP</u> : Any person	➔ Without intent to kill but cutting or lopping off of a part of the victim's body. must be with deliberate intent.	Crime Against Persons
SERIOUS PHYSICAL INJURIES (Art. 263, RPC)	By wounding, beating, or assaulting another and that the victim – 1. becomes insane, imbecile, impotent, or blind; or 2. loses the use of speech or the power to hear or to smell, or shall have lost an eye, a hand, a foot, an arm, or a leg or loses the use of any such member, or becomes incapacitated for the work in which he is habitually engaged; or 3. becomes deformed, or loses any other part of his body, or the use thereof, or becomes ill or incapacitated for the work in which he is habitually engaged for a period of more than 90 days ; or 4. becomes incapacitated for labor for more than 30 days . SMC : a parent who has inflicted <u>Serious PI</u> upon his child by excessive chastisement.	<u>Ofr/OP</u> : Any person	Without intent to kill.	Crime Against Persons
LESS SERIOUS PHYSICAL INJURIES (Art. 265, RPC)	As a consequence of the assault, the victim becomes incapacitated for labor for 10 days to 29 days , or medical assistance is required for the same period.	<u>Ofr/OP</u> : Any person	Without intent to kill	Crime Against Persons

SLIGHT PHYSICAL INJURIES AND MALTREATMENT (Art. 266, RPC)	<p>As a consequence of the assault, the victim–</p> <ol style="list-style-type: none"> 1. becomes incapacitated for labor from 1 to 9 days, or medical assistance is required for the same period. or 2. is not prevented from engaging in his habitual work nor required medical assistance; 3. despite the ill-treatment, victim does not suffer any injury. 	<u>Ofr/OP:</u> Any person	Without intent to kill	Crime Against Persons
ADMINISTERING INJURIOUS SUBSTANCES OR BEVERAGES (Art. 264, RPC)	By inflicting any serious physical injury, by knowingly administering to the victim any injurious substance or beverages or by taking advantage of his weakness of mind or credulity.	<u>Ofr/OP:</u> Any person	Without intent to kill or cause death.	Crime Against Persons
PHYSICAL INJURIES CAUSED IN A TUMULTUOUS AFFRAY (Art. 252, RPC)	A person suffers serious or less serious physical injuries in the course of a tumultuous affray, and it cannot be ascertained who actually caused the same to the victim. The person who may be identified to have used violence upon the deceased is liable for PICTA.	<u>Ofr:</u> Any person <u>OP:</u> Anyone who suffers less serious or serious physical injuries in a tumultuous affray.	With Intent to use violence but absent Intent to kill.	Crime Against Persons
DUEL (Art. 260, RPC)	A person suffers physical injuries in a duel.	<u>Ofr:</u> participants in the duel <u>OP:</u> Any person	With or without intent to kill	Crime Against Persons
Attempted or Frustrated Stage in HOMICIDE Cases	By physically assaulting or discharging a firearm at another, thereby causing non-mortal injury or without causing any (attempted) or causing any fatal injury (frustrated).	<u>Ofr:</u> Any person <u>OP:</u> Any person, except victims in Parricide and children below three (3) days old (Infanticide).	With intent to kill	Crime Against Persons

ROBBERY WITH SERIOUS PHYSICAL INJURIES (Art. 294 [2], [3] and [4], RPC)	By reason or on the occasion of the robbery, any person suffers serious physical injuries.	<u>Ofr:</u> Any person <u>OP:</u> Any person, whether or not a victim of robbery. <u>Exception</u> under Art. 294 [4]: in case the victim of serious physical injuries (Art. 263 [3] and [4]) is one of the robbers.	With or without intent to kill	Crime Against Property/ Special Complex Crime
RECKLESS NEGLIGENCE/ IMPRUDENCE RESULTING IN S, LS or SI. PHYSICAL INJURIES (Art. 365, RPC)	By reason or as a result of lack of precaution on the part of the person performing or failing to perform such act, a person suffers physical injuries.	Ofr/OP: Any person	Without intent to kill	Quasi-Offense/ Criminal Negligence

Abortion.

INTENTIONAL ABORTION²	UNINTENTIONAL ABORTION³
A fetus is expelled from the maternal womb.	
Offender may be the pregnant woman herself (Art. 258) or another person (Art. 256).	Offender is a third person.
Committed through employment of violence or administration of substances.	Committed only through employment of violence.
With or without consent of pregnant woman	Without consent of pregnant woman
With intent to cause abortion	Without intent to cause abortion
Offender is aware of woman's pregnancy.	Offender may or may not be aware of woman's pregnancy.
Concealment of dishonor is a special mitigating circumstance in case the offender is the pregnant woman herself or her parents.	No MC

Where a tooth has been chipped or fractured and then later medically repaired in a manner where no visible deformity could be seen, it cannot be immediately classified as a serious physical injury, without taking into account all the circumstances that may affect the nature and consequences of the injury. In determining whether or not the loss of a tooth could be considered a serious physical injury, such must have resulted in a visible deformity. Where deformity is not apparent whether as a result of a lesser injurious act or through medical intervention, a lesser penalty should be imposed.⁴

² Arts. 256/258, RPC

³ Art. 257, RPC

⁴ Ruego vs. People, G.R. No. 226745, 03 May 2021

III.

**CRIMINAL LIABILITY IN CASES WHERE A PERSON
COMMITTS SEXUAL INTERCOURSE/ASSAULT
OR ACTS OF LASCIVIOUSNESS AGAINST ANOTHER.**

Crime	Manner of Commission	Parties	Extenuating Circumstance/s	Nature
ADULTERY (Art. 333, RPC)	Married woman having sexual intercourse with a man not her husband; or Man who has carnal knowledge of a woman knowing her to be married, even if the marriage be subsequently declared void.	<u>Ofr.</u> : Married woman and paramour. <u>OP</u> : Husband	MC ➡ Abandonment without justification by the husband.	Crime against Chastity/ Private crime.
CONCUBINAGE (Art. 334, RPC)	Keeping a mistress in the conjugal dwelling, or having sexual intercourse, under scandalous circumstances, with a woman not his wife, or cohabiting with her in any other place.	<u>Ofr.</u> : Married man and concubine. <u>OP</u> : Wife	None.	Crime against Chastity/ Private crime.
RAPE BY CARNAL KNOWLEDGE (Art. 266-A [1], RPC)	Having carnal knowledge of a woman: (a) by using force or intimidation; (b) who is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority, or (d) who is under sixteen years of age, or is demented, even though none of the	<u>Ofr.</u> : Any man <u>OP</u> : Any woman	Q/AC: (Art. 266-B, RPC) ● use of deadly weapon or committed by 2 or more persons. ● victim becomes insane. ● rape and the victim is killed. ● victim is under 18 y/o and the offender is an ascendant, stepparent, guardian, relative by affinity or consanguinity within 3 rd civil degree or by common law spouse of victim's parent. ● victim is under the custody of the authorities. ● if committed within the full view of spouse, parent, children or relative by affinity or consanguinity within 3 rd civil degree.	Crime against Persons/ Public crime

	above-circumstances mentioned be present. (RA No. 11648)		<ul style="list-style-type: none"> • victim is a religious engaged in religious calling and offender is known to victim. • victim is under 7 y/o. • offender is afflicted with any sexually transmissible disease, and such is transmitted to the victim. • offender is a member of the AFP or PNP and takes advantage of his position to facilitate its commission. • victim suffered permanent physical mutilation or disability. • offender knew of pregnancy of victim. • offender knew of the victim's mental/ emotional disorder or physical disability. 	
<u>SEXUAL ASSAULT</u> (Art. 266-A [2], RPC) Its designation as "Rape through Sexual Assault" is a misnomer (Pp. vs. Tulagan, G.R. No. 227363, 12 March 2019)	Insertion of penis into another person's mouth or anal orifice; or Insertion of any instrument or object into the genital or anal orifice, under any of the circumstances in Art. 266-A [1], RPC)	<u>Ofr</u> : Any man <u>OP</u> : Any person <u>Ofr /OP</u> : Any person	- SAME -	Crime against Persons/ Public crime
ACTS OF LASCIVIOUSNESS (Art. 336, RPC)	Any act of lasciviousness committed through any of the circumstances under Art. 266-A [1], RPC)	<u>Ofr/OP</u> : Any person	None.	Crime against Chastity/ Private crime.
QUALIFIED SEDUCTION (Art. 337, RPC)	Having sexual intercourse by abuse of authority, confidence or	<u>Ofr</u> : Any man who is a person in public	AC➡ Seduction of his sister or descendant, virgin or not, and over 12 y/o.	Crime against Chastity/

	relationship, absent any of the circumstances under Art. 266-A [1], RPC)	authority, priest, home-servant, domestic, guardian, teacher, or those who, in any capacity is entrusted with the education or custody of the victim. <u>OP:</u> Woman who must be virgin (of good reputation), over 16 and under 18 years of age. (RA No. 11648)		Private Crime.
SIMPLE SEDUCTION (Art. 338, RPC)	Having sexual intercourse by means of deceit , absent any of the circumstances under Art. 266-A [1], RPC).	<u>Ofr:</u> Any man other than the offenders in Qualified Seduction. <u>OP:</u> Woman who must be over 16 and under 18 years of age. (RA No. 11648)	None.	Crime against Chastity/ Private crime.
FORCIBLE ABDUCTION w/ RAPE (Arts. 342, 266-A [1], and 48, RPC)	Abduction with lewd design and against the will of the victim as a necessary means of committing rape by carnal knowledge.	<u>Ofr:</u> Any man. <u>OP:</u> Any woman.	None. Additional rapes are treated as separate from FA w/ Rape. However, If the main intention in the abduction is to rape the victim, offender can be convicted only for rape as FA is absorbed in the former. ⁵	Crime against Persons/ Public crime/ Complex Crime.

⁵People vs. Sabadlab, 668 SCRA 237 (2012).

FORCIBLE ABDUCTION w/ SEXUAL ASSAULT (Arts. 342, 266-A [2], and 48, RPC)	Abduction with lewd design and against the will of the victim as a necessary means of committing sexual assault.	<u>Ofr:</u> Any person. <u>OP:</u> Any woman.	-SAME-	Crime against Persons/ Public crime/ Complex Crime.
KIDNAPPING WITH RAPE (Art. 267, RPC)	In the course of the detention, the victim is raped.	<u>Ofr:</u> Any private individual <u>OP:</u> Woman in case of rape by carnal knowledge; any person in sexual assault.	None. No matter how many rapes had been committed in the special complex crime of kidnapping with rape, the resultant crime is only one kidnapping with rape .	Crime Against Personal Liberty/ Special Complex Crime/ Public Crime
ROBBERY WITH RAPE (Art. 294 [1], RPC)	Robbery is accompanied by rape.	<u>Ofr:</u> Any person <u>OP:</u> Woman in case or rape by carnal knowledge; any person in sexual assault.	None. No matter how many rapes had been committed in the special complex crime of robbery with rape, the resultant crime is only one robbery with rape .	Crime Against Property/ Special Complex Crime/ Public Crime
ABUSES AGAINST CHASTITY (Art. 245, RPC)	Soliciting or making immoral or indecent advances. Proof of solicitation is not necessary if there is sexual intercourse. (p. 482, Reyes, The Revised Penal Code-Criminal Law, 18 th ed. [2012])	<u>Ofr:</u> Public officer or employee. <u>OP:</u> Any woman – [1] interested in matters pending before the offender for decision, or w/ respect to which he is required to submit a	None.	Crime Committed by Public Officers / Public Crime

		<p>report or consult w/ a superior officer, or</p> <p>[2] under the custody of the offender who is a public officer directly charged with the care and custody of prisoners or persons under arrest; or</p> <p>[3] the wife, daughter, sister or relative within the same degree by affinity of the person in the custody of the offender.</p>		
GRAVE SCANDAL (Art. 200, RPC)	Performing a highly scandalous act, such as sexual intercourse or any lascivious act, in a public place or within public view or knowledge, <i>provided</i> such does not constitute another crime punished under the RPC.	<p><u>Ofr</u>: Any person</p> <p><u>OP</u>: Victimless crime; State.</p>	None.	Crime Against Public Morals
PROSTITUTION (Art. 202, RPC)	Habitually indulging in sexual intercourse or any lascivious conduct, for money or profit.	<p><u>Ofr</u>: Any woman.</p> <p><u>OP</u>: Victimless crime; State.</p>	None.	Crime Against Public Morals

IV.

CRIMINAL LIABILITY IN CASES WHERE A PERSON ARRESTS, DETAINS, THREATENS OR COERCES ANOTHER.

Crime	Manner of Commission/ Intent	Parties	Extenuating Circumstance/s	Nature
ARBITRARY DETENTION (Art. 124, RPC)	By arresting and detaining another without lawful grounds.	<u>Ofr.</u> : Any public officer or employee who has the authority to arrest or detain another or cause or order his arrest or detention. <u>OP</u> : Any person.	None.	Crime against the Fundamental Laws of the State.
DELAY IN THE DELIVERY OF PERSONS TO PROPER JUDICIAL AUTHORITIES (Art. 125, RPC)	By arresting and detaining another for some legal ground but failing to deliver such person to the proper judicial authorities within the period of 12 hours, for crimes punishable by light penalties, 18 hours, for crimes punishable by correctional penalties, 36 hours, for crimes punishable by afflictive penalties, and 14 days (if not extended to 10 days max) for certain acts punishable under the Anti-Terrorism Act of 2020 (R.A. No. 11479)	<u>Ofr.</u> : Any public officer or employee authorized to arrest or detain another or to cause or order his arrest or detention. <u>OP</u> : Any person.	None.	Crime against the Fundamental Laws of the State.

DELAYING RELEASE (Art. 126, RPC)	By delaying the release of a prisoner or detention prisoner for the period of time specified in any judicial or executive order directing such release, or unduly delaying the service of the notice of such order to said prisoner or the proceedings upon any petition for the liberation of such person.	<u>Ofr.:</u> Any public officer or employee tasked to implement such order or serve the same. <u>OP:</u> Any person.	None.	Crime against the Fundamental Laws of the State.
EXPULSION (Art. 127, RPC)	By expelling any person from the Philippines or compelling such person to change his residence.	<u>Ofr.:</u> Any public officer or employee who is not authorized under the law to do so <u>OP:</u> Any person	None.	Crime against the Fundamental Laws of the State.
VIOLATION OF PARLIAMENTARY IMMUNITY (Art. 145, RPC)	By arresting (or searching) a member of Congress for a crime not punishable under the RPC by <i>prision mayor</i> or higher, while Congress is in regular or special session.	<u>Ofr.:</u> Public officer or employee. <u>OP:</u> Any member of Congress.	None	Crime against Public Order
KIDNAPPING AND SERIOUS ILLEGAL DETENTION (Art. 267, RPC)	By kidnapping or detaining another, or depriving him of his liberty, under any of the following circumstances:	<u>Ofr.:</u> Private individual. **[see exceptions below] <u>OP:</u> #1-3 –	<u>QC:</u> ● if committed for the purpose of extorting ransom. ● if the victim dies or is killed (Special Complex	Crime against Personal Liberty.

	<p>1. detention lasted more than 3 days.</p> <p>2. committed by simulating public authority.</p> <p>3. Serious PI is inflicted upon the victim; or if threats to kill are made.</p> <p>4. Victim is a <u>minor</u>, except when the accused is any of the parents; <u>female</u> or a <u>public officer</u>.</p> <p>• Guilty of KSID even if none of the foregoing circumstances are present if kidnapping or detention is committed for the purpose of extorting ransom from the victim.</p>	Any person; #4 – as specified.	<p>Crime of Kidnapping with Homicide)</p> <p>• if the victim is raped (Special Complex Crime of Kidnapping with Rape).</p>	
SLIGHT ILLEGAL DETENTION (Art. 268, RPC)	By kidnapping or detaining another, or in any other manner deprive him of his liberty absent any of the circumstances in KSID.	<p><u>Ofr</u>: Private individual.</p> <p>The ruling in <i>Trestiza</i> is applicable though.</p> <p><u>OP</u>: Any person who must not be a woman, public officer or minor.</p>	<p>MC:</p> <p>If offender voluntarily releases the victim within 3 days from the start of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him.</p>	Crime against Personal Liberty.
UNLAWFUL ARREST (Art. 269, RPC)	By arresting or detaining another, without authority of law or reasonable ground therefor, for the purpose of delivering him to the proper authorities.	<p><u>Ofr/OP</u>: Any person</p> <p>The public officer as an offender must NOT have authority to arrest; otherwise, he is liable for Arbitrary</p>	None.	Crime against Personal Liberty.

		Detention.		
KIDNAPPING AND FAILURE TO RETURN A MINOR (Art. 270, RPC)	By deliberately failing to restore a minor to his parents or guardians.	<u>Ofr</u> : Any person entrusted with the custody of a minor person. <u>OP</u> : Any person under 18 years old.	None.	Crime against Personal Liberty.
FORCIBLE ABDUCTION (Art. 342, RPC)	By abducting any woman against her will and with lewd designs and, in every case (i.e., even if the abduction is not against the will of the victim), if the female abducted be under 12 years of age.	<u>Ofr</u> : Any person. <u>OP</u> : Any woman.	None.	Crime against Chastity/ Private Crime
CONSENTED ABDUCTION (Art. 343, RPC)	By abducting a virgin over 12 years and under 18 years of age, carried out with her consent and with lewd designs .	<u>Ofr</u> : Any person. <u>OP</u> : Any woman who must be a virgin and over 12 but under 18 years old.	None.	Crime against Chastity/ Private Crime
SLAVERY (Art. 272, RPC)	By purchasing, selling, kidnapping or detaining a human being for the purpose of enslaving him.	<u>Ofr/OP</u> : Any person	QC: If the crime be committed for the purpose of assigning the offended party to some immoral traffic. This may constitute a violation of the Anti-Trafficking in Persons Act (R.A. 9208/ 10364)	Crime against Personal Liberty
SERVICES RENDERED UNDER COMPULSION IN PAYMENT OF DEBT (Art. 274, RPC)	By compelling the debtor to work for the offender, against his will, as household servant or farm laborer, in	<u>Ofr</u> : Any creditor <u>OP</u> : Any debtor	None.	Crime Against Personal Liberty

	order to require or enforce the payment of a debt.			
GRAVE THREATS (Art. 282, RPC)	By threatening another with the infliction upon the person, honor or property of the victim or of his family of any wrong amounting to a crime, with or without any demand for money or any condition imposed, even though not unlawful, and whether or not the offender shall have attained his purpose.	<u>Ofr/OP:</u> Any person	<u>MC</u> → if the offender does not attain his purpose. <u>MC</u> → if the threat is not made subject to a condition. <u>QC</u> → if offender attains his purpose. <u>QC</u> → if the threat be made in writing or through a middleman.	Crime against Personal Security
LIGHT THREATS (Art. 283, RPC) (Blackmailing)	By threatening another with the infliction upon the person, honor or property of the victim or of his family of any wrong NOT amounting to a crime coupled with demand for money or a condition imposed, even though not unlawful, and whether or not the offender shall have attained his purpose.	<u>Ofr/OP:</u> Any person.	None.	Crime against Personal Security
OTHER LIGHT THREATS (Art. 285, RPC)	[1] By threatening another with a weapon or draw such weapon in a quarrel unless it be in lawful self-defense. [2] In the heat of anger, by orally	<u>Ofr/OP:</u> Any person	None.	Crime against Personal Security

	<p>threatening another with some harm constituting a crime, and who by subsequent acts show that he did not persist in the idea involved in his threat.</p> <p>[3] Any person who shall orally threaten to do another any harm <i>not</i> constituting a felony.</p>			
<p>THREATENING TO PUBLISH AND OFFER TO PREVENT SUCH PUBLICATION FOR A COMPENSATION (Art. 356, RPC)</p> <p>(Blackmailing)</p>	<p>By threatening another to publish a libel concerning him or the members of his family or by offering to prevent the publication of such libel for a compensation or monetary consideration.</p>	<p><u>Ofr/OP:</u> Any person</p>	None.	Crime Against Honor
<p>GRAVE COERCION (Art. 286, RPC)</p>	<p>[1] by preventing another from doing something not prohibited by law, without authority of law and by means of violence; or</p> <p>[2] by compelling another to do something against his will, whether it be right or wrong, without authority of law and by means of violence.</p>	<p><u>Ofr/OP:</u> Any person</p>	<p><u>QC</u>➡ If committed for the purpose of compelling another to perform any religious act or to prevent him from so doing.</p>	Crime against Personal Security.
<p>ROBBERY THROUGH EXECUTION OF DEEDS (Art. 298, RPC)</p>	<p>By compelling another to sign, execute or deliver any public instrument or documents with intent to defraud another and by means of violence</p>	<p><u>Ofr/OP:</u> Any person</p>	None.	Crime Against Property

	or intimidation.			
OCCUPATION OF REAL PROPERTY OR USURPATION OF REAL RIGHTS IN PROPERTY (Art. 312, RPC)	By taking possession of any real property or usurping any real rights in property belonging to another, through violence against or intimidation of persons.	<u>Ofr</u> : Any person <u>OP</u> : Owner of the real property occupied or of the real rights in property usurped by the offender.	If a person suffers physical injuries or is killed by the person who is committing Occupation..., the offender shall incur a penalty for Phys. Injuries or Homicide, in addition to the penalty for Occupation...	Crime Against Property
UNJUST VEXATION (Art. 287, par. 2, RPC)	Any human conduct which, although not productive of some physical or material harm, could unjustifiably annoy or vex an innocent person.	<u>Ofr/OP</u> : Any person	None.	Crime Against Personal Security
MALTREATMENT OF PRISONERS (Art. 235, RPC)	By overdoing in the correction or handling of a prisoner, by the imposition of punishment not authorized by the regulations or infliction of such punishments in a cruel and humiliating manner.	<u>Ofr</u> : Public officer directly charged with the custody of said prisoner. <u>OP</u> : Any prisoner.	If the purpose is to extort a confession, or to obtain some information from prisoner. ➤ In addition to criminal liability for MOP, offender may also be held liable for Physical Injuries or Homicide (in case the victim dies).	Crime Committed by Public Officers.

Circumstances under which PUBLIC OFFICERS may be offenders in Serious/Slight Illegal Detention (Art. 267/268):

1. **conspiracy** with a private individual
2. as an **accomplice** or **accessory**
3. purpose of detention is to extort **ransom**
4. **no authority** to arrest
5. even with authority to arrest, if a public officer or employee, in detaining another, has done so **neither** in furtherance of his official functions, in the pursuit of authority vested in him **nor** in relation to his office, but in purely **private capacity**.⁶

⁶People vs. Trestiza, 660 SCRA 407

V.

**CRIMINAL LIABILITY IN CASES WHERE A PERSON
TAKES, APPROPRIATES OR MISAPPROPRIATES
ANY MONEY OR PROPERTY OF ANOTHER.**

Crime	Manner of Commission	Parties	Extenuating Circumstance/s	Nature
MALVERSATION OF PUBLIC FUNDS OR PROPERTY (Art. 217, RPC)	By taking, appropriating or misappropriating public funds or property (<i>Intentional Malversation</i>) or by consenting, through abandonment or negligence, or permitting another person to take public funds, or property. (<i>Malversation through negligence</i>).	<u>Ofr.</u> : Any public officer or employee who is accountable for such public funds or property by reason of the duties of his office.	None.	Crime Committed by Public Officers.
ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS (Arts. 293-294, RPC)	By unlawfully taking any personal property belonging to another, with intent to gain, with violence against or intimidation of persons; and – ➡ by reason or on occasion of the robbery, the crime of homicide is committed; ➡ robbery is accompanied by rape, intentional mutilation or arson. ➡ if by reason or on occasion of such robbery, serious physical injuries under Art. 263, RPC is inflicted. ➡ if the violence or intimidation employed in shall have been carried to a degree clearly unnecessary for the commission of	<u>Ofr/OP</u> : Any person	Band ➡ more than three armed malefactors taking part in the commission of robbery. QC ➡ pars. 3, 4 and 5 of Art. 294. GAC ➡ pars. 1 and 2 of Art. 294 (Robbery w/ homicide, rape.. serious PI)	Crime against Property Special Complex Crime (Art. 294)

	robbery.			
ROBBERY WITH USE OF FORCE UPON THINGS (Arts. 299-302, RPC)	<p>By unlawfully taking any personal property belonging to another, by xxx, use of force upon things (Art. 293, RPC)</p> <ul style="list-style-type: none"> • In an <u>inhabited</u> house or public building or one devoted to religious worship, committed by armed person. (Art. 299, RPC) • In an <u>uninhabited</u> place or in private building. (Art. 302, RPC) <p>➤ Entry to house or building is made thru any of the following means:</p> <ol style="list-style-type: none"> 1. Through an opening not intended for entrance or exit. (unlawful entry) 2. Breaking any door window, wall, roof, or floor. 3. Using false keys, picklocks or similar tools. 4. Using any fictitious name or pretending the exercise of public authority. 5. Breaking of wardrobes, chests, or any locked or sealed furniture or receptacle; 6. By taking such furniture or objects to be broken or forced open outside the place of the 	<u>Ofr/OP</u> : Any person	<p>QC ➡ if committed in an uninhabited place and by a band or when the property taken is mail matter or large cattle.</p> <p>MC ➡ if the offender is not armed, or if armed, if the value of the property taken does not exceed ₱50,000. (R.A. 10951)</p>	Crime against Property

	robbery.			
THEFT (Arts. 308-310, RPC)	<p>By unlawful taking, with intent to gain of personal property belonging to another, but without violence against or intimidation of persons nor force upon things, without the owner's consent.</p> <p>Other forms of theft:</p> <ol style="list-style-type: none"> 1. Failure to deliver to the authorities or to its owner a lost property found by another; 2. Removal or making use of the fruits or object of the damage the offender has maliciously caused to the property of another; and 3. xxx (Art. 308, RPC) 	<p><u>Ofr</u>: Any person.</p> <p><u>OP</u>: Any person (exc. Domestic servant)</p>	<p>Qualified Theft (Art. 310, RPC)</p> <p>QC ➡ (1) by domestic servant,</p> <p>(2) with grave abuse of confidence,</p> <p>(3) property stolen is motor vehicle, mail matter or large cattle, xxx, or</p> <p>(4) on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.</p>	Crime against Property
ESTAFA By misappropriation or conversion (Art. 315, par. 1[b], RPC)	<p>By misappropriating or converting, <i>to the damage of another</i>, money, goods, or any other personal property received by offender in trust or on commission, or for administration, or under any other obligation or duty to deliver or return the same; or</p> <p>By denying having received such money, goods, or other property.</p>	<u>Ofr/OP</u> : Any person	None.	Crime against Property.
ESTAFA by means of false pretenses and fraudulent acts (Art. 315, par. 2[a], RPC)	By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or	<u>Ofr/OP</u> : Any person	None.	Crime against Property.

	imaginary transactions, or by means of other similar deceits, executed prior to or simultaneous with the commission of fraud, to the damage of another.			
ESTAFA by issuing a bounced check (Art. 315, par. 2[d], RPC)	By postdating a check or issuing a check in payment of an obligation when the funds therein were not sufficient to cover the amount of the check, executed prior to or simultaneous with the commission of fraud, <i>to the damage of another.</i>	<u>Ofr/OP</u> : Any person	None.	Crime against Property.
OTHER FORMS OF SWINDLING (Art. 316, par. 3, RPC)	By wrongfully taking a personal property from its lawful possessor to the prejudice of the latter or any third person.	<u>Ofr</u> : Owner of the personal property. <u>OP</u> : Lawful possessor of a personal property owned by the offender.	None.	Crime against Property.
LIGHT COERCION (Art. 287, par. 1, RPC)	By seizing anything belonging to a debtor for the purpose of applying the same to the payment of the debt, by means of violence.	<u>Ofr</u> : Any creditor <u>OP</u> : Any debtor	None.	Crime against Personal Security
PIRACY ON THE HIGH SEAS OR PHILIPPINE WATERS (Arts. 122 and 123, RPC; PD 532)	By attacking or seizing a vessel or, the whole or part of the cargo of said vessel, its equipment, or personal belongings of its complement or passengers.	<u>Ofr</u> : Any person. However, if what is seized is the whole or part of the cargo of the vessel, its equipment, or personal	1. Seizure of vessel by boarding or firing upon the same; 2. Abandonment of victims without means of saving themselves or; 3. Accompanied by murder, homicide, physical injuries or rape.	Crime against National Security and the Laws of Nations

		belongings of its complement or passengers, the offender must neither be a member of its complement nor a passenger thereof. <u>OP:</u> Passengers or compliments of the vessel.		
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Malversation.

- Demand is not necessary in malversation. Demand merely raises a *prima facie* presumption that the missing funds have been put to personal use (misappropriated). xxx. Malversation is committed from the very moment the accountable officer misappropriates public funds and fails to satisfactorily explain his inability to produce the public finds he received.⁷

Illegal use of public funds (Technical Malversation).

- Elements: [1] The offender is a public officer; [2] There is public fund or property under his administration; [3] Such public fund or property has been appropriated by law or ordinance; [4] He applies the same to a public use other than that for which such fund or property has been appropriated by law or ordinance.⁸
- Technical malversation is *mala prohibita*, i.e., the prohibited act is not inherently immoral but becomes a criminal offense because positive law forbids its commission based on considerations of public policy, order, and convenience. It is the commission of an act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. Hence, malice or criminal intent is completely irrelevant.⁹

Robbery

- Whenever homicide is committed as a consequence or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals in the special complex crime of robbery with homicide although they did not take part in the homicide, unless it is clearly shown that they endeavored to prevent the homicide.¹⁰

Estafa by misappropriation or conversion.

- **Damage**, as an essential requisite in estafa, must be capable of pecuniary estimation.
- When the thing is received by the offender from the offended party in trust or in commission or for administration, the offender acquires **both** material or physical possession and juridical

⁷Venezuela vs. People, G.R. No. 205693, 14 February 2018.

⁸Abdulla vs. People, 455 SCRA 78

⁹Ysidoro vs. People, 685 SCRA 637

¹⁰People vs. FO1 Dela Cruz, 575 SCRA 412

possession of the thing received. **Juridical possession** means a possession which gives the transferee a right over the thing transferred and this he may set up even against the owner.¹¹ So long as the juridical possession of the thing appropriated did not pass to the perpetrator, the offense committed remains to be theft, qualified or otherwise.¹²

Estafa by issuing a bounced check.

- check was postdated or issued at the time the obligation was contracted.
- Issuance of check in payment of an obligation must be the efficient cause of the defraudation, i.e., the offended party would not have parted with his money or property were it not for the issuance of the check by the offender.
- Check was not in payment of a pre-existing obligation.

As distinguished from B.P. Blg. 22

ESTAFA (Art. 315, par. 2 [d], RPC	B.P. Blg. 22
<i>Malum in se</i>	<i>Malum prohibitum</i>
Deceit is an element	Deceit is NOT an element, as what is punished is the mere issuance of worthless checks.
NOT violated if check is issued in payment of a pre-existing obligation.	Violated whether or not the check is issued in payment of a pre-existing obligation.
The drawer is given 3 days from receipt demand letter or notice of dishonor to pay the amount due on the bounced check.	Via a letter of demand, the drawer is given 5 days from receipt thereof or notice of dishonor, to pay the amount due on the bounced check.
Failure to pay within the required period shall be <i>prime facie</i> evidence of deceit.	Failure to pay within the required period shall give rise to the presumption that the drawer has knowledge of insufficiency of funds at the time the check was issued.
Payment is NOT a defense.	Payment (full) is a defense, if made before the filing of Information. ¹³

- Under Art. 315, par. 2[d], RPC and BP 22, **notice of dishonor is necessary** for their prosecution. Without proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed and no crime (whether *estafa* or violation of BP 22) can be deemed to exist.¹⁴ Notice of dishonor being an element of a charge under Art. 315, 2(d), failure to prove it is a ground for acquittal thereunder.¹⁵

Other Deceits (Art. 318)

- “By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, xxx, without paying therefor, with intent to defraud the proprietor or manager thereof, xxx” is **no longer a crime** under Art. 315, as par. 2 [e] thereof was deleted by R.A. 10951. Such act may however be covered by Art. 318 (Other Deceits) of the RPC.

¹¹San Diego vs. Court of Appeals, 755 SCRA 260.

¹²Benabaye vs. People, G.R. No. 203466, 25 February 2015.

¹³Ariel Lim vs. People, 742 SCRA 685

¹⁴People vs. Ojeda, 430 SCRA 436

¹⁵Ong vs. People, 566 SCRA 253

VI.

CRIMINAL LIABILITY IN CASES WHERE A PERSON DESTROYS OR CAUSES DAMAGE TO ANY PROPERTY OF ANOTHER.

ARSON (Art. 320 of the RPC, as amended by R.A. No. 7659 and P.D. No. 1613)	CRIMES INVOLVING DESTRUCTION (Art. 324, RPC)	MALICIOUS MISCHIEF (Arts. 327 - 331, RPC)	THEFT (under Art. 308 [2], RPC)
Nature / Parties			
Crime against Property / Any person			
Means of Commission			
By burning or setting on fire the property of another, or <u>one's own property, if it exposes to danger the life or property of another.</u> Subject thereof may include: any building, mode of conveyance for transportation of persons or property, plantation, farm or forest.	By causing destruction by means of explosion, discharge of electric current, inundation, sinking or stranding of a vessel, intentional damaging of the engine of said vessel, taking up the rails from a railway track, maliciously changing railway signals for the safety of moving trains, xxx, in general, by using any other similar agency or means.	By deliberately causing to the property of another any damage, through any means other than fire and those in Destruction.	After having maliciously damaged the property of another, by removing or making use of the fruits or object of the damage caused.
Qualifying Circumstance/s			
(1) committed with intent to gain, (2) for the benefit of another, by a syndicate; or (3) offender is motivated by spite or hatred towards the owner or occupant of the property burned. ✓ if death results.	If the commission endangers the safety of any person.	If the purpose is to obstruct the performance of public functions or to spread any contagion among cattle; if any poisonous or corrosive substance is used; causing damage to the property of the National Museum or National Library, or to any archive or registry; or xxx.	Art. 310, RPC

VII.

CRIMINAL LIABILITY IN CASES WHERE A PERSON GIVES OR MAKES A FALSE TESTIMONY OR WRITTEN STATEMENT.

FALSIFICATION (Arts. 171, par 4. and 172, RPC)	FALSE TESTIMONY IN CRIMINAL CASES (Arts. 180 and 181, RPC)	FALSE TESTIMONY IN CIVIL CASES (Art. 182, RPC)	PERJURY (Art. 183, RPC)
Manner of Commission			
By making untruthful statement in a narration of facts in a document where the offender has the <i>legal obligation</i> to disclose the truth thereon.	By falsely testifying, <u>under oath</u> ,* for or against an accused in a criminal case wherein the latter is either acquitted or convicted in a final judgment, or the case against him is dismissed.	By falsely testifying <u>under oath</u> * in a civil case on matters related to the issues presented in said case, with malice and given with an intent to affect the issues presented. * <i>before a competent officer authorized to administer/receive an oath.</i>	<i>Elements:</i> (1) by making a statement or executing an affidavit upon a material matter; (2) <u>under oath</u> ;* (3) there is a willful and deliberate assertion of a falsehood and (4) the giving or making thereof or its submission is required by law or for a legal purpose
Offender			
Public officer or employee who has taken advantage of his position in committing such falsification (Art. 171, RPC); or a private individual. (Art. 172, RPC)	Any person	Any person	Any person
Where Given/Submitted			
N/A	Court – Criminal proceedings	Court – Civil proceedings	➡ Quasi-judicial or administrative tribunals ➡ Court – in civil cases governed by the Rules of Special Proceedings.

Illegal possession and use of false bank notes.¹⁶

- Use *or possession, with intent to use*, any false treasury or banks notes or other instruments of credit.

¹⁶Art. 168, RPC

Falsification.¹⁷

- Damage or intent to cause damage is an element if what is falsified is a private document and **not** a public, official or commercial document.
- Any person in possession of a falsified document and/or who stands to benefit thereby is presumed to be its author.
- By Public officers – Offender must have *taken advantage of his official position*, i.e. (1) he has the duty to make or prepare or to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies.¹⁸

Specific acts of falsification:

- Counterfeiting any handwriting or signature
 - Causing it to appear a person has participated in any act when he did not in fact so participate;
 - Attributing to a person who has participated in an act, statements other than those made by him.
 - Making untruthful statements in a narration of facts;
 - Altering true dates;
 - Making any alteration or intercalation in a genuine document which changes its meaning;
 - Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original;
 - Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.
- “**true date**” – date is essential, i.e., its alteration affects the veracity of the document or its effects.

Use of falsified document.¹⁹

Judicial Proceedings	Other Transactions
Offender used a falsified document which he knew to have been falsified by another person .	
Damage/intent to cause damage, not essential	Damage/intent to cause damage is essential

VIII.

CRIMINAL LIABILITY IN CASES WHERE A PERSON INJURES THE CHARACTER, REPUTATION OR HONOR OF ANOTHER THROUGH ACTS, UTTERANCES AND/OR MALICIOUS STATEMENTS.

Crime	Manner of Commission	Means of Commission	Nature
LIBEL (Arts. 353 and 355, RPC)	“public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor,	➡ writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means.	Crime against Honor/ A Public Crime except if the defamation consists in the imputation of a

¹⁷Art. 171/172, RPC

¹⁸People vs. Sandiganbayan, G.R. No. 197953, 05 August 2015.

¹⁹Last par. Art. 172, RPC

	discredit or contempt of a natural or juridical person, or to blacken the memory of one who is dead.”	➡ in cyber libel - through computer system (Anti-Cybercrime Law) ²⁰	private crime. In such case, the criminal action may be brought only at the instance of and upon complaint filed by the person defamed. (last par., Art. 360)
ORAL DEFAMATION (Art. 358, RPC)	Elements: (1) there must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, status or circumstances; (2) made orally ; (3) publicly; (4) and maliciously; (5) directed to a natural or juridical person, or one who is dead; (6) which tends to cause dishonor, discredit or contempt.	Spoken words	-SAME-
SLANDER BY DEED (Art. 358, RPC)	<u>Elements:</u> (1) the offender performs any act not included in any other crime against honor, (2) such act is performed in the presence of other person or persons, and (3) such act casts dishonor, discredit or contempt.	Physical act or conduct.	Crime against Honor/ Public Crime
INCRIMINATORY MACHINATION (Art. 363, RPC)	By performing an act, <i>not constituting perjury</i> , which directly incriminates or imputes to an innocent person the commission of a crime.	Commonly known as “ <i>planting of evidence.</i> ” However, the following laws (<i>and not Art. 363</i>) apply in case the evidence planted is: • Firearm, ammunition or any part thereof (Sec. 38, R.A. 10591; or • Dangerous drug/controlled precursor – Sec. 29, R.A. 9165.	Crime against Honor/ Public Crime
INTRIGUING AGAINST HONOR	By making any intrigue which has for its principal	The offender does not directly avail of written of	Crime against Honor/

²⁰R.A. 10175

(Art. 364, RPC)	purpose to blemish the honor or reputation of another person.	spoken words but of some trickery or secret plot. Thus, “gossiping” is not intriguing against honor.	Public Crime
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IX.

CRIMINAL LIABILITY IN CASES WHERE A PERSON CONTRACTS A MARRIAGE OR PERFORMS A MARRIAGE CEREMONY.

BIGAMY (Art. 349, RPC)	MARRIAGE CONTRACTED AGAINST PROVISIONS OF LAW (Art. 350, RPC)	PERFORMANCE OF ILLEGAL MARRIAGE CEREMONY (Art. 352, RPC)
Nature		
Crime against the Civil Status of Persons / Public Crime		
Manner of Commission		
By contracting a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings. *The subsequent marriage would have been valid had it not been for the existence of the first.	By contracting marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment. Qualified: If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation or fraud.	By performing or authorizing any illegal marriage ceremony.
Offender		
Any legally married person.	Any person with no subsisting marriage.	Any priest or minister of any religious denomination or sect, or anyone authorized to solemnize marriages who knew that such marriage does not have all the requisites for its validity. **if not authorized, the offender is liable for Usurpation of Authority/Official Functions under Art. 177, RPC, whether or not the marriage he supposedly solemnizes have all the requirements for its validity.

- A judicial declaration of absolute nullity is not necessary to prove a void *ab initio* prior and subsequent marriages in a bigamy case. Consequently, a judicial declaration of absolute nullity of the first and/or second marriages presented by the accused in the prosecution for

bigamy is a valid defense, irrespective of the time within which they are secured.²¹

- Art. 351 (Premature Marriages) of the RPC has already been repealed by R.A. No. 10655 as of March 2015. Thus, it is **no longer a crime** for “any widow to marry within 301 days from the date of the death of her husband, or before having delivered if she shall have been pregnant at the time of his death; or any woman whose marriage shall have been annulled or dissolved, if she marries before her delivery or before the expiration of the period of 301 days after the legal separation.”

X.

CRIMINAL LIABILITY IN CASES WHERE A PERSON DOES AN ACT WHICH AFFECTS THE CIVIL STATUS OF ANOTHER OR CAUSES THE LATTER TO LOSE ONE.

FALSIFICATION committed by ecclesiastic minister (Art. 171, RPC)	SIMULATION of births, SUBSTITUTION of one child for another and CONCEALMENT OR ABANDONMENT of a legitimate child (Art. 347, RPC)	USURPATION OF CIVIL STATUS (348, RPC)
Manner of Commission		
By committing any of the acts of falsification under Art. 171 of the RPC which may affect the civil status of another.	✓ By simulating the birth of another ✓ By substituting one child for another ✓ By concealing or abandoning any legitimate child, <i>with intent to cause the latter to lose his civil status.</i>	By usurping the civil status of another, with or without intent to defraud the offended party or his heirs.
Offender		
Any ecclesiastic minister	Any person	Any person
Nature		
Crime Against Public Interest	Crime Against the Civil Status of Persons	Crime Against the Civil Status of Persons

XI.

CRIMINAL LIABILITY IN CASES WHERE A PERSON EVADES HIS SENTENCE OR ESCAPES FROM DETENTION FACILITY.

Crime	Manner of Commission	Offender	Nature
DELIVERING PRISONERS FROM JAIL (Art. 156, RPC)	By removing from any jail or penal establishment any prisoner or helping the escape of such person, by means of violence, intimidation, or bribery.	Any person	Crime against Public Order
EVASION OF SERVICE OF SENTENCE (Art. 157, RPC)	By escaping during the term of his imprisonment by reason of final judgment	Prisoner serving sentence by final judgment	Crime against Public Order
	By leaving the penal institution		

²¹ Pulido vs. People, G.R. No. 220149, 27 July 2021

EVASION OF SERVICE OF SENTENCE ON THE OCCASION OF DISORDERS... (Art. 158, RPC)	<p>where prisoner shall have been confined, on the occasion of disorder resulting from a conflagration, earthquake, explosion, or similar catastrophe, or during a mutiny in which he has not participated.</p> <p><u>Penalty:</u> an increase of 1/5 of remaining time to be served under the original sentence, which shall not exceed 6 months, if prisoner fails to give himself up to within 48 hours following the issuance of a proclamation by the Chief Executive announcing the passing away of such calamity.</p> <p>(see also Art. 98, as amended by R.A. 10592)</p>	Prisoner serving sentence by final judgment	Crime against Public Order
CONNIVING WITH OR CONSENTING TO EVASION (Art. 223, RPC)	By consenting to the escape of a detention prisoner or prisoner serving sentence by final judgment.	Public officer who has a prisoner in his charge or custody.	Crime Committed by Public Officers
EVASION THROUGH NEGLIGENCE (Art. 224, RPC)	Through inexcusable negligence of the offender, a prisoner, the latter escapes.	Public officer who has a prisoner in his charge or custody.	Crime Committed by Public Officers
ESCAPE OF PRISONER UNDER THE CUSTODY OF PRIVATE PERSON (Art. 225, RPC)	By consenting to the escape of a detention prisoner or prisoner serving sentence by final judgment or if evasion takes place through negligence.	Any private person to whom the conveyance or custody of a prisoner or person under arrest is confided (e.g., by way of recognizance).	Crime Committed by Public Officers

XII.

CRIMINAL LIABILITY IN CASES WHERE PERSONS RISE PUBLICLY AND TUMULTUOUSLY AND/OR TAKE ARMS OR LEVY WAR AGAINST THE GOVERNMENT.

Crime	Manner of Commission	Offender	Nature
TREASON	By <u>levying war</u> against the Philippines <u>or adhering to her</u>	<i>Those owing allegiance to Phil.</i>	Crime against

Notes on and Matrix of Selected Crimes under Special Penal Code by Prof. Modesto Ticman, Jr. Unauthorized copying, dissemination, sharing, uploading, downloading, and storage are strictly prohibited and will be prosecuted to the full extent of the law, including the filing of administrative complaints with the Office of the Bar Confidant, IBP, and SC as well as the filing of criminal charges.

(Art. 114, RPC)	<u>enemies, by giving them aid or comfort</u> , within the Philippines or elsewhere.	<i>Government:</i> Filipino citizens and <i>resident</i> aliens.	National Security and the Laws of Nations
REBELLION (Art. 134, RPC) Doctrine of absorption: All crimes committed as a necessary means, in furtherance or on the occasion of Rebellion are deemed absorbed therein.	By rising publicly and taking arms against the government for the purpose of <u>removing from the allegiance to said Government or its laws, the territory</u> of the Philippine or any part thereof, of any body of land, naval or other armed forces, <u>depriving the Chief Executive or the Congress</u> , wholly or partially, of any of their <u>powers or prerogatives</u> .	Any person.	Crime against Public Order
COUP D' ETAT (Art. 134-A, RPC) Doctrine of absorption: All crimes committed as a necessary means, in furtherance or on the occasion of the of <i>Coup d' etat</i> are deemed absorbed therein.	By means of swift attack, accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications network, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines, <u>for the purpose of seizing or diminishing state power</u> .	Members of the military or police or persons holding any public office of employment. Private individuals (PI): if they are in conspiracy with the above offenders; or if PI participate, or in any manner support, finance, abet or aid in undertaking a <i>coup d'etat</i> . (Art. 135)	Crime against Public Order
SEDITION (Art. 139, RPC)	By rising publicly and tumultuously in order to attain by force, intimidation, or by other means outside of legal methods, any of the following objects: 1. To prevent the promulgation or execution of any law or the holding of any popular election; 2. To prevent the National Government, or any provincial or municipal government or any public officer thereof from freely exercising its or his functions, or prevent the execution of any administrative order; 3. To inflict any act of hate or revenge upon the person or	Any person.	Crime against Public Order

	property of any public officer or employee; 4. To commit, for any political or social end, any act of hate or revenge against private persons or any social class; and 5. To despoil, for any political or social end, any person, municipality or province, or the National Government, of all its property or any part thereof.		
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Misprision of Treason.²²

- committed by Filipino citizens who having knowledge of a conspiracy (to commit treason) against government, conceals or does not disclose the same, as soon as possible to the governor or prosecutor of the province, or the mayor or prosecutor of the city in which he resides.

XIII.

**CRIMINAL LIABILITY IN CASES WHERE A PERSON
GIVES OR ACCEPTS A BRIBE OR REFRAINS FROM PERFORMING AN ACT,
FOR OR WITHOUT ANY CONSIDERATION.**

Crime	Manner of Commission	Offender	Nature
DIRECT BRIBERY (Art. 210, RPC)	1. By <u>agreeing</u> to perform or <u>by performing</u> an act constituting a crime, <i>in connection with the performance of this official duties</i> , in consideration of any offer, promise, gift or present, whether or not the crime agreed upon shall have been committed. 2. By <u>accepting a gift</u> in consideration of the execution of an act which does not constitute a crime (but which must be unjust), whether or not the offender executed said act. 3. By <u>refraining from doing something</u> which was the offender's official duty to do for which the gift was received or promised.	Public officer or employee	Crime Committed by Public Officers

²²Art. 116, RPC

INDIRECT BRIBERY (Art. 211, RPC)	By accepting gifts, offered to the offender by reason of his office. <i>"offered...by reason of his office"</i> – given in anticipation of a future favor or to corrupt the public official.	Public officer or employee	Crime Committed by Public Officers
QUALIFIED BRIBERY (Art. 211-A, RPC)	By refraining from arresting or prosecuting an offender who has committed a crime punishable by <i>reclusion perpetua</i> (and/or death) in consideration of any offer, promise, gift or present.	Public officer or employee tasked with law enforcement.	Crime Committed by Public Officers
CORRUPTION OF PUBLIC OFFICIALS (Art. 212, RPC)	By making the offers or promises or giving the gifts or presents under any of the circumstances that the recipient may be held guilty of Direct, Indirect or Qualified Bribery.	Any person.	Crime Committed by Public Officers
DERELICTION IN THE PROSECUTION OF OFFENSES (Art. 208, RPC) (or <i>prevaricacion</i>)	By maliciously refraining from instituting prosecution for the punishment of violators of the law, or by tolerating the commission of offenses, in dereliction of the duties of the offender's office.	Public officer or employee tasked with law enforcement.	Crime Committed by Public Officers

XIV.

CRIMINAL LIABILITY IN CASES WHERE A PERSON, WITHOUT AUTHORITY OF LAW, USURPS OR PERFORMS PUBLIC FUNCTIONS.

Crime	Manner of Commission	Offender	Nature
USURPATION OF OR OFFICIAL FUNCTIONS (Art. 177, RPC)	Without being lawfully entitled to do so – 1. by knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of	Any person	Crime against Public Interest

	any foreign government; or, 2. by performing any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, <u>under pretense of official position.</u>		
USURPATION OF LEGISLATIVE POWERS (Art. 239, RPC)	By encroaching upon the powers of the legislative branch of the Government, either by making general rules or regulations beyond the scope of his authority, or by attempting to repeal a law or suspending the execution thereof.	Public officer or employee	Crime Committed by Public Officers
USURPATION OF EXECUTIVE FUNCTIONS (Art. 240, RPC)	By assuming any power pertaining to the executive authorities or shall obstruct the latter in the lawful exercise of their powers.	Any judge	Crime Committed by Public Officers
USURPATION OF JUDICIAL FUNCTIONS (Art. 241, RPC)	By assuming judicial powers or obstructing the execution of any order or decision rendered by any judge within its jurisdiction.	Any officer of the executive branch of government.	Crime Committed by Public Officers

XV.

CRIMINAL LIABILITY IN CASES WHERE A PERSON DISCHARGES A FIREARM OR CAUSES DISTURBANCE BY MEANS THEREOF.

Crime	Manner of Commission	Offender	Intent	Nature
DISCHARGE OF FIREARMS (Art. 254, RPC)	[1] By discharging any firearm at another <u>without</u> intent to kill, or [2] By willfully and indiscriminately discharging any firearm or device that may not have been designed as firearm but can be functionally	Any person	To intimidate, scare or frighten the victim.	Crime Against Persons

	<p>used as a firearm, (R.A. No. 11926.)</p> <p><u>unless</u> the same constitutes frustrated or attempted parricide, murder, homicide or any other crime for which a higher penalty is prescribed by the RPC.</p>			
ALARMS AND SCANDALS (Art. 155, RPC)	<p>Discharging of firearm or firecracker in a public place, calculated to cause alarm, danger or disturbance that is not serious in character. Otherwise, Art. 153 applies.</p> <p>**The use of a firearm in the commission of this crime is no longer included and may now be covered by "Discharge of Firearms" under Article 254 of the RPC, as amended by R.A. No. 11926.</p>	Any person.	Intent is immaterial for as long as discharge of firecracker has caused any disturbance in a public place.	Crime Against Public Order
PROHIBITION, INTERRUPTION OR DISSOLUTION OF PEACEFUL MEETINGS (Art. 131, RPC)	Discharging of firearm or firecracker (or any act) resulting to the prohibition or interruption of the holding of a peaceful meeting, or dissolution of the same, without legal ground.	Public officer or employee <u>who must be a stranger to or not a participant in</u> the peaceful meeting.	Intent is immaterial for as long as it has caused the prohibition or interruption of the holding of a peaceful meeting, or dissolution thereof.	Crime against the Fundamental Laws of the State.
INTERRUPTION OF RELIGIOUS WORSHIP (Art. 132, RPC)	Discharging of firearm or firecracker (or any act) resulting to the prevention or disturbance or a religious ceremony or manifestation of any religion.	Public officer or employee who must be a stranger to or not be a participant in the religious ceremony.	Intent is immaterial for as long as it has caused the prevention or disturbance of a religious ceremony or manifestation of any religion.	Crime against the Fundamental Laws of the State.
OFFENDING RELIGIOUS FEELINGS (Art. 133, RPC)	Discharging of firearm or firecracker (or any act) in a place devoted to religious worship or during the celebration of any religious ceremony, thereby notoriously offending the feelings of the faithful.	Any person.	Intent is immaterial for as long as discharge of firearm or firecracker is notoriously offensive to the feelings of the faithful.	Crime against the Fundamental Laws of the State.

TUMULTS AND OTHER DISTURBANCES OF PUBLIC ORDER (Art. 153, RPC)	Discharging of firearm or firecracker (or any act) resulting to any serious disturbance in a public place, office, or establishment, or the interruption or disturbance public performances, functions or gatherings, or peaceful meetings.	Any person, except in the case of a public officer or employee, <u>who is a not stranger but a participant in</u> the peaceful meeting, etc. wherein he has caused serious disturbance. In such case, the public officer is liable under Art. 131 or 132, as the case may be.	Intent is immaterial for as long as discharge of firearm or firecracker has caused any <u>serious disturbance</u> therein.	Crime Against Public Order
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- Discharge of firearms is **absorbed** in (1) homicide cases if there is *intent to kill* and in (2) any other crime for which a *higher penalty* is prescribed by law.
- **Alarms and Scandals may also be committed as follows:**
 - (1) instigating or taking part in disorderly meetings offensive to another or prejudicial to public tranquility;
 - (2) disturbing public peace while wandering about at night or while engaged in any other nocturnal amusements, or
 - (3) causing any disturbance or scandal in public places.

XVI.

CRIMINAL LIABILITY IN CASES WHERE A PERSON RESISTS OR DISOBEYS THE ORDER OF PUBLIC AUTHORITIES.

Crime	Manner of Commission	Party/ies	Nature
DIRECT ASSAULT (Art.148, RPC)	<u>Without public uprising</u> , by attacking, employing force, or seriously intimidating or resisting any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance (by reason of past performance of duties)	Ofr.: Any person OP: Person in authority or his agent.	Crime against Public Order

RESISTANCE AND DISOBEDIENCE (Art. 151, RPC)	By resisting or seriously disobeying any person in authority, or his agents, while engaged in the performance of official duties.	Ofr.: Any person OP: Person in authority or his agent.	Crime against Public Order
DISOBEDIENCE TO SUMMONS OF CONGRESS OR CONSTITUTIONAL COMMISSIONS (Art. 150, RPC)	By refusing, without legal excuse, to obey the summons issued by Congress or any Constitutional Commission, for a person to attend as a witness therein; or Being present therein, by refusing to be sworn in or to answer any legal inquiry or to produce any documents, or records in his possession, when required to do so.	Ofr.: Any person	Crime against Public Order
OPEN DISOBEDIENCE (Art. 231, RPC)	By openly refusing to execute a judgment, decision or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities.	Ofr.: Any judicial or executive officer	Crime Committed by Public Officers

- **“persons in authority”** – those directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board, or commission. Included are barangay chairmen, teachers, professors and persons charged with the supervision of public or duly recognized private schools, and lawyers, in the actual performance of their professional duties or on the occasion of such performance.²³
- **“agents of persons in authority”** – those, by direct provision of law or by election or by appointment by competent authority, are charged with the maintenance of public order and the protection and security of life and property, (*barangay councilman, leader, and tanod*, included) and any person who comes to the aid of persons in authority.²⁴
- The laying of hands or using physical force against *agents of persons in authority* when not serious in nature constitutes resistance or disobedience under Article 151, and not direct assault under Article 148 of the RPC. This is because the gravity of the disobedience to an order of a person in authority or his agent is measured by the circumstances surrounding the act, the motives prompting it and the real importance of the transgression, rather than the source of the order disobeyed.²⁵
- **Direct Assault** may also be committed by any person who, without public uprising, shall employ force or intimidation for the attainment of any of the purposes of the crimes of rebellion and sedition.

²³ Art. 152, RPC

²⁴ Art. 152, RPC

²⁵ Mallari vs. People, G.R. No. 224679, 12 February 2020

XVII.

CRIMINAL LIABILITY IN CASES WHERE PERSONS ARE INCITED TO COMMIT CERTAIN CRIMES OR PROVOKED TO CAUSE DISTURBANCE.

INCITING TO REBELLION OR INSURRECTION (Art. 138, RPC)	INCITING TO SEDITION (Art. 142, RPC)	ILLEGAL ASSEMBLY (Art. 146, RPC)	TUMULTS AND OTHER DISTURBANCES OF PUBLIC ORDER (Art. 153, RPC)
Nature			
Crimes against Public Order			
Manner of Commission			
Without taking arms, by inciting others to the execution of any of the acts constituting rebellion.	Without taking any direct part in Sedition, (1) by inciting others to the accomplishment of any of the acts which constitute sedition, by means of speeches, writings, banners, xxx, or other representations tending to the same end, or (2) by uttering seditious words or speeches, write, publish, or circulate scurrilous libels against the Government, or which tend to disturb or obstruct any lawful officer in executing his functions, or which tend to instigate others to cabal and meet together for unlawful purposes or which suggest or incite rebellious conspiracies or riots, or which lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government, or (3) who shall knowingly conceal such evil practices.	In any meeting in which the audience is incited to commit of the crime of treason, rebellion or insurrection, sedition, or assault upon a person in authority or his agents. • the offender must not have any intention to incite the audience to commit any of these crimes. Otherwise, he is guilty of inciting to commit rebellion, sedition or treason.	By making any outcry, in any meeting or public place, tending to incite rebellion or sedition or in such place shall display placards or emblems which provoke a disturbance. • a mere spontaneous outburst wherein the offender has no intention of inciting the hearers to commit sedition.

- Illegal Assembly may also be committed when there is meeting attended by armed persons for the purpose of committing any of the crimes under the RPC.
- If a person is found in possession of an unlicensed firearm, it shall be presumed that the purpose of the meeting, *insofar as he is concerned*, is to commit acts punishable under the RPC, and that he is deemed a leader or an organizer of thereof.

XVIII.

**CRIMINAL LIABILITY IN CASES WHERE A PERSON
ENTERS THE PROPERTY OF ANOTHER AGAINST THE
WILL OR WITHOUT THE CONSENT OF ITS OWNER.**

VIOLATION OF DOMICILE (Art. 128, RPC)	TRESPASS TO DWELLING (Art. 280, RPC)	OTHER FORMS OF TRESPASS (Art. 281, RPC)	ROBBERY WITH USE OF FORCE UPON THINGS (Arts. 299-302, RPC)
Nature			
Crime Against the Fundamental Laws of the State	Crime Against Personal Liberty and Security		Crime Against Property
Parties			
<u>Ofr.</u> : Public officer or employee <u>OP</u> : Any person	<u>Ofr.</u> : Private individual <u>OP</u> : Any person	<u>Ofr./OP</u> : Any person	<u>Ofr./OP</u> : Any person
Manner of Commission			
Not being authorized by judicial order, by entering any dwelling against the will of the owner thereof, searching papers or other effects found therein without the previous consent of such owner, or after having surreptitiously entered said dwelling, and required to leave the premises, by refusing to do so.	By entering the dwelling of another against the latter's will	By entering a closed premises or fenced estate of another, while either or both are uninhabited, and that the prohibition to enter be manifest and the trespasser has not secured the permission of the owner or the caretaker thereof.	With intent to commit robbery, by entering an <u>inhabited</u> house or public building or one devoted to religious worship, or an <u>uninhabited</u> place or in private building thru any of the following means: 1. unlawful entry 2. breaking any door window, wall, roof, or floor. 3. using false keys, picklocks or similar tools. 4. using any fictitious name or pretending the exercise of public authority. xxx

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PART ONE: REMEDIAL LAW

I. General Principles

A. Substantive Law vs. Remedial Law

Substantive

1. The part of the law which creates, defines or regulates CDR rights and duties which gives rise to a cause of action, and that which courts are established to administer.
2. Generally prospective.

Remedial

1. Merely regulates procedure for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them or operates as a means of implementing an existing right already recognized by law.
2. Generally retroactive. It applies to actions pending and undetermined at the time of their effectivity. No vested rights attach to procedural laws.
3. XPNs: (i) express provision; (ii) if retroactivity will impair vested rights; (iii) application will not be feasible or will work injustice; (iv) intricate questions of due process.
4. 2019 Rules (took effect May 1, 2020) expressly provides for its application to pending cases unless the application will not be feasible or will work injustice.

Procedural FC provisions

1. If proof of filiation is based on secondary evidence, the period to file the same is limited by the putative father's lifetime: (a) different rule from OCC; (b) if father died during regime of FC, the time bar cannot be applied since it will prejudice the vested rights of the child.
2. The absolute nullity of the first marriage can be invoked solely on the ground of judicial declaration of its nullity for purposes of contracting a second marriage: (a) in Pulido v. Pp, SC held that the requirement should not be applied in criminal prosecutions for bigamy as it will prejudice the rights of the accused; (b) absolute nullity of first marriage is a defense in bigamy case, even without securing judgment declaring its nullity.

B. Rule-Making Power of the Supreme Court

Scope:

1. Protection and enforcement of constitutional rights
2. Pleading, practice, and procedure in all courts
3. Admission to the practice of law and the integrated bar – SC has plenary power to regulate the legal profession, can integrate the bar and ensure that the dues were duly paid.
4. Legal assistance to the underprivileged (Const.)

Limitations:

1. Shall provide a simplified and inexpensive procedure for the speedy disposition of cases SIP.
2. Shall be uniform for all courts of the same grade.
3. Shall not diminish, increase, or modify DIM substantive rights. (Const.)
4. Must not amount to judicial legislation.

Liberal application:

1. Express provision: Theses rules shall be liberally construed to promote their objective of securing a just, speedy and inexpensive disposition JSID of every action and proceeding.
2. Grounds: (i) Existence of special circumstances; (ii) Merts of case; (iii) Cause not attributable to the party invoking; (iv) Lack of showing that the review is frivolous or dilatory; (v) Other party will not be unjustly prejudiced. SPAML
3. Prerequisites: (i) plausible explanation for non-compliance; (ii) compelling reason to convince the court that outright dismissal of the petition would

seriously impair the orderly administration of justice.

4. Includes the power to: (i) overturn judicial precedents; (ii) relax or suspend technical or procedural rules; (iii) except a case from their operation if there are compelling reasons.
5. Mere exercise of equity jurisdiction which cannot prevail against positive provision of law – e.g., laches cannot prevail over prescription.

Rules of special courts and quasi-judicial bodies

1. They remain effective unless disapproved by SC.
2. They are valid and effective even without SC approval.

Evolution:

1. Under 1935 Const. – Congress may repeal, alter, or supplement RAS Rules.
2. Under 1973 Const. – (i) Still subject to RAS by Congress; (ii) added power to promulgate rules in integration of Ph bar.
3. Under 1987 Const. – (i) **Took away Congress' power to RAS Rules**; (ii) grant of power to promulgate rules re: protection and enforcement of constitutional rights; (iii) grant of power to disapprove rules of procedure of special courts and quasi-judicial bodies.

C. Principle of Judicial Hierarchy

1. Judicial power is vested not just in SC but also upon such lower courts established by law.
2. Under the law, the proper RTC exercises concurrent jurisdiction over extraordinary remedies such as petitions for certiorari, prohibition and/or mandamus. These cases must be filed before them at the first instance, and the direct invocation of SC's jurisdiction and imposition upon its time shall be grounded on compelling reasons.

D. Doctrine of Non-Interference/Judicial Stability

No court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by the injunction.

The rationale for the rule is founded on the concept of jurisdiction: a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment.

A Petition for Certiorari, Prohibition and Mandamus filed before a court of concurrent jurisdiction was improper and in glaring violation of the doctrine of judicial stability. The power to open, modify, or vacate the said orders is not only possessed but is restricted to the court in which the order is issued. E.g., Petition for CPM filed before Makati RTC pertaining to an action pending before Pasig RTC. Makati RTC has no jurisdiction, and its judgment and all its incidents were void.

II. Jurisdiction

A. Classification of Jurisdiction

1. Original vs. Appellate

Original jurisdiction is the power of a court to take cognizance of a case at first instance.

Appellate jurisdiction is the power to review, revise, reverse, modify, or affirm final judgments, and orders of the lower courts.

2. General vs. Special

The designation of a RTC as a special court exercising special jurisdiction does not divest it of its general jurisdiction. Designation as special courts is only a matter of

procedure. – e.g., an RTC designated to hear and try drugs and heinous cases has jurisdiction to try a VAWC case if the Family Court judges in the territory are disqualified.

3. Exclusive vs. Concurrent

Exclusive jurisdiction pertains to the power of a court to take cognizance of a case belonging to a particular class to the exclusion of other courts.

Concurrent:

1. Various courts have jurisdiction over a particular case.
2. The court first taking cognizance excludes the others.
3. Subject to the doctrine of hierarchy of courts.

B. Doctrines of Hierarchy of Courts DHC and Adherence of Jurisdiction

Doctrine of Hierarchy of Courts:

1. Applies if the courts have concurrent original jurisdiction.
2. Case must first be filed in the lowest court with jurisdiction. Purpose is to prevent imposition on the time of SC.
3. XPNs – (i) generally, special and important reasons alleged in the petition; (ii) Meritorious reasons stated in complaint; (iii) Public welfare policy; (iv) Higher interest of justice; (v) Patent nullity of judgment assailed; (vi) Issues of constitutionality at most immediate time; (vi) Transcendental importance.

Doctrine of Adherence of Jurisdiction

1. Once a court acquires jurisdiction, it retains the same until final disposition of the case. It cannot be ousted by the happening of supervening events, although of a character which would have prevented jurisdiction from attaching in the first instance.
2. Jurisdiction is determined by the law in force at the time of the filing of the complaint. Amendment or passage of law changing jurisdiction of courts will not affect jurisdiction already acquired.¹ XPN: When a law changing jurisdiction of courts is **curative** in nature. (i) jurisdiction of RTC with respect to claims against corporations undergoing rehabilitation is suspended; the same shall be submitted to the rehabilitation court pursuant to law; (ii) law transferring jurisdiction over the civil aspect of B.P. Blg. 22 cases to MTC.
3. The court acquires jurisdiction not only as to the main case, but all its incidents, even those otherwise falling within the jurisdiction of other courts.
4. Upon perfection of appeal, the court of origin loses jurisdiction over the case. XPN: residual jurisdiction.

Doctrine of ancillary jurisdiction

1. Jurisdiction over the main case embraces all incidental matters arising therefrom and connected therewith, in aid of the court's authority over the principal matter, even though the incidental matter may not be within the court's jurisdiction as an original COAc.
2. E.g., in a petition for correction of entries, the RTC having jurisdiction may order the LCR in another province to cancel the petitioner's duplicate birth certificate.

Residual jurisdiction

1. One exercised by the court of origin after appeal was perfected but before transmittal of case records to the appellate court for limited purpose.
2. Purposes [generally not involving matters litigated on appeal] – (i) issue orders for the protection/preservation of rights of parties; (ii) execution pending appeal; (iii) approval of compromise; (iv) allowance of withdrawal of appeal; (v) appeal by indigent litigant does.

C. Jurisdiction of Various Philippine Courts and Tribunals

1. Supreme Court

Original

1. Cases affecting ambassadors, other public ministers and consuls.
2. Petitions for CPM, quo warranto, and habeas corpus.

Appellate:

1. Cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
2. Cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
3. Cases in which the jurisdiction of any lower court is in issue.
4. Criminal cases in which the penalty imposed is reclusion perpetua or higher.
5. Cases in which only an error or question of law is involved.

Administrative supervision

1. Over all courts and court personnel.
2. Exercised through the Office of the Court Administrator.

2. Court of Appeals

EOJ:

1. Petitions for annulment of RTC judgments

Appellate jurisdiction:

1. Decisions rendered by RTC in original jurisdiction (via NOA/RONA)
2. Decisions rendered by RTC in appellate jurisdiction (via Petition for Review). XPN: cases covered by RRSP are immediately F&E, and not appealable (R65).
3. Decisions rendered by QJA (via R43)
4. Decisions rendered by OMB in administrative cases. c.f.: if rendered in criminal cases, appeal to SC.

Concurrent with SC:

1. Petitions for CPM, habeas corpus
2. Quo warranto petitions
3. Petition for Writ of Kalikasan
4. Petition for Writ of Amparo, Habeas Data (also with SB)

CA may conduct trial if:

1. It grants MNT.
2. Petitions for CPM, Quo Warranto, Habeas Corpus, Habeas Data, Writ of Amparo.
3. Appeals in criminal cases based on newly discovered evidence.

3. Court of Tax Appeals

Exclusive jurisdiction to determine constitutionality or validity of tax laws, rules regulations.

¹ E.g., FC provision which provides that petition for recognition of filiation based on open and continuous possession of status as illegitimate child can be filed only during the lifetime of the

putative father did not oust RTC of its jurisdiction previously acquired.

CTA not CA has jurisdiction over petitions for certiorari assailing DOJ resolution in a preliminary investigation involving tax and tariff cases.

4. Sandiganbayan

EOJ

1. Violations of RA 3019, RA 1379, Ch. II, S2, Title VII, Book II RPC – (i) RTC has jurisdiction if: (a) no allegation of damage to the government or any bribery, (b) damage alleged do not exceed 1M; (ii) RTC judgments appealable to SB.
2. Other offenses or felonies whether simple or complexed with other crimes committed by public officials in relation to their office;
3. Civil and criminal cases filed pursuant to and in connection with EO 1, 2, 14, 14-A, s. 1986 (ill-gotten wealth)

Officials covered:

1. Executive branch, SG 27 and higher
2. Members of Congress and officials, SG 27 and higher
3. Members of the Judiciary
4. Chairmen and members of the Constitutional Commissions
5. All other national and local officials SG 27 and higher

5. Regional Trial Courts

EOJ

1. Real actions where assessed value of property >400k, except FE/UD
2. Admiralty and maritime claims >2M.
3. Petitions for settlement of estate with probable gross value >2M.
4. Actions for sum of money, exclusive of DALIC >2M.
5. Actions incapable of pecuniary estimation **IPE**
6. Residual jurisdiction – All other cases not within the special jurisdiction of other courts (including court of agrarian reforms), QJA.

Real actions

1. Allegation of assessed value in the Complaint is jurisdictional. It cannot be presumed or be subject of judicial notice. However, annexes (e.g., tax declaration) shall be considered under the doctrine of incorporation.
2. Allegations in answer are irrelevant.
3. Assessed value must be alleged not the market value. Otherwise, dismissible.
4. If the action is for a recovery of only a portion of the property, the assessed value for purposes of jurisdiction is still the value of the entire property.
5. Includes action or cancellation of OCT arising from Certificate of Ancestral Land Title. RTC may pass upon validity of NCIP proceedings.
6. Cancellation of emancipation patents, CLOA, CTs issued under CARP is within exclusive jurisdiction of DAR Secretary. However, RTC has jurisdiction over petitions for issuance of new duplicate CT, even one emanating from CLOA (not agrarian dispute).

Actions for sum of money

1. Excluded interest pertain only to interest by way of damages² but not to contractual interest. Contractual interest is included in the computation of jurisdictional amount.
2. Payment of filing fees on the amount of demand is jurisdictional. It should include all those which have accrued as of the time of the filing of complaint.

3. Filing fees shall constitute lien on the award not included in demand, provided the non-inclusion was not done to avoid payment of filing fees.

Actions IPE

1. Nature of action is determined by the principal relief sought, not the caption.
2. Action for annulment of deed of conveyance – (i) real action if there is allegation of transfer of title or possession to defendant; (ii) otherwise, personal action IPE.
3. Action for annulment of REM – (i) IPE even if the REM was already foreclosed, if at the time the complaint was filed, the certificate of sale was not yet registered; (ii) if already registered, real action; (iii) registration of the certificate of sale is the operative act which binds the world.
4. Action for breach of contract – (i) capable of pecuniary estimation of primarily seeking damages of refund of deposit; (ii) IPE if claim for damages is merely incidental.
5. EOJ over petition for declaratory relief is with RTC.

RTCs with special jurisdiction:

1. Family Courts
2. Special Commercial Courts SCC – (i) intracorporate controversies. If ITC is raffled to non-SCC, latter should not dismiss the case but should refer it to executive judge for redocketing; (ii) a suit by investor against stockbroker who misappropriated his money is not ITC since the action is not against investee corporations; (iii) derivative suits, whether intracorporate or not.

c.f. Jurisdiction of QJAs

1. NLRC – If the case will be resolved by application of Civil Laws not Labor Laws, the case is within the jurisdiction of regular courts – e.g., action for damages against ER for injuries sustained by EE due to former's failure to provide safe work conditions.
2. COA – (i) has primary jurisdiction over liquidated claims against the government; (ii) however, COA's jurisdiction pertains only the execution, it cannot modify F&E judgments of other courts/tribunals (e.g., CIAC); (iii) COA has no appellate jurisdiction over other courts/ tribunals.
3. Doctrine of primary jurisdiction – applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative agency. In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its review or if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.

6. Family Courts

EOJ

1. All cases involving marriages and family relations. If there is FC in the province, regular courts have no jurisdiction over the actions within FC's special jurisdiction. If raffled to regular court, it has no other power but to dismiss the case. It cannot order its transfer to a FC.

7. Metropolitan Trial Courts, Municipal Trial Courts, Municipal Trial Courts in cities, and Municipal Circuit Trial Courts (Republic Act No. (RA) 11576, An Act Further Expanding the Jurisdiction of First-Level Courts)

Rules administered by First Level Courts **FLC**

² Punitive or compensatory.

1. Rules on Expedited Procedures in the First Level Courts (REPFLEC; April 11, 2022) – (i) Rules on Small Claims; (ii) Revised Rules on Summary Procedure RRSP
2. Regular Rules

Under RRSP

Coverage

1. FE/UD cases, regardless of assessed value of property, damages, unpaid rentals – (i) assessed value need not be alleged; (ii) action for unpaid rentals is merely incidental; (iii) claim for attorney's fees shall not exceed 100k; (iv) even if interpretation of contract is necessary to determine right to possess or issue of ownership is raised; (v) subject to HLURB's primary jurisdiction.³
2. Real actions where assessed value of property ≤400k – (i) action for reconveyance to recover property co-owned under Art. 147 FC with assessed value of 100k is within MTC jurisdiction, not RTC as FC.
3. Actions for sum of money, exclusive of DALIC ≤2M.
4. Actions for damages, exclusive of ALIC ≤2M.
5. Petition for the revival of action of MTC decisions in relation to R39 S6⁴ (n)
6. Enforcement of barangay amicable settlement >1M, if no execution was made within 6m from the time the award becomes due and demandable and not coupled with application for provisional remedies.

Procedure under RRSP

1. Initiated by Complaint.
2. Answer may be filed within 30d from receipt of summons (not extendible). In case of failure to file – (i) no motion to declare defendant in default; (ii) court may decide based on complaint and attachments, either motu proprio or on plaintiff's manifestation.
3. Court shall conduct preliminary conference – (i) non-appearance of plaintiff is ground for dismissal; (ii) non-appearance of defendant entitles plaintiff to judgment. XPN: in case of 2+ defendants based on same cause of action and pleading the same defense where the appearance of one benefits the other/s; (iii) parties shall be referred to CAM/JDR; (iv) instances having the same effect as non-appearance: (a) non-appearance in CAM/JDR; (b) non-filing of PC brief; (c) appearance by representative but without SPA, or SPA did not authorize him to enter into amicable settlement, stipulation of facts, etc.
4. Parties may submit position papers within 10d from receipt of preliminary conference order.
5. Court may call for clarificatory hearing.
6. Court may order submission of case of judgment if it finds that there are no triable issues on the basis of admissions or stipulations of facts.
7. Grounds for MTD: (i) lack of SM jurisdiction; (ii) failure to comply with Barangay Conciliation.
8. Grounds for dismissal (motu proprio): (i) improper venue; (ii) lack of capacity to sue; (iii) litis pendencia; (iv) res judicata; (v) prescription; (vi) failure to state cause of action; (vii) failure to attach CAFS; (viii) failure to comply with condition precedent.
9. Crossclaims and counterclaims not raised are barred.
10. Counterclaims may be filed – (i) must be within the coverage of the rules (>1M, ≤2M). Excess amount

shall be deemed waived; (ii) arose from the same transaction or event; (iii) does not require the joinder of 3p over which the court cannot acquire jurisdiction; (iv) not the subject of pending action.

11. **Decisions by MTC under RRSP is appealable to RTC via NOA/RONA. Decision of RTC on appeal is F&E, not appealable (one-step appeal).**

Under Rules on Small Claims

1. Covers cases purely civil in nature: (i) action for sum of money arising from contract and supported by documents; (ii) enforcement of barangay amicable settlement ≤1M, if no execution was made within 6m from the time the award becomes due and demandable; (iii) must not be coupled with application for provisional remedies.
2. Joinder of claims is allowed, provided total ≤1M.
3. Counter claims (compulsory and permissive) must be within the coverage of the Rules (≤1M). Excess is deemed waived. Defendant may set-off up to 1M and file separate action for the excess.
4. Lawyers are not allowed to appear in Small Claims cases. XPN: as party litigant.
5. Venue: (i) Rule 4 applies; (ii) XPN: if the plaintiff is engaged in banking/lending/similar business with the branch in defendant's residence or place of business, the action must be filed in the defendant's residence or place of business.

Procedure under Small Claims

1. Initiated with Statement of Claims (pro forma) – (i) Must be verified; accompanied with CAFS, splitting of causes of action and multiplicity of suits; (ii) must be based on personal knowledge; (iii) must state if the claimant is engaged in the business of lending (venue purposes), and the number of small claims filed.
2. Attachments – (i) Board Resolution/SPA authorizing the representative to file the claim if plaintiff is juridical person; (ii) Duly certified photocopies of actionable documents subject of claim; affidavits of witness; other evidence. No other evidence shall be allowed not attached to the statement of claims. Reservation not allowed. XPN: good cause shown.
3. Respondent may respond within 10d from receipt of summons (with SOC and blank response form). In case of failure to file, (a) the respondent may still attend the hearing, and the court shall hear his defenses; or (b) court may render judgment based on the prayers in SOC and the attachments.
4. Decision must be rendered after 1d hearing.
5. Judgement is F&E, unappealable. Remedy is R65.

Common Provisions: RSC and RRSP

1. GR: MTD/MTQ is prohibited. XPNs: (i) lack of jurisdiction; (ii) failure to comply with barangay conciliation.
2. Motion for extension of time to file pleadings is not allowed.
3. Rejoinder is not allowed.
4. MR is not allowed for judgment on the merits. But if mere interlocutory order, MR may be allowed.

Under regular procedure

1. Admiralty and maritime claims ≤2M.
2. Petitions for settlement of estate with probable gross value ≤2M.

Under LGC

³ HLURB has exclusive jurisdiction to hear and decide cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, etc. E.g., action by

homeowner to prevent the use of subdivision house as Church which causes disturbance to them.

⁴ In case there is failure to execute judgment by way of motion within 5y from finality.

1. Cases for enforcement of barangay amicable settlement, regardless of the amount involved, if no execution was made within 6m from the time the award becomes due and demandable.
2. Applicable rules depends on amount: (i) if $\leq 1M$, Small Claims; (ii) if $> 1M$, RRSP.

Under other laws

1. Enforcement of arbitration awards $\leq 1M$.
2. Civil case aspect of BP 22 case, if no criminal action was filed. If criminal action was filed, the civil action is deemed instituted.
3. Inclusion and exclusion of voters.

Delegated jurisdiction in cadastral cases:

1. Delegation from RTC
2. Conditions: (i) case is undisputed, or (ii) value of land $\leq 100k$ affidavits or tax declarations.
3. Mode of appeal – (i) same as in cases decided by RTC; (ii) either: to CA via NOA, or to SC via R45 if pure questions of law.

5. Lack of jurisdiction is personal to the concerned party and may not be invoked by the co-defendants.

Jurisdiction over the defendant

1. Acquire upon service of summons or voluntary submission.
2. Lack of valid service of summons renders the judgment null and void.
3. Asking for affirmative reliefs is voluntary submission – e.g., motion for extension to file answer, motion to set aside order of default.
4. Inclusion grounds other than improper service of summons in a motion already constitutes waiver of the defect.
5. A counsel entering special appearance for the defendant to question lack of persona jurisdiction may be deputized by the court to serve summons to his client.
6. Required only for actions in personam, but not for actions in rem or quasi in rem.

D. Aspects of Jurisdiction

1. Jurisdiction Over the Subject Matter

Power to hear and determine cases of the general class to which the proceedings in question belong.

1. Determined by: (i) the law in force at the time of the filing of action; (ii) the nature of the action pleaded, and the character of principal relief sought as appearing from the allegations in the complaint (not the Answer), irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.
2. When it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, the court shall dismiss the claim. R9 S1. It is the court's duty to consider the question of jurisdiction even if not raised by the parties. Courts are bound to take notice of the limits of their authority.
3. Order or resolution issued without SM jurisdiction is void and cannot be given any effect, including all acts pursuant to it and all claims emanating from it.
4. Not waivable. Imprescriptible, but may be barred from being assailed as a result of estoppel by laches. A party cannot invoke the jurisdiction of a court to secure affirmative relief and, after obtaining or failing to obtain such relief, repudiate that same jurisdiction. Said party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice cannot be tolerated — obviously for reasons of public policy [Tijam v. Sibonghanoy]. In Tijam, 15y lapsed before the issue of jurisdiction was raised by a party who actively participated in the case.
5. The jurisdictional defect may be raised at any time during trial, on appeal, even during execution (XPN to doctrine of immutability of judgments).
6. Also, a ground for dismissal of the case motu proprio.
7. Reviewable by appellate court even if not assigned as error.

2. Jurisdiction Over the Parties

Power of the court to render judgment that is binding on the parties to the case. Power to render personal judgments against a party to an action or proceeding.

1. Over plaintiff – voluntary submission by filing of complaint.
2. Over defendant
3. Not determined by law but subject to will of the parties.
4. Waivable (by failure to raise in Answer) and cannot be raised for the first time on appeal.

3. Jurisdiction Over the Issues

Power of the court to hear and determine questions raised by the parties in the pleadings.

1. Waivable.
2. GR: only issues stated in the pre-trial order may be heard during trial. XPNs: (i) issues not covered by the PTO may be tried if raised during trial with the express or implied [failure to object] consent of the parties. Under 2019 Rules, pleadings need not be amended to conform to evidence presented during trial.
3. Ground for objection if evidence seeks to prove a matter not indicated in PTO: irrelevant.
4. On appeal: (i) in civil cases, the court may consider only errors assigned by the parties. XPN: lack of SM jurisdiction; (ii) in criminal cases, the whole case is thrown open for review and the appellate court may review issues, even if not assigned.

4. Jurisdiction Over the Res or the Property in Litigation

Power to render decisions binding the property whether real or personal that is subject matter of the action.

1. Conferred by: (i) seizure of the property under legal process, whereby it is brought into actual custody of the law; or (ii) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.

E. Jurisdiction vs. Exercise of Jurisdiction

Error of judgment	Error or jurisdiction
If the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment.	(i) court exercises jurisdiction not conferred by law (ii) although vested with jurisdiction, it acts in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction
Correctible by appeal or petition for review	Correctible only by the extraordinary writ of certiorari
Where a court has jurisdiction, judgment is valid and may not be attacked collaterally	Where a court has no jurisdiction, judgment is void and may be attacked collaterally

F. Jurisdiction vs. Venue

Jurisdiction	Venue
Power of the court to hear and decide a case belonging to a class of cases	Place where the case is to be tried
Matter of substantive law	Matter of procedural law
Not waivable	Waivable

Cannot be subject to agreement or stipulation	Can be subject to agreement, stipulation, or act of parties
Case dismissible motu proprio for lack of SM jurisdiction	Case not dismissible motu proprio in case of improper venue
May be raised anytime even for the first time on appeal	Must be raised in Answer as affirmative defense AFD ; otherwise, deemed waived
Venue is jurisdictional in a criminal case for libel	Venue is not jurisdictional in a civil case for libel: waivable
Judgment rendered without jurisdiction is null and void	Judgment rendered if venue is improper is valid; the defect is deemed waived

G. Jurisdiction Over Cases Covered by Barangay Conciliation, and Cases Covered by the Rules on Expedited Procedures in the First Level Courts (Administrative Matter (A.M.) No. 08-8-7-SC, as amended, approved on March 1, 2022)

Barangay Conciliation Requirement

1. Required only if all the parties reside in the same city or municipality.
2. Under regular procedure, non-compliance is not ground for MTD. Must be raised as affirmative defense in answer, i.e., failure to comply with condition precedent. If proven, court shall dismiss the case, not merely suspend it.
3. Lawyers are not allowed to appear.

When not required if:

1. One/some parties already reside elsewhere at the time of the filing of action, even though the former authorized the others to file the case on their behalf since the residence of representative party is irrelevant. XPN: if they reside in adjacent barangays, and they agree to the submission of the case to barangay conciliation.
2. Action is coupled with application for provisional remedy. The court cannot dismiss the case for non-compliance with barangay conciliation requirement on ground that the application for provisional remedies is resorted only to circumvent said requirement. GF is presumed.
3. One of the parties is the government, or a public officer and the dispute involves the performance of his official duties.
4. One of the parties is a juridical person, including estate.
5. Action involves a real property located in another city/ municipality.

Venue:

1. Barangay where both parties live.
2. Barangay where defendant residents, if different.
3. Barangay where real property is located, if involving real property.
4. Barangay where workplace is located, if workplace dispute.

Enforcement of Barangay Amicable Settlement

1. Has the force and effect of judgment and may be enforced within 6m.
2. If not enforced within 6m from the time the award becomes due and demandable, MTC has EOJ, regardless of amount.
3. If ≤1M, small claims.
4. If >1M, RRSP.

III. Civil Procedure (A.M. No. 19-10-20-SC)

A. General Provisions (Rule 1)

1. ROC applies in all courts. XPN: if otherwise provided by SC.
2. Kinds of actions: (i) Civil: One by which a party sues another for the enforcement or protection of

a right, or the prevention or redress of a wrong; (ii) Criminal: One by which the State prosecutes a person for an act or omission punishable by law; (iii) Special proceedings: A remedy by which a party seeks to establish a status, a right, or a particular fact **SRP**.

3. Cases not covered: (i) election cases; (ii) land registration; (iii) cadastral; (iv) naturalization; (v) insolvency proceedings; (vi) other cases not provided for. ROC applies only (a) by analogy or (b) in a suppletory character and (c) whenever practicable and convenient **ASP**.
4. The suppletory application of ROC to other proceedings applies only where there is deficiency or insufficiency in the applicable rule, not where there is total lack of provision. E.g., The 2000 NPS⁵ Rules provided for a remedy of MR without specifying the grounds. Here, the ROC provisions on grounds for MR may be applied suppletorily.
5. These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive **JSI** disposition of every action and proceeding.

Commencement of civil actions:

1. As to plaintiff: (i) upon filing of Complaint where all the elements of COAc are present and all conditions precedent were complied with; (ii) payment of filing fees.
2. As to defendant – (i) an action deemed commenced as to him on the date of filing of the original complaint in court; (ii) XPN: when additional defendant is impleaded, the action is commenced as to him on the date of the filing of the amended pleading.

B. Kinds of Action

Classification relevant to determine the binding effect of judgments.

1. c.f.: real and personal actions – relevant for venue purposes.

1. In Rem

An action directed against the subject matter of a case rather than a particular defendant.

1. Judgment binds the whole world.
2. E.g., Petition for correction of entries under R108 (personal); Petition for declaration of nullity of marriage (personal); Adoption; Change of Name

2. In Personam

An action directed against a particular defendant to enforce a claim or cause of action.

1. Judgment binds only the parties to the case.
2. E.g., UD case (real); action for deficiency judgment after REM foreclosure (personal).
3. A party becomes bound only from the time he was impleaded. If a party was impleaded by amended of complaint, the date of the motion for admission of amended complaint impleading additional party is the reckoning date for prescription.

3. Quasi In Rem

An action directed against a particular defendant the purpose of which is to subject his property to answer for a claim or action.

1. Judgment binds the whole world.
2. E.g., REM foreclosure (real)

C. Cause of Action (Rule 2)

The act or omission by which a party violates a right of another.

1. Every civil action must be based on a cause of action.

⁵ National Prosecution Service. – under the NPS rules, the aggrieved party may file for a motion for reconsideration

2. Elements: (i) plaintiff's legal right; (ii) correlative duty of defendant to respect such right; (iii) act or omission of the defendant violative of said right resulting injury or damage to the plaintiff for which the latter may maintain an action for the recovery of relief from the defendant. If one element is lacking, raise as AFD in Answer: failure to state cause of action. E.g., debt not yet due since there is no breach yet.
3. Requirements: (i) must exist at the time of the filing of complaint; (ii) must be sufficiently alleged.
4. If non-existent at time of filing, it cannot be cured by subsequent amendment or supervening event.
5. Test of sufficiency of allegation: whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer of plaintiff.
6. Failure to state **COAc** c.f. Lack of COAc – (i) failure to state pertains to insufficiency of allegation of COAc. Must be raised as AFD in Answer; (ii) lack of COAc pertains to insufficiency of evidence to prove the material allegations in the complaint. Remedy is demurrer to evidence.
7. COAc may be joined (permissive) but cannot be split.

Splitting of causes of action – PROHIBITED

1. A party may not institute more than one suit for a single COAc. If two or more suits are instituted on the basis of the same COAc, there is splitting COAc.
2. The (i) filing of one (litis pendentia), or (ii) judgment on the merits (res judicata) on any one is available as ground for dismissal of the other. XPN: in case of willful and deliberate forum shopping, all related cases will be dismissed as punishment (twin dismissal rule).
3. Tests: EDC (i) whether the same evidence would support and sustain both the first and second causes of action (same evidence test), (ii) whether the defenses in one case may be used to substantiate the complaint in the other; (iii) whether the cause of action in the second case existed at the time of the filing of the first complaint.
4. Stipulation in compromise agreement allowing the splitting of cause of action is void.
5. E.g., (i) action for foreclosure of REM and collection suit based on same loan; (ii) separate collection suits for collect various PNs under one discounting line facility.

Joinder of causes of action – PERMISSIVE

1. A party, in one pleading, may assert as many causes of action as he may have against the same opposing party.
2. Requirements: **SPVT** (i) compliance with the requirements on joinder of parties; (ii) must not include special civil actions, or actions governed by special rules; (iii) (a) If causes of action are between the same parties (b) but pertain to different venues or jurisdiction (c) joinder may be allowed in the RTC (d) provided that one of the causes of action falls within the jurisdiction of RTC, and venue lies therein; (iv) if all causes of action were principally for the recovery of sum of money, the aggregate amount claimed shall be the test of jurisdiction (totality rule).
3. Misjoinder: (i) Not a ground for dismissal. The misjoined COAc may be severed and proceeded with separately, on motion or motu proprio; (ii) unpaid seller against cannot join the action against separate buyers since they do not arise from the same transaction; (iii) UD case + 5M collection suit.
4. Permissive joinder: A sues B for PNs 123.

5. Mandatory joinder: in an action to collect installment payments, all those due at the time of filing the complaint must be joined.

Requirements on joinder of parties

1. Arising out of the same transaction or series of transactions.
2. All claimants may join as plaintiffs, and all persons against who relief is sought may be joined as defendants in one complaint – whether jointly, severally, or in alternative.
3. Common question of fact or law may arise in the action.
4. Joinder is not prohibited by law. **TACoP**

Special civil actions – cannot be joined with ordinary civil actions

1. Interpleader
2. Declaratory relief and similar remedies (reformation, quieting, consolidation of ownership)
3. CPM
4. Quo warranto
5. Expropriation
6. Foreclosure
7. Partition
8. FE/UD
9. Contempt

D. Parties to Civil Actions (Rule 3)

Who may be parties to civil action: (a) Natural, (b) Juridical persons; (c) Entities authorized by law, even though they may not have separate juridical personality; (d) Entities without juridical personality, though not authorized by law.

1. Lack of legal personality to sue means a party has capacity to act (natural or juridical person) but he is not a real party in interest. AFD: failure to state cause of action.
2. Lack of capacity to sue means a party has no capacity to act.

(b) Juridical persons

1. Dissolved corporations – May still participate in legal actions even beyond the 3y winding up period, provided the suit was commenced within such 3y period.
2. Foreign corporations – (i) not doing business and unlicensed, may sue on isolated transaction; (ii) doing business and not licensed, may not sue but may be sued. XPNs: (a) isolated transaction; (b) contracting party is estopped.

(c) Entities authorized by law

1. Estates of deceased persons through the E/A.
2. Legitimate labor organizations.
3. Unincorporated HOA (not registered with HLURB) does not have capacity to sue.

(d) Entities without juridical personality

1. Corporations by estoppel.
2. Conditions – (i) Two or more persons not organized as an entity with juridical personality enter a transaction; (ii) They may be sued (but they cannot sue) under the name by which they are generally or commonly known; (iii) In the answer, the names and addresses of persons composing the entity must be revealed.
3. Summons may be served to all defendant upon any one of them, or any person in-charge of the office.
4. Adverse decision may be executed against the individual persons composing the entity. The judgment shall set out their individual or proper names, if known.

Parties to a civil action: (e) Plaintiff; (f) Defendant

(f) Defendant

<p>1. Alternative defendants may be sued – (i) if the plaintiff is uncertain against who of several persons he is entitled to relief; (ii) plaintiff joins any or all of such persons in the alternative, even though right to relief against one may be inconsistent with the other; (iii) the defendants need not be sued on the same theory.</p> <p>2. Unknown defendant – (i) may be sued as the unknown owner, heir, devisee, or other proper designation or identifying quality; (ii) upon discovery of his identity or name, the pleading must be amended accordingly.</p> <p><u>Various kinds of parties:</u> (g) Real parties in interest; (h) Indispensable and necessary parties; (i) Representative parties; (j) Spouses; (k) Minors/incompetents; (l) Indigents; (m) OSG</p> <p>(g) Real party in interest RPI</p> <ol style="list-style-type: none"> (i) The party who stands to be benefited or injured by the judgment in the suit, and (ii) entitled to the avails of the suit. Plaintiff's standing is based on his own right to the relief sought. Every action must be prosecuted or defended in the name of the RPI (AFD if not: failure to state cause of action). XPN: An agent acting in his own name and for the benefit of undisclosed principal may sue or be sued without joining the principal. XPN to XPN: If the contract involves a thing belonging to the principal. Only RPI are required to sign the CAFS and a misjoined party is not required to do so. But the failure of an indispensable party to sign the CAFS is fatal. c.f.: locus standi – (i) used in public interest suits; (ii) pertains to a personal and substantial interest in a case such that the party has sustained or will sustain direct injury because of the challenged governmental act. <p>Examples of RPI</p> <ol style="list-style-type: none"> The beneficial user of electric service has cause of action against MERALCO even though the service contract with MERALCO was still registered in the name of former owner. Mere applicant in homestead patent is not RPI. He cannot file an action for reconveyance over the land subject of application. Subsequent grant of application will not cure the defect complaint. COAc must exist at the time of the filing of complaint, and lack of COAc may be cured by amendment. Children/siblings of deceased father may not file petition for declaration of nullity of their father's second marriage. However, the aggrieved spouse (prior) in a bigamous marriage may file an action for the declaration of the nullity of the latter. Republic, not BCDA is the RPI in action for reversion and cancellation of title over land in Fort Bonifacio. BCDA is only trustee for the Republic. The private contractor of the government agency is a RPI with respect to a COA disallowance. The government agency/GOCC is necessary party since in case of favorable judgment, it will be required to make the payment. <p>(h) Indispensable and necessary parties</p> <table border="1"> <thead> <tr> <th>Indispensable</th><th>Necessary</th></tr> </thead> <tbody> <tr> <td>Party in interest without whom no final determination can be had on the action</td><td>Party who is not indispensable but whose presence in the action is required (i) to accord complete relief to those already party, or (ii) to determine and settle completely the claims which are the subject matter of the action</td></tr> <tr> <td>With such interest in controversy that final decree will affect their rights</td><td>Interest is separable that judgement can be rendered without affecting them</td></tr> </tbody> </table>		Indispensable	Necessary	Party in interest without whom no final determination can be had on the action	Party who is not indispensable but whose presence in the action is required (i) to accord complete relief to those already party, or (ii) to determine and settle completely the claims which are the subject matter of the action	With such interest in controversy that final decree will affect their rights	Interest is separable that judgement can be rendered without affecting them
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Court cannot proceed unless they are joined either as plaintiff/s or defendant/s	Court can proceed even in their absence
Joinder of all indispensable parties is condition sine qua non for the exercise of judicial power	Non-joinder does not affect court's exercise of judicial power
If not impleaded, the judgment and proceedings are void and has no effect, not only as to the person not impleaded but even as to the parties to the case. It may be set aside via R65 or R47 petition.	Their absence will not nullify the proceedings otherwise validly made
(i) All co-owners are indispensable parties in an action for partition; (ii) but in a suit by one co-owner for the benefit of all, only the acting co-owner are indispensable, the other/s are neither indispensable nor necessary; (iii) joint debtor is indispensable with respect to his share	(i) Transferee pendente lite; (ii) Guarantor in an action against the main debtor; (iii) joint debtor is necessary with respect to the others' share; (iv) solidary debtor is neither indispensable nor necessary, he becomes necessary only if 3p complaint is filed against him for reimbursement.

(i) Representative parties

- Applies in cases when the action is allowed to be prosecuted or defended by a representative or someone acting in fiduciary capacity.
- The beneficiary shall be included in the title of the case and shall be deemed the RPI.
- Class suits – (i) The subject matter (not the issues or questions of law) of controversy is of common or general interest to many persons; (ii) Interested persons are so numerous that it is impracticable to join all of them as parties; (iii) A number of them may sue or defend for the benefit of all if the court finds said number to be sufficiently numerous and representative to protect the interest of all concerned; (iv) Subject to the right of any interested party to intervene to protect his individual interest. Not proper for libel or action for damages sustained in a plane crash since the personal injury to each plaintiff is distinct.

(j) Spouses

- They shall sue or be sued jointly. XPN: As provided by law.
- Summons must be served individually.

(k) Minors/incompetents

- Minority or incompetence does not deprive the person of capacity of sue.
- They may sue or be sued with the assistance of: (i) father, (ii) mother, (iii) guardian, or (iv) guardian ad litem. The action shall be in the name of the minor or incompetent as the RPI.

(l) Indigents

- Cumulative requirements: (i) Family income not more than 2x the monthly minimum wage; (ii) No property with FMV >300k.
- Only natural persons may be considered indigents.
- Authority to litigate as indigent – (i) Exemption from payment of docket and lawful fees and TSN; (ii) Such fees and costs shall constitute lien on the judgment that may be awarded in favor of the indigent litigant.

(m) OSG

- If any action involves the validity of treaty, law, ordinance, EO, PD, rules and regulation **TOLPER**
- Court may require the appearance of SolGen, who may be heard in person or by his representative (discretionary).
- Actions where the RPI is the State shall be initiated only by the SolGen. Otherwise, dismissible.

6. Non-joinder or misjoinder of parties is not ground for dismissal – (i) the court may order a party to be dropped or impleaded at any time; (ii) in case of failure to comply, the case is dismissible for failure to comply with court order.
7. Transferee pendente lite is not an indispensable party. He is bound by the decision of the case.

Joinder of parties may be: (n) Compulsory or (o) Permissive.

(n) Compulsory joinder of parties

1. Indispensable parties must be joined either as plaintiff/s or defendant/s. (i) registered owner in disputes involving registered land; (ii) the party who caused the annotation in an action for the cancellation of the annotation of lis pendens; (iii) public respondent in a petition for certiorari; (iv) dismissed EE in an action for illegal dismissal (Labor Union is merely a representative party)
2. Non-joinder of indispensable party is not a ground for dismissal. The court may order his joinder, **motu proprio** or on motion. However, the court shall not dismiss the case outright but should instead give the plaintiff the opportunity to implead the indispensable party by ordering the same. In case of non-compliance, the case may be dismissed on ground of failure to comply with court order under R17.
3. The Court may suspend the trial until indispensable parties are made either plaintiffs or defendants.
4. The burden of procuring the presence of all indispensable parties is on the plaintiff.
5. The indispensable party not impleaded may petition for the annulment of judgment under R47.
6. Procedure to implead – (i) file amended complaint; (ii) service of summons.
7. If consent of party who should be joined as plaintiff (indispensable) cannot be obtained, (i) he may be made defendant (ii) with the reasons therefore stated in the complaint (unwilling co-plaintiff).

(o) Permissive joinder of parties

1. Requirements: (i) Arising out of the same transaction or series of transactions; (ii) All claimants may join as plaintiffs, and all persons against whom relief is sought may be joined as defendants in one complaint – whether jointly, severally, or in alternative; (iii) Common question of fact or law may arise in the action; (iv) Joinder is not prohibited by law. TACoP
2. Non-joinder of necessary party – (i) Plead must set forth the (a) name of necessary party, if known; and (b) state reason for the non-joinder; (ii) Court shall order the inclusion of necessary party if: (a) if found the non-joinder unmeritorious, and (b) jurisdiction over him can be obtained.
3. Effects of non-joinder – (i) Non-compliance with order to join the necessary party is deemed **waiver** of the claim against the latter; (ii) judgment rendered in the action is without prejudice to the rights of the necessary party not impleaded; (iii) not a ground to dismiss the complaint; (iv) court is not prevented from proceeding with the action.

***Parties may be dropped or added by order of court, on motion or motu proprio, at any stage and under just terms (with opportunity to be heard). Claim against a misjoined party may be severed and proceeded with separately.*

Supervening events include: (q) Death of a party; (r) Separation of a public officer; (s) Incompetence/Incapacity; (t) Transfer of subject matter.

(p) Death of a party

1. GR: shall not result to the automatic dismissal of the action. Distinguish: (i) if the action does not survive, the case shall be dismissed; (ii) if not, the case shall proceed.
2. Duty of lawyer in actions that survive – (i) To inform the court of the fact of death within 30d; (ii) To give the names and addresses of the deceased's legal representative/s.
3. Duty of court: (i) Heirs may be substituted for deceased without need for appointment of E/A (Notice of Substitution); (ii) Court shall order the legal representative/s to appear and be substituted for the deceased within 30d from notice,⁶ OR (iii) the court may order opposing party to procure the appointment of E/A who shall immediately appear for and on behalf of deceased.
4. If heirs were not notified and the court proceeded with the case, the proceedings are void. XPN: if the heirs actively participated despite absence of formal notice.

Defendant's death:

1. Before filing – (i) court does not acquire jurisdiction; (ii) heirs cannot be substituted since jurisdiction is not acquired in the first place; (iii) remedy is to amend the complaint and sue the estate through the E/A.
2. During pendency – (i) if action does not survive, the case shall be dismissed; (ii) if action survives, the case shall not be dismissed, and plaintiff may move for substitution.
3. After judgment – Enforcement of adverse judgment (i) if based on contract, file as claim against the estate; (ii) if not based on contract, execute against the estate; (iii) in case of legal separation, the case shall not be dismissed and heir/s, estate may be substituted to implement partition. But if a party dies before judgment, the case shall be dismissed.

(q) Separation of a public officer

1. If a public officer is party to a case in his official capacity is separated during its pendency, action may be continued or maintained by or against his successor if: **SAN** (i) there is showing by any party of substantial need for continuing or maintaining the action, within 30d after assumption of office by successor; (ii) the successor adopts/continues or threatens to adopt/continue the action of his predecessor; (iii) reasonable notice of application and opportunity to be heard on the part of successor prior to substitution, unless he expressly assents to the substitution.
2. The requirement does not apply if the public officer is party to the suit in his personal capacity.

(s) Incompetence/Incapacity – upon motion, with notice, the action may be continued by or against the incompetent or incapacitated (in his name as the RPI), assisted by his legal guardian or guardian ad litem.

(t) Transfer of subject matter

1. GR: Action “may” be continued by or against the original party; substitution is not mandatory.
2. XPN: If the court orders the transferee pendente lite either (i) to be substituted in the action, or (ii) joined as original party.
3. Transferee pendente lite is merely a necessary but not an indispensable party.

E. Venue (Rule 4)

The place where the case is to be heard or tried.

⁶ Summons is no longer required since personal jurisdiction over the deceased was already acquired.

1. In civil cases, not jurisdictional merely procedural; waivable. In case of improper venue, remedy is: (i) under regular procedure, raise as AFD in answer. If not raised, deemed waived; (ii) under RRSP, court may motu proprio dismiss the case on ground of improper venue.
2. In criminal cases, jurisdictional; not waivable.
3. SC may order change of venue to prevent miscarriage of justice.

Kinds of actions for venue purposes: (a) Real; (b) Personal

(a) Real actions

1. Those involving title to or possession of real property. e.g., ejectment cases, action for partition.
2. Venue is the court having jurisdiction over the area where the real property or portion thereof is located.
3. FE/UD – MTC of the city or municipality where property is located.
4. Singularity of transaction rule – (i) If a single transaction consists of several mortgage security, the action may be filed in any place where a mortgaged property is located; (ii) XPN: if mortgages are separate transactions.

(b) Personal actions

1. An action other than a real action.
2. Venue is – (i) Residence of plaintiff or any of the principal plaintiff; (ii) Residence of defendant or any of the principal defendant; (iii) Wherever a nonresident defendant may be found; (iv) At the option of the plaintiff.
3. If defendant is a nonresident who cannot be found in the Ph, venue may be: (i) plaintiff's residence, in an action affecting personal status of plaintiff; or (ii) the place where property is situated or found, in an action affecting property of defendant in Ph.
4. In case juridical persons, venue depends on the place of corporation's principal office. In a derivative suit, the venue is always the place of corporation's principal office, even if real action.
5. In a collection suit brought by atty-in-fact, the latter's residence (representative party) is irrelevant for venue purposes. If the plaintiff is non-resident, the case should have been filed in the place of defendant's residence.
6. Action to recover deficiency after foreclosure is a personal action.

Dependent venue

1. A Petition for Revival of Judgement is either real or personal depending on the nature of the judgment rendered sought to be enforce.
2. Complaint for nullification of sale of land – (i) personal action, if there was no allegation that the possession or title was transferred to the defendant; (ii) real action, if there is such allegation.

Venue rules under R4 will not apply if: (c) Venue is specifically provided by specific rule or law; (d) There is restrictive venue stipulation.

(c) Venue is specifically provided by specific rule or law

1. Civil aspect of libel.
2. Petition for declaration of nullity of marriage, annulment, legal separation may be filed only where the plaintiff or respondent lived at least 6m before filing.
3. Small claims cases where the plaintiff is a lending company shall be filed in the place where the company maintains a branch and where the defendant resides.

(d) There is restrictive venue stipulation

1. Venue stipulations are generally considered permissive, i.e., merely provides a venue in addition to that provided under R4. XPN: if the language is such as to clearly and categorically express the parties' purpose and design to designate an exclusive venue.
2. Requirements: (i) in writing; (ii) executed prior to the filing of the action; (iii) contain qualifying, restrictive, or mandatory phrases or clauses [only, solely, exclusively in this court, etc.]
3. Complementary-contracts-construed-together rule. The venue stipulation indicated in the principal loan agreement shall be read in the accessory security contracts. In case of foreclosure or enforcement of security agreement, the venue stipulation in the principal agreement is binding.
4. When venue stipulation not binding: (i) in adhesion contracts if it will defeat the convenience of the parties; (ii) if the validity of the entire instrument is being assailed. But if only certain provisions are being questioned, the venue stipulation may still be given effect; (iii) in EJ foreclosure of REM since this is not a court action.
5. Arbitration clause prevails over a venue stipulation being a condition precedent.

F. Pleadings

1. Kinds (Rule 6)

A pleading is (i) a document containing written statements of the **claims and defenses** of the parties; (ii) submitted to the court for appropriate judgment (grant or deny).

Kinds:

1. Asserting claims: (a) Complaint; (b) Counterclaim; (c) Cross-claim; (d) Third-party Complaint; (e) Complaint-in-intervention.
2. Asserting defenses: (f) Answer; (g) Reply; (h) Rejoinder.

(a) Complaint

1. Pleading alleging the plaintiff or claiming party's cause/s of action.
2. Contents – (i) Ultimate facts constituting COAc; (ii) Names/residence of parties; (iii) Statement of evidentiary facts.

(b) Counterclaim

1. Any claim which the defending party may have against an opposing party.
2. May be permissive or compulsory.
3. In small claims cases, both permissive and compulsory counterclaims may be raised, provided the same is within the coverage of the rules ($\leq 1M$). Excess is deemed waived.
4. Effect of dismissal of the case – (i) GR: CC is dismissed; (ii) XPNs: (a) If dismissal is due to grant of affirmative defense raised in answer, the defendant may avail of the provisions in ROC authorizing the prosecution of the CC in the same action; (b) If the dismissal is due to the fault of plaintiff which is without prejudice to the right of defendants to prosecute the CC (compulsory or permissive) R17.
5. In an action for deficiency judgement filed after EJ foreclosure, the mortgagor's claim for nullification of the EJ foreclosure is compulsory CC.
6. An action for the reimbursement of necessary and useful expenses as a builder in good faith is a compulsory CC in an action for recovery of property. Failure to raise the same in the latter bars its recovery.
7. In suit by lessor against lessee for unpaid rentals, the CC by lessee for damages for the taking over of the leased premises and harvesting of crops is permissive.

Compulsory counterclaim

1. Requisites: **ANJE** (i) Arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim; (ii) Does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction; (iii) Within the **jurisdiction** of the court both as to amount and nature. XPN: in original action before RTC, counterclaim may be considered compulsory regardless of amount; (iv) In existence at the time of the filing of the answer.
2. Tests: **LIRE** (i) Are the **issues** of fact and law raised by the claim and by the counterclaim largely the same? (ii) Would **res judicata** bar a subsequent suit on defendant's claims, absent the compulsory counterclaim rule? (iii) Will substantially the same **evidence** support or refute plaintiff's claim as well as the defendant's counterclaim? (iv) Is there any **logical** relation between the claim and the counterclaim?
3. Test of mutual exclusivity. If the court cannot grant the claim without necessarily denying the counterclaim, or vice versa, the counterclaim is compulsory. If the court may grant both, merely permissive.
4. Counterclaim for damages and attorney's fees arising from the filing of the complaint are compulsory counterclaims.

Compulsory v. Permissive counterclaim

Permissive	Compulsory
Not barred if not set up in the answer; the claimant may file a separate case	Barred if not set up in the answer; the claimant may no longer file a separate case (res judicata)
Initiatory pleading	Not initiatory
Must be accompanied by CAFS, or CFA	Does not require CAFS, or CFA
Answer must be filed by the defending party	No need to answer since the allegations will be the same as those already set forth in the complaint
Defendant may be declared in default ⁷ (plaintiff in original action)	Defendant may not be declared in default since the defenses may also be included in the complaint
Docket fees must be paid	Docket fees need not be paid

(c) Crossclaim

1. (i) Any claim by one party against a co-party; (ii) Arising out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim therein.
2. Must also be in existence at the time of the filing of pleading where crossclaim was raised.
3. Cross claim not raised is also deemed barred.

(d) Third-party Complaint

1. Claim that a defending party may file against a person not party to the action for the purpose of contribution, indemnification, subrogation, or other relief in respect of his opponent's claim **CISO**. Includes a situation where the defendant totally disclaims liability and passes it on to a 3p.
2. It is a mere procedural device allowed only with leave of court. It is an action independent, separate, and distinct from the plaintiff's complaint. Were it not for the Rules of Court, it would be necessary to file a separate action.
3. MFL shall be denied if: **LEI** (i) the third (fourth, etc.)-party defendant cannot be **located** within 30 calendar days from the grant of leave; (ii) matters **extraneous** to the issue in the principal case are raised; (iii) the effect would be to **introduce** a new and separate controversy into the action. If MFL denied, remedy is to file a separate action.
4. Subject to payment of filing fee.

5. Tests – (i) whether the 3p claim arises from the same transaction or is connected with the plaintiff's claim; (ii) whether the 3p defendant would be liable for all or part of the plaintiffs claim; (iii) whether the 3p defendant may assert any defenses which the 3p plaintiff may have to the plaintiffs claim.

(e) Complaint-in-intervention – Efforts of a 3p to join plaintiff, or enforce a claim against both plaintiff and defendant.

(f) Answer

1. Pleading wherein the defending party sets forth his defenses.
2. Parts: (i) Admissions; (ii) Denials; (iii) Defenses; (iv) Counterclaims, if any.
3. Defenses may either be negative or affirmative – (i) negative defenses are specific denials of the material fact/s alleged in the pleading of claimant, essential to his defense or COAC; (ii) affirmative defenses are allegation of a new matter which (a) hypothetically admits the material allegations in the complaint, but (b) would nevertheless prevent or bar recovery by him or her. In the nature of confession and avoidance.
4. Affirmative defenses shall be raised at the earliest opportunity (filing of answer). Otherwise, deemed waived.

(g) Reply

1. Pleading intended to deny or allege facts in denial or avoidance of matters alleged in or relating an actionable document attached to the answer. Purpose: to deny the authenticity and due execution of the actionable document attached in the answer.
2. GR: Reply is prohibited. (i) all new matters alleged in the answer are deemed controverted; (ii) claims arising out of new matters alleged shall be set forth in amended or supplemental pleading. XPN: Allowed only if the defending party attaches an actionable document to the answer.
3. Actionable document is a document where the claim or defense of a party is based; the document itself which establishes the right/obligation of parties, not mere evidentiary matters.
4. As basis for claim – set forth and attach.
5. As basis for defense – set forth and deny.
6. Failure to deny amounts to an admission of the actionable document's authenticity and due execution.

(h) Rejoinder – a pleading filed by the defendant to address an actionable document attached to the reply.

2. Parts of a Pleading (Rule 7)

(a) Caption; (b) Body; (c) Signature; (d) Verification; (e) CNFS; (f) Explanation

(a) Caption

1. Name of court – relevant for jurisdiction purposes.
2. Title of action – names of parties.
3. Docket number + nature of action.

(b) Body

1. Title of the pleading
2. Allegations of claims and defenses – (i) in numbered paragraphs where one paragraph contains a set of circumstances; (ii) headings may be used for multiple causes of action.
3. Relief prayed for – (i) specific relief; (ii) general prayer for such other relief as may be just and

⁷ A defendant may be declared in default: (1) upon failure to file answer within the reglementary period, and (2) upon motion to declare defendant in default.

equitable; (iii) award of moral damages must be specifically prayed for; (iv) in default judgments, the court may not render a relief different in nature an amount than that prayed for by plaintiff.	
4. Date of pleading.	
(c) Signature	
1. Every pleading and other submission to court shall be signed by the party or his counsel.	
2. A party may sign the pleading if not represented by counsel. But if already represented by counsel, the latter may not delegate the signing to a non-lawyer (staff).	
3. An unsigned (sham) pleading is deemed not filed at all and produces no legal effect.	
(d) Verification	
1. GR: Pleadings need not be under oath or verified. XPN: when otherwise specifically required by law or rule. N.B.: A Complaint need not be verified, unless coupled with a prayer for provisional remedy.	
2. Defect in verification is merely formal and generally curable by submission or correction, provided not intended to delay or caused by mere inadvertence. c.f.: CAFS which is generally not. Substantial compliance with verification requirement is sufficient.	
3. See attestations below.	
(e) CAFS	
1. Required for initiatory pleadings. E.g., Complaint, Third (Fourth, etc.)-party Complaint, Answer with permissive Counterclaim, Special Civil Actions CPM.	
2. Affidavit may be incorporated in the initiatory pleading or made in a sworn certification annexed to the Complaint.	
3. All plaintiffs or principal parties must sign. But the failure of a misjoined party to sign is not fatal. Those who did not sign will be dropped as parties to the case. But, if the court already gave opportunity for all concerned parties to sign, and there is still unjustified failure to do so, the case will be dismissed in the entirety. XPN: If there is acceptable substantial compliance even if only one party signed by the CAFS, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action – e.g., case by H&W involving conjugal property, labor case by a group of EEs against a common ER, signature by relative or co-owners.	
4. Defects are generally not curable by amendment, unlike a verification.	
5. The failure to submit a certification is a ground for dismissal, separate and distinct from forum shopping as a ground for dismissal.	
6. Rule on CAFS is stricter than verification.	
7. See attestations below.	
<i>Defects or non-compliance:</i>	
1. Non-certification – dismissal without prejudice, unless substantial compliance is justified by special or important reasons.	
2. False certification or non-compliance with undertakings (non-deliberate FS) – (i) dismissal without prejudice, (ii) indirect contempt, (iii) administrative and criminal sanctions.	
3. Willful and deliberate forum shopping – (i) summary dismissal with prejudice (twin dismissal rule), (ii) direct contempt, (iii) administrative and criminal sanctions.	
<i>Forum shopping:</i>	
1. Forum shopping exists if the [suits] raise identical causes of action, subject matter, and issues CSI . The institution of two (2) or more actions or	

proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.	
2. Elements – (i) Identity of the parties; (ii) identity of the rights asserted and relief prayed for; (iii) identity of the two preceding particulars as to constitute res judicata or litis pendencia.	
3. Ways of committing – (i) Filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (litis pendencia); (ii) Filing multiple cases based on the same cause of action and with the same prayer, the previous case having been resolved (res judicata); (iii) Filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action).	
<i>Common requirements: Verification and CAFS</i>	
1. Executed through the affidavit of the party pleader, or his duly authorized representative, not the lawyer, unless the latter is authorized for the purpose.	
2. The authorization of affiant to act on behalf of a party shall be attached to the pleading (Board Resolution, Secretary's Certificate, SPA). Parties who may sign without authority (exceptional): (i) the President, (ii) Chairperson of the Board, (iii) GM or acting GM, (iv) personnel officer, (v) an employment specialist in a labor case (reiterated even after 2019 Amendments).	
3. Both are mandatory but not jurisdictional. Jurisdiction is conferred by law.	
<i>Form of Verification and CAFS:</i>	
VERIFICATION AND CERTIFICATION AGAINST SHOPPING	
I, ABC, of legal age, Filipino, married, with postal address at Quezon City, after having been duly sworn in accordance with law, hereby depose and state that: TNFC	
1. I am the [plaintiff] in the above-mentioned case;	
2. I caused the preparation of the foregoing [complaint];	
3. The allegations therein are true and correct based on my personal knowledge, or based on authentic documents; ATC BPK BAD	
4. The [complaint] is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; H Cud Nicl	
5. The factual allegations therein have evidentiary support, or if specifically so identified, will likely have evidentiary support after a reasonable opportunity for discovery. FAES ISIWLES AROD	
6. I certify that (a) I have not commenced any action or filed any claim involving the same issues in any court, tribunal or agency, and to the best of my knowledge, not such other action or claim is pending, and NCAFC ISI CTA (b) if I should thereafter learn that the same or similar action or claim has been filed or is pending, I shall report that fact within five (5) calendar days from notice thereof to this Honorable Court, and to the court, tribunal or agency where the original pleading was filed. LSFP RF5C	
In witness hereof, I hereby affix my signature this 9 th day of August 2023 in Quezon City.	
Sgd. (Affiant)	
<i>Verification v. CAFS</i>	
Verification	CNFS
Non-compliance/defect does not fata; generally curable by submission or correction	Non-compliance/defect fatal; generally not curable by subsequent submission or correction
Relaxation of rules if circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby	When there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons".
Substantially complied if executed by one having ample knowledge to swear to	Substantially complied if signed by one of the principal plaintiffs if done under reasonable or

the truth of the allegations, and when matters alleged have been made in good faith or are true and correct.	justifiable circumstances as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense.
Must be signed by one who has ample knowledge to swear to the truth of the allegations in the complaint or petition. May be signed by a representative of a party.	Must be executed by the party-pleader, not by his counsel. If for justifiable reasons, the party-pleader is unable to sign, he must execute a SPA designating his counsel of record to sign on his behalf.

(f) Evidentiary matters

- Names of witnesses
- Summary of witnesses' intended testimonies – (i) JAs of witnesses shall be attached to the pleading and form and integral part of it; (ii) Only witnesses whose JAs are attached shall be presented during trial. XPN: if the party shows meritorious reason for admission of additional witness.
- Documentary and object evidence must be attached pursuant to JAR.

3. Manner of Making Allegations (Rule 8)

a) In General

Every pleading shall contain in methodical and logical form:

- Plain, concise, direct statement of ultimate facts.
- Evidence on which the party pleader relies for his claim or defense, or a statement that factual allegations are likely to have evidentiary support AROD.
- The clear and concise statement of the pertinent provision of law, and its applicability to the case

b) Action or Defense Based on Document

Actionable document pertains to a written instrument which forms the basis of a party's claim or defense. It is the document itself which is the source of the rights and obligations of the parties.

Manner of allegation:

- As basis for claim (set forth and attach): (i) set forth the substance of the instrument in the pleading; (ii) attach the original or a copy and make it an integral part of the pleading.
- To deny (set forth and deny): (i) specific denial under oath **SDUO**; (ii) set forth the facts claimed to be.

SDUO not applicable if:⁸

- The adverse party does not appear to be a party to the instrument.
- Compliance with an order for inspection of original was refused.
- Instrument is not the basis, but merely evidence of the claim or defense.

Failure to SDUO:

- Defendant admits the authenticity and due execution of the instrument (technical admission).
- Defenses cut-off: (i) forgery, (ii) lack of agent's authority to sign or execute the document, (iii) non-delivery, (iv) variance in words or figures as set forth in the pleading. The defendant may not introduce evidence to prove these matters over the relevant objection. Failure to object is waiver of the technical admission.
- Defenses not cut-off: (i) non-payment, (ii) compromise, (iii) lack of consideration, (iv) estoppel, (v) prescription, (vi) vices of consent.

c) Specific Denial

Kinds of valid denial: (a) Absolute; (b) Partial; (c) Disavowal of knowledge

(a) Absolute

- Specify the material factual allegations not admitted.
- Set forth the substance of the matters relied upon to support the denial.

(b) Partial

- Specify so much of the factual allegation as is true.
- Deny the remainder.

(c) Disavowal of knowledge

- State that one has no sufficient knowledge or information sufficient to form a belief as to the truth of a material allegation **NSKI FBT**
- Requirement: must be bona fide. A party cannot deny by disavowal of knowledge a matter which ought to be within his knowledge.

Invalid denial – **NEGATIVE PREGNANT**

- Negative expression which carries an admission.
- In an allegation containing both allegation and qualification – only either, but not both is denied.
- In an allegation containing 1+ set of facts – not all factual allegations are denied.
- Considered ambiguous.

Technical admission:

- (i) if there is failure to make specific denial, or (ii) the denial is negative pregnant.
- XPN: as to amount of unliquidated damages.

d) Affirmative Defenses

Allegation of a new matter which (i) hypothetically admits the material allegations in the complaint, but (ii) would nevertheless prevent or bar recovery by him or her.

- In the nature of confession and avoidance.
- Affirmative defenses shall be raised at the earliest opportunity (filing of answer). Otherwise, deemed waived.

Three groups of affirmative defenses:

Fraud, statute of limitations (prescription), release, payment, illegality, statute of frauds (unenforceable), estoppel, former recovery, discharge in bankruptcy FEPIDUE- rpf	If raised in answer, the court must resolve the same within 30 calendar days from filing. The court may conduct a summary hearing within 15d from the filing.
Lack of personal jurisdiction, improper venue, no legal capacity to sue, failure to state cause of action, condition precedent not complied with FLINC	If raised in answer, the court must resolve the same motu proprio within 30 calendar days from filing, without discretion to conduct summary hearing ⁹ (matters of record)
Lack of SM jurisdiction, litis pendencia, res judicata, prescription	May be raised as AFD in Answer, or in MTD. In case of denial: (i) if raised as AFD, not subject to CPM; ¹⁰ (ii) if raised in MTD, may be subject to CPM.

Remedy:

- The court's action on the AFD (grant or denial) cannot be the subject of Petition for CPM.
- If denied – (i) proceed to trial; (ii) in case of adverse judgment, raise as error on appeal.
- If granted (case dismissed) – remedy depends on the ground raised. (i) if based on PURE:¹¹ dismissal is with prejudice (final order), remedy is

⁸ Only the oath requirement is dispensed with but not the specific denial. Simple specific denial is sufficient.

⁹ Motion to hear on affirmative defenses is prohibited.

¹⁰ Court's action on the affirmative defense may not be the subject of Petition for CPM.

¹¹ Prescription, Unenforceable, Res Judicata, Extinguishment.

appeal. (ii) if based on other grounds: dismissal is without prejudice, remedy is R65.¹²

Manner of making other allegations:

1. Conditions precedent – general.
2. Capacity to sue – specific.
3. Fraud, mistake, condition of mind – specific.
4. Judgment – general, i.e., without need to set forth matters showing jurisdiction, but authenticated copy must be attached.
5. Official document/act – general, i.e., that it is made in compliance with law.

4. Effect of Failure to Plead (Rule 9)

(a) Defenses and objections; (b) Compulsory counterclaim, or cross-claim; (c) Failure to file Answer

(a) Defenses and objections

1. Must be pleaded in ANS or MTD. If not, **deemed waived**.
2. XPNs (not deemed waived despite failure to plead if): **JRLP** + willful and deliberate forum shopping **WDFS**

(b) Compulsory counterclaim, or cross-claim

1. If existing at time of filing, must be set-up in responsive pleading. If not, **barred**. XPNs: if due to oversight, inadvertence, or excusable neglect, or when justice requires, **JOIEN** – (i) may be set up by amendment before judgment; (ii) by leave of court.
2. If arising after filing – (i) before judgment, may be set-up in supplemental pleading; (ii) after judgment, may be asserted in separate action.

(c) Failure to file Answer

1. Defending party may be declared in **default** – (i) defendant in original complaint; (ii) defending party **DFP** in permissive CC.
2. Two stages: (i) default order;* (ii) default judgment.**
3. Conditions: **AFaMoNoPO** (i) court validly acquired personal jurisdiction over defending party; (ii) failure of defending party to file ANS within the time allowed;¹³ (iii) motion of claiming party; (iv) with notice of defending party; (v) and proof of [i][ii]; (vi) court order* declaring the defending party in default.
4. ANS filed out of time where there is no motion to declare DFP in default or order declaring him in default, shall be admitted. Court loses authority to declare DFP in default. **Default judgments are frowned upon**.
5. Partial default: (i) if there are several DFP who are sued on the basis of a common COAc; (ii) not all filed ANS; (iii) ANS filed shall benefit all, and those who did not file cannot be declared in default; (iv) the case shall be tried, and judgment rendered based on ANS filed and evidence presented.

Effect of default:

1. As to movant: (i) Court may render judgment** based on relief sought in the pleading; **OR** (ii) require him to present evidence ex-parte. N.B.: default judgment award cannot (a) exceed the amount prayed for, (b) be different in kind, (c) include unliquidated damages. **AKU**
2. As to defaulting party: (i) he is not entitled to participate in the proceedings;¹⁴ but (ii) he is

entitled to notices. Not an admission of claims against him.

3. Motu proprio dismissal of case after defendant was declared in default was improper.
4. Instances having the effect of default – (i) failure to file PTB, (ii) failure to appear at pre-trial, (iii) failure to comply with modes of discovery.

When default judgment prohibited:

1. Actions for (i) annulment, (ii) declaration of nullity of marriage, (iii) legal separation. OSG shall intervene to ensure (a) no collusion, and (b) evidence is not fabricated.
2. Cases covered by REPFLEC – SC, RRSP.
3. Intracorporate disputes.

Remedies of DFP: SAM RC

1. Before judgment – **Motion to Set Aside Order of Default**: (i) under oath; (ii) allege FAME¹⁵ as justifiable ground; (iii) allege meritorious defense [Affidavit of merits]
2. After judgment but before finality – (i) **Appeal**, on ground that judgment is contrary to evidence or law, or award is **AKU**;¹⁶ (ii) **MNT**, on ground of FAME.
3. After finality of judgment – (i) **Petition for Relief from Judgment**, on ground of FAME R38, (ii) **Petition for certiorari**, on ground of GADALEJ.

Under REPFLEC:

1. Small claims – MTDDD is prohibited pleading; defendant may still attend 1d hearing and be heard on his defenses.
2. RRSP – MTDDD is also prohibited pleading; court may render judgment based on complaint or evidence (i) motu proprio, or (ii) upon manifestation of plaintiff.

5. Amended and Supplemental Pleadings (Rule 10)

(a) Amended pleadings; (b) Supplemental pleadings

1. New claims sought arising from the ANS may be set forth through amended or supplemental pleadings, not reply.
2. Amendment pertains to TOE existing at the time of original filing; supplement pertains to supervening TOE.

(a) Amended pleadings

1. Done by: (i) adding or striking out, (ii) correcting a mistake. **SAC**
2. May be: (i) matter or right, (ii) by leave of court.
3. Pleading need not be amended to conform to evidence to prove issues not raised in the pleadings or fixed in PTO with the express or implied (failure to object on ground of irrelevance) consent of parties. Court acquires jurisdiction over the issue.

Amendment as a matter of right:

1. (i) Before service (not filing) of responsive pleading, (ii) only once.
2. Both formal and substantial amendments.
3. If defendant file MTD, amendment is still a matter of right since MTD is not a responsive pleading.
4. Rule applies only in TC, not CA.

Amendment by leave of court:

1. (i) If responsive pleading was already served; (ii) even before, if second amendment or oftener.

¹² N.B.: MR on court's action on AFD is prohibited pleading. But MR is condition precedent for R65. (i) may be considered as XPN to the MR requirement under R65, or (ii) since R65 is special civil action, the provisions under R65 shall prevail and it shall be considered XPN to the prohibition against MR on court's action on AFD (rule in ordinary civil action).

¹³ Answer to original complaint – 30d.

Answer to permissive CC – 20d.

¹⁴ Loss of standing in court. He cannot participate as party, but may as witness.

¹⁵ Fraud, accident, mistake, Excusable neglect.

¹⁶ No other grounds since DFP can no longer present evidence even on appeal.

2. Substantial amendments – (i) always with leave of court (motion + notice + hearing); (ii) grounds for denial: (a) intended to delay; (b) to confer jurisdiction; (c) pleading stated no COAc from the beginning which could be amended. **DJUN** N.B.: these amendments may be made as a matter of right before service of responsive pleadings.
3. Formal amendments – (i) clerical or typographical errors; (ii) may be made at any time; (iii) *motu proprio* or on motion; (iv) limitation: must not prejudice the adverse party; (v) e.g., substitution by sole proprietorship by the owner-operator.

Effects of amendment:

1. In general, (i) Amended pleading **supersedes** the pleading it amends; (ii) original pleading is deemed **withdrawn** and no longer considered part of the record.
2. Admissions in superseded may be offered in evidence against the pleader as EJ admission, not subject to judicial notice.
3. Claims/defenses not incorporated in amended pleading are deemed waived.
4. If the amended complaint introduced new demands not specified in the averred expressly in the original complaint, prescriptive period is reckoned from the date of the filing of amended complaint. Otherwise, from the date of the filing of original complaint.
5. If there was already prior valid service of summons, the amended complaint may be served upon him without need of another summons, even if new causes of action are alleged since personal jurisdiction is already acquired. Otherwise, summons must be served to acquire personal jurisdiction upon defendant.

(b) Supplemental pleadings

1. To set forth transaction, occurrence, events **TOE** that happened since the date of the pleading sought to be supplemented.
2. (i) Always with leave of court (motion + notice + hearing); (ii) Upon just terms.
3. Original pleading is not superseded but exists side by side the supplemental pleading. Issues shall be joined.
4. (i) May raise new COAc having some relation to the original COAc; (ii) may be used to bolster or add something to the original pleading.

6. When to File Responsive Pleadings (Rule 11)

****Always in calendar days.**

1. ANS to original complaint

In general	30d from service of summons
Foreign private juridical entity	60d from service of summons to designated government official
Unknown defendant	60d from service of summons by publication
REPFLC	10d from service of Statement of Claims, Complaint

2. ANS to amended complaint

Matter of right	30d from service of summons
By leave of court	15d from notice of order admitting the amended complaint. If none filed, ANS to original complaint shall be the answer for the amended complaint. new matters are deemed admitted.

3. Other ANS

To supplemental complaint	20d from notice of order admitting the supplemental complaint. If none filed, ANS to original complaint shall be the answer for the supplemental complaint. All new matters are deemed admitted.
To cross/counterclaim	20d from service
To 3p complaint	30d from service of summons

Reply	15d from service of responsive pleading attaching an actionable document
4.	Extension of time to file ANS (only) may be allowed: (i) for meritorious reasons; (ii) only once; (iii) $\leq 30d$; (iv) discretionary upon the court.
5.	Motion for extension of time to file any other pleading is prohibited.
6.	If the deadline fell on weekend/holiday, pleading may be filed on the next working day.
7.	But the extended period shall be counted from the date of expiry of the original period even if falling on weekend/ holiday.

G. Filing and Service (Rule 13)

1. Service before filing. If there is no proper service, the court will not consider the pleading as properly filed.
2. If party appeared by counsel, service shall be made upon the counsel. Notice sent directly to client is not notice in law. XPN: if the court orders service to both to the party AND the counsel – e.g., at pre-trial, request for admission must be served to the party not the counsel.
3. Priority of personal service/filing was already deleted by the 2019 Rules.

Modes of filing and service: (a) Personal; (b) Mail; (c) Accredited courier; (d) E-mail; (e) Other electronic means; (f) Substituted service; (g) Presumptive service.

(a) Personal

Filing date	Date and time endorse by Clerk on the pleading
Service	Upon actual receipt by personal delivery: (i) to party, counsel, duly authorized representative named in the pleading or motion; (ii) in their office, to clerk or person having charge thereof; (iii) in their residence, to a person sufficient age and discretion residing there, between 8am and 6pm.

(b) Registered mail

Filing date	Date on the post office stamp on the envelope or registry receipt (attached to case records)
Service	Upon (i) actual or (ii) constructive receipt by addressee, whichever is earlier. There is constructive receipt upon lapse of 5d from receipt of first notice from postmaster. Done by (i) deposit in post office in sealed envelope; (ii) addressed to the party; (iii) postage fully prepaid; (iv) with instruction to postmaster to return mail to sender after 10 calendar days if not delivered.
Ordinary mail	Upon (i) actual or (ii) constructive receipt by addressee, whichever is earlier. There is constructive receipt upon lapse of 10d from mailing (service). **May be resorted only if no registry service available in the locality.

(c) Accredited courier

Filing date	Date or receipt by the courier
Service	Upon (i) actual or (ii) constructive receipt by addressee, whichever is earlier. There is constructive receipt (i) after attempts to deliver; or (ii) upon lapse of 5 calendar days after the first attempt to deliver, whichever is earlier.

(d) E-mail

Filing date	Date of electronic transmission
Service	Upon electronic transmission or notification of sending of document (if available). E-service is not effective if party serving learned that it did not reach the addressee.
Consent	Consent of court is required for e-filing since the court must be electronically equipped. Consent of other party is required for e-service. In case change of e-add, the party shall notify the court and the other party. Otherwise, service to old e-add is valid. But consent of parties is not required if the court will serve. Consent given applies to the entire proceedings.

(e) Other electronic means

Filing date	Date of electronic transmission
Service	Upon receipt by the party as indicated in the (i) facsimile transmission printout; (ii) other means

(f) Substituted service

Service	Upon delivery of copy to the clerk of court with proof of failure to serve personally or via registered mail.
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Proofs:

1. Primary proof of filing is the existence of the pleading in the records.
2. In the absence of [1], secondary proof may be resorted.

Mode of F/S	Of filing	Of service
Personal	Written or stamped acknowledgement of filing by Clerk on pleader's copy	(i) Written admission of party served; (ii) server's official return; (iii) server's affidavit
Registered mail	(i) Mailer's affidavit; (ii) registry receipt	(i) Mailer's affidavit; (ii) registry receipt; (iii) unclaimed letter with postmaster sworn certification of notice given indicating the date and circumstances of receipt
Accredited courier	(i) Mailer's affidavit; (ii) OR; (iii) document tracking number	(i) Mailer's affidavit; (ii) OR; (iii) document tracking number
E-mail	(i) Affidavit of e-filing; (ii) paper copy of document mailed; (iii) written or stamped acknowledgement of filing with Clerk	(i) Affidavit of e-service; (ii) printed proof of transmittal
Other electronic means	(i) Affidavit of e-filing; (ii) electronic acknowledgement of filing with Clerk	(i) Affidavit of e-service; (ii) printed proof of transmittal

(g) Presumptive service

1. Applies only to notice of court setting, not to other pleadings by parties.
2. The party is presumed notified if appears on the records that the notice was mailed to the party: (i) at least 20cd prior to the scheduled hearing (addressee within same judicial region); or (b) at least 30cd (addressee outside court's judicial region).
3. Applies only if there is no actual proof of service, e.g., registry return card.
4. Mere presumption which may be rebutted by proof of non-receipt. Remedy is to move to set aside order of court on the hearing which he failed to attend and allowance to present evidence, cross examine, etc.

Service of Judgments, Final Orders, Resolutions

JFoR service by PRCP

1. Must be served only via personal or registered mail.
2. XPNs: (i) by accredited courier: (a) upon ex parte motion; (b) at the expense of movant; (ii) by publication: (a) if party summoned by publication failed to appear in action; (b) service to him shall also be made by publication; (c) at the expense of prevailing party.
3. Important for the reckoning of reglementary period. If the mode of service was improper, the period will not start to run.

Preference for conventional service or filing:

These documents must be served or filed personally or by registered mail. XPN: electronically if expressly permitted by court

1. Initiatory pleadings and initial responsive pleadings, such as an answer.
2. Initiatory pleadings and initial responsive pleadings, such as an answer.

3. Sealed and confidential documents or records.
4. Appendices and exhibits to motions, or other documents that are not readily amenable to electronic scanning may, at the option of the party filing such, be filed and served conventionally.

1. Rules on Payment of Docket Fees; Effect of Non-Payment

1. Court acquires jurisdiction upon payment of filing fees – (i) if deliberate evasion of payment, court fails to acquire jurisdiction [Manchester]; (ii) if not, court acquires jurisdiction and plaintiff must be given time to pay filing fees. Plaintiff must pay the fees within the applicable prescriptive or reglementary period.
2. Required for – (i) Complaint; (ii) 3rd, 4th, etc-party complaint; (iii) Permissive CC
3. Exemption: indigent/pauper litigant – (i) combined family income does not exceed 2x the minimum wage in Metro Manila; AND (ii) does not own property valued in excess of 300k.

2. Efficient Use of Paper Rule; E-filing (A.M. No. 10-3-7-SC and A.M. No. 11-9-4-SC, as revised, approved on February 22, 2022)

H. Summons (Rule 14)

1. Nature and Purpose of Summons in Relation to Actions In Personam, In Rem, and Quasi In Rem

Summons is a document issued by the Court, addressed to the defendant in notifying him: (i) that an action was commenced against him by the plaintiff, and (ii) that he is required to file an answer within the period set forth therein. Valid service of summons allows the court to acquire personal jurisdiction over the defendant.

1. It is mandatory for the court to issue summons within 5d from filing of the Complaint, if it does not find any ground for its outright dismissal. **JRLP**
2. In In Personam Actions, service of summons is essential to allow the court to render a judgment binding on the defendant's person.
3. In In Rem actions, service of summons is not essential as long as court acquires jurisdiction over the subject matter of the action, or the res.
4. In In Quasi Rem actions, service of summons is also not essential, but he must nonetheless be notified in order to comply with the requirements of due process and fair play.

2. Who May Serve Summons

1. The sheriff/deputy, other proper court officer **SDO** shall serve summons.
2. Plaintiff, if allowed under the rules – (i) if juridical person, it must give notice in writing to the court of the representative's name authorized to serve summons; (ii) in case of misrepresentation of service: **DNS** (a) case shall be dismissed with prejudice; (ii) proceedings shall be nullified; (iii) plaintiff shall be meted with proper sanctions.
3. Counsel of record – (i) if there is improper service of summons; (ii) lawyer makes special appearance; (iii) he may be deputized by court to serve summons to his client.

Service by plaintiff: Aco Ofs

1. When authorized by the court: (i) as contained in the summons itself, upon ex parte motion; (ii) if summons is to be served outside the judicial region. **Aco**
2. When ordered by the court in case of failure of service by SDO. **Ofs**. Non-compliance is ground for dismissal of case without prejudice.

****Defendant's voluntary appearance in the action is equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of personal jurisdiction shall be deemed a voluntary appearance. – but**

defendant will not be bound by proceedings done without his participation.

3. Validity of Summons and Issuance of Alias Summons

1. Summons shall remain valid until duly served, unless recalled by the court.
2. Alias summons – (i) may be issued in case of loss or destruction; (ii) upon plaintiff's motion; (iii) under old Rules, alias summons may be issued in case of failure to serve within 5d, or in case of loss or destruction; the Clerk may issue alias summons without need of motion.
3. If there was already prior valid service of summons, the amended complaint may be served upon him without need of another summons, even if new causes of action are alleged since personal jurisdiction is already acquired. Otherwise, summons must be served to acquire personal jurisdiction upon defendant.

4. Personal Service

1. Personal service is preferred, and substituted and other modes shall be allowed only if personal service cannot be made, subject to conditions under the Rules.
2. How done – (i) by handing a copy to the defendant in person and informing him that he is being served; or (ii) by leaving the summons within his view and in his presence, if he refuses to receive (tender). **HI LVP**
3. Service may be made wherever defendant may be found, not necessarily in his place of residence or business as stated in the Summons.

Service to various defendants:

1. If without juridical personality – (i) upon any of them, or (ii) upon the person in charge of the office or place of business maintained in the name by which they are generally or commonly known.
2. If Minor/incompetent – upon minor M/I himself, and his parent, or guardian.
3. If spouses, service shall be made individually.
4. If juridical person – upon the **PT MaGIC SLR** (i) president; (ii) managing partner; (iii) general manager; (iv) corporate secretary; (v) treasurer; (vi) in-house counsel, wherever they may be found; (vii) their [personal] secretaries; (viii) receptionist ("customarily receives"); (ix) receiver/liquidator; (x) electronic [after 3 attempts in 2 different dates].
5. If foreign private juridical entities – (i) doing business in Ph: (a) resident agent; (b) designated government official; (c) any of its officers, agents, directors or trustees within Ph; (ii) not doing business in Ph: (a) personal service outside Ph through appropriate foreign court with assistance of DFA; (b) publication; (c) electronic; (d) other authorized means. Requires prior leave of court.
6. Public corporations – (i) upon SolGen (RP), (ii) upon executive head, other officers as directed by court (LGU).
7. Unknown defendant: (i) publication with prior leave of court; (ii) if defendant is unknown, or his whereabouts are unknown and cannot be ascertained within 90cd from commencement of action.

5. Substituted Service

1. May be resorted to only in case of failure to personally serve the summons to the resident defendant in his address indicated in the complaint.
2. Condition – Within 1m, on 2 different dates, 3 unsuccessful bona fide attempt to serve (1-2-3).

How done: **ROSE**

1. In his residence, to a person at least 18y, with sufficient discretion, residing therein.
2. In his office/regular place of business, to a competent person in charge or customarily receives correspondence.
3. HOA officer/condominium, to any officer or chief security officer after the process server is refused entry to the building after making known his authority and purpose.
4. Via email, if allowed by the court through an order, upon motion.

Return on service:

1. Impossibility of personal service within 1m (30d) from receipt of summons.
2. 2 different dates, 3 unsuccessful attempts, detailing the inquiries and efforts made.
3. Name of person who received the summons.

6. Constructive Service

Done by publication in NPGC, completed with complementary service, unless otherwise ordered by court.

Applies to defendant who are:

1. NR and not found in Ph – in rem and quasi in rem actions. **PACE**
2. Resident temporarily out of Ph – in personam or in rem actions.
3. Foreign corporations – in personam or in rem actions.
4. Unknown defendant – in personam or in rem actions.

7. Extraterritorial Service

Applies to defendant who are:

1. NR and not found in Ph – **PACE** (i) affecting personal status of plaintiff; (ii) involving property in Ph where defendant claims lien or interest; (ii) relief consists in excluding defendant from interest on property in Ph; (iv) involving property of defendant attached within Ph [in rem and quasi in rem actions]
2. Resident temporarily out of Ph – (i) in personam or in rem actions; (ii) **substituted service** may also be availed.
3. Foreign corporations – in personam or in rem actions.

How done: **PIPs**

1. Personal service through foreign court with assistance of DFA.
2. Pursuant to international conventions where Ph is party.
3. Publication with complementary service by registered mail to last known address.

8. Proof of Service

1. Affidavit by the process server
2. If by mail, (i) printout of email; (ii) copy of summons served; (ii) mailer's affidavit.
3. If by publication, (i) affidavit of publisher, editor, etc.; (ii) with attached copy of publication; (iii) affidavit of registered mailing (complementary service).

I. Motions (Rule 15)

1. In General

A motion is an application for relief other than by a pleading. It seeks for relief from the court other than judgment on the merits (office of a pleading).

1. Must be in writing following the formalities on pleadings. XPN: those made in open court in the course of trial or hearing – (i) shall immediately be resolved, (ii) after the adverse party was given the opportunity to argue his case.
2. If motion is based on facts not appearing on record, court may: (i) hear parties on affidavits or

- depositions, or (ii) direct it to be heard or oral testimony or depositions.
3. Omnibus motion rule – A motion must include all objections then available. Otherwise, deemed waived. XPN: **JRLP**
 4. No written motion shall be acted upon by the court without proof of service.
 5. Modes of service: (i) personal; (ii) registered mail; (iii) accredited courier; (iii) electronic.
 6. 3-day notice rule already deleted in 2019 Rules.
 7. Kinds: (a) non-litigious, (b) litigious; (c) prohibited.

2. Non-litigious Motions

May be resolved by the court without prejudicing the rights of the adverse party.

1. Shall not be set for hearing.
2. shall be resolved by the court within 5cd from receipt.

Includes: **CAPEs WEaP**

1. Motion for the issuance of an **alias** summons
2. Motion for **extension** to file answer
3. Motion for **postponement**
4. Motion for the issuance of a **writ** of execution
5. Motion for the issuance of an **alias** writ of execution
6. Motion for the issuance of a writ of **possession**
7. Motion for the issuance of an order directing the sheriff to execute the final **certificate** of sale
8. Other **similar** motions

Similar motions:

1. Motion for leave to amend complaint before service of responsive pleading
2. Motion to annotate lis pendens¹⁷ – (i) motion to annotate notice of lis pendens is not required; (ii) but the cancellation of the notice requires a motion, since the court order is required for this purpose
3. Motion for leave to file supplemental answer
4. Motion to substitute original with photocopies of the documentary exhibits
5. Motion for early resolution of pending interlocutory incident
6. Motion to admit answer before defendant was declared in default, even if beyond reglementary period
7. Motion take deposition

3. Litigious Motions

May not be resolved by the court without prejudicing the rights of the adverse party.

1. Opposing party shall file opposition within 5 cd from service, without need of court order.
2. Court shall resolve within 15cd from receipt of opposition, or lapse of the 5d period. No other submissions shall be considered in the resolution.
3. Hearing is discretionary to court.

Includes: **BBREADDNCPSS**

1. Motion for **bill** of particulars
2. Motion to **dismiss** – **JRLP**
3. Motion for **new** trial
4. Motion for **reconsideration**
5. Motion for **execution** pending appeal
6. Motion to **amend** after a responsive pleading has been filed
7. Motion to **cancel** statutory lien¹⁸
8. Motion for an order to **break** in or for a writ of demolition¹⁹

¹⁷ Merely serves as notice to 3p that the property is subject of a pending litigation but does not affect the right of the owner to dispose the property. The grantee takes the same subject to the results or outcome of the pending case.

¹⁸ C.f.: notice of lis pendens may be annotated even without court order.

9. Motion for **intervention**
10. Motion for judgment on the **pleadings**
11. Motion for **summary** judgment
12. **Demurrer** to evidence
13. Motion to declare defendant in **default**
14. Other similar motions.

Similar motions:

1. Motion for leave to file motion for judgment on the pleadings
2. Motion for leave to file motion for summary judgement
3. Motion to admit answer after defendant was declared in default

4. Prohibited Motions

Those which cannot be filed, and if filed has no legal effect and treated as mere scrap of paper. **DAPES**

1. Motion to **dismiss** except on the grounds of **JRLP**
2. Motion to hear **affirmative** defenses²⁰
3. Motion for reconsideration of the court's action on the **affirmative** defenses²¹
4. Motion to **suspend** proceedings without a TRO or injunction issued by a higher court
5. Motion for **extension** of time to file pleadings, affidavits or any other papers, except ANS
6. Motion for **postponement** intended for delay (dilatory) – XPNs: (i) acts of God, (ii) force majeure or (iii) duly substantiated physical inability of the witness to appear and testify **AFD** (**dspiwat**). Shall be accompanied by OR evidencing payment of postponement fee.

5. Motion for Bill of Particulars (Rule 12)

1. To seek from the adverse party a statement or bill of particulars of any matter not alleged with sufficient particularity to enable movant to properly prepare his responsive pleading.
2. Must be filed within the period for filing a responsive pleading.
3. Bill of particulars (separate or amended pleading) must be filed and served to movant within 10d from notice of order granting the motion.
4. If not complied, the pleading or portion with insufficient allegation may be stricken out from the record.
5. Filing of MBP tolls the running of period to file responsive pleading until receipt of the BP or notice of order denying the same. The movant has the remaining period or 5d, whichever is longer to file responsive pleading.

J. Dismissal of Actions (Rule 17)

(a) Upon notice by plaintiff; (b) Upon motion of plaintiff; (c) Due to fault of plaintiff

(a) Upon notice by plaintiff

1. The plaintiff may dismiss the Complaint by mere notice filed before service of: (i) ANS or (ii) motion for summary judgment.
2. Court must render an order confirming the dismissal.
3. Dismissal without prejudice (i) unless otherwise stated in the order, (ii) under TDR.
4. Two-dismissal rule **TDR**. (i) When the plaintiff has twice dismissed the action; (ii) where the two actions are based on or including the same claims; (iii) and are filed in a court of competent jurisdiction; (iv) the second notice operates as

¹⁹ Inherent in replevin.

²⁰ Conduct of hearing is discretionary.

²¹ If JRLP is raised in MTD, the aggrieved party may still file MR, then Petition for CPM.

adjudication upon the merits. Dismissal with prejudice.
5. If the dismissal was initiated by the defendant, the TDR will not apply.
(b) Upon motion of plaintiff
1. The plaintiff may dismiss the Complaint by way of motion filed <u>after</u> service of: (i) ANS or (ii) motion for summary judgment.
2. Must be approved by the court.
3. Rule on CC – if counterclaim was pleaded prior to service of motion for dismissal, the defendant may: (i) manifest to the court his intention to prosecute the CC (compulsory or permissive) in the same action within 15cd from notice such motion, or (ii) prosecute his CC in a separate action. In the first, the dismissal shall be limited to the complaint and the CC shall be allowed to continue.
4. Dismissal without prejudice unless otherwise stated in the order.
(c) Due to fault of plaintiff
1. Grounds: FAC (i) non- appearance on the date of presentation of evidence in chief; (ii) failure to prosecute action for an unreasonable length of time; (iii) non- compliance with these Rules or any order of the court. Failure of plaintiff to appear during defendant's presentation of evidence is not ground for dismissal but constitutes waiver of his right to participate.
2. May be (i) motu proprio, or (ii) on defendant's motion.
3. Dismissal is with prejudice unless otherwise declared by the court.
4. Action for partition may be refiled despite dismissal with prejudice due to failure to prosecute. Former is a substantive right under NCC.
5. Counterclaim survives and may be prosecuted in the same action.
**There is no provisional dismissal under the Rules on Civil Procedure.

1. With Prejudice vs. Without Prejudice

(a) With prejudice
1. May not be refiled.
2. May be appealed.
Grounds:
1. PURE – (i) Prescription; (ii) Unenforceable under SOF; (iii) Res judicata (bar by prior judgment); (iv) Extinguishment, payment, waiver, abandonment
2. Dismissal upon notice by plaintiff, if court declares
3. Dismissal upon notice by plaintiff, under TDR
4. Dismissal upon motion of plaintiff, if court declares
5. Dismissal due to fault of plaintiff, unless the order states otherwise
6. WDFS
7. Non-filing of PTB or non-attendance at PT
8. Dismissal due to misrepresentation that defendant was properly served
(b) Without prejudice
1. May be refiled.
2. Not appealable, subject to R65.
Grounds:
1. FEPIDUE – fraud, estoppel, illegality, discharge in bankruptcy
2. FLINC – failure to state cause of action, lack of personal jurisdiction, improper venue, no legal capacity to sue, condition precedent not complied
3. JRLP – lack of SM jurisdiction, litis pendentia
4. Dismissal upon notice by plaintiff
5. Dismissal upon motion of plaintiff

6. False CAFS or non-compliance with undertaking
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2. Dismissals Which Have an Effect of an Adjudication on the Merits

1. Upon notice by plaintiff – (i) if declared by court, or (ii) under TDR.
2. Upon motion by plaintiff, if declared by court
3. Due to fault of plaintiff, unless otherwise declared by court.
4. Dismissal due to plaintiff and counsel's non-appearance at pre-trial, unless the court orders otherwise (includes CAM/JDR, non-filing of PTB)
5. Order of the court directing the parties to submit to arbitration partakes the nature of judgment on the merits.
6. Grant of demurrer to evidence.

K. Pre-Trial (Rule 18)

1. Nature and Purpose

Pre-trial is a mandatory preliminary court process conducted before the trial intended to aid in the prompt disposition of the case.

Purposes:

1. Possibility of amicable settlement
2. Simplification of issues
3. Possibility of stipulations
4. Limitation and identification of witnesses
5. Possibility of preliminary reference to commissioner
6. Propriety of judgment on the pleadings, summary judgment, or dismissal
7. Requirement to: (i) mark evidence; (ii) compare evidence with copy to be marked; (iii) stipulate on genuineness, due execution, faithful reproduction of documents; (iv) reserve evidence not available
8. Other matters that will aid prompt disposition of the case **PDC**

Pre-trial Order

1. Controls subsequent proceedings. GR: Only the issues set forth in the PTO shall be resolved in the course of the trial. XPN: if raised during trial and tried with the express or implied consent of the parties. Pleadings need not be amended to conform to evidence.
2. Court may include in PTO that the case be submitted for summary judgment or judgment on the pleadings (expedited judgment), **motu proprio**. Order is not subject to appeal or CPM.
3. Documents already forming part of the pre-trial submissions and the records of the case may be considered even if not formally offered.

2. Appearance of Parties; Effects of Failure to Appear

Three phases:

1. Pre-trial
2. Court-Annexed Mediation (CAM)
3. Judicial Dispute Resolution (JDR)

It shall be the duty of both the parties AND their counsel to appear at the pre-trial, CAM, and JDR, if necessary.

1. If counsel is authorized by the party, he must be armed with SPA authorizing him to perform acts covered.
2. If party is a juridical person, he must present proper authority (Board Resolution, SPA, Secretary's Certificate).
3. Failure of plaintiff and counsel to appear shall cause the **dismissal** of the action, motu proprio or on defendant's motion. (i) provided, they are given due notice and their non-appearance is without valid cause; (ii) dismissal is with prejudice unless otherwise ordered by the court; (iii) only permissive CC shall survive.
4. Failure of defendant and counsel to appear shall cause the allowance of plaintiff to present

- evidence ex-parte, and court may render judgment based on the evidence presented.
5. In both case, non-attendance amounts to waiver of any objection to the faithfulness of the reproductions marked, or their genuineness and due execution.
 6. In both case, failure to bring evidence amounts to waiver of presentation of the evidence.
 7. If the defendant was present but not his counsel – (i) the judge shall not ipso facto allow the plaintiff to present evidence ex parte; (ii) he should reset the same and ask the lawyer to explain why he should not be cited in contempt.
 8. Valid excuse: **AFD**
 9. The effects extend to: (i) non-attendance at CAM, JDR; (ii) non-submission of PTB.

3. Pre-Trial Brief; Effect of Failure to File

1. Must be served and filed 3 days before pre-trial date.
2. Failure to file shall have the same effect as failure to appear at the pre-trial.

Contents:

1. Concise statement of the case and the reliefs prayed for
2. Summary of admitted facts and proposed stipulations
3. Main factual and legal issues to be tried
4. Propriety of referral to commissioners
5. Documents, object evidence to be marked, and their purpose
6. Names of the witnesses, summary of testimonies
7. Brief statement of points of law and citation of authorities.

L. Intervention (Rule 19)

Any person with legal interest (i) in the matter in litigation, (ii) in the success or either party, or (iii) interest against both **MSI**, so situated as to be adversely affected by a distribution or other disposition of property in the custody of court or officer **SADCO**

1. Intervention is a mere procedural tool, without which, a separate action shall be filed by the intervenor (same with 3p complaint).
2. Always ancillary to a main action and interlocutory procedure.
3. Generally discretionary. XPNs: (i) when the intervenor is an indispensable party; (ii) in a class suit, where an individual member of the class has the right to intervene.
4. After an intervenor was admitted in an action, the action cannot just be dismissed to the prejudice of the intervenor.

Requisites: **MIL**

1. Motion for intervention filed before rendition of judgment
2. Intervenor has direct and immediate interest
3. Leave of court

Interest must be direct and immediate such that the party stands to gain or lose **DIGL** as a result of the judgment.

1. Not indirect, contingent, remote, conjectural, consequential, collateral, inchoate or mere expectancy.
2. Interest of SH in corporation does not entitle him to intervene in suit involving corporate assets (inchoate, expectant interest). Same with heirs re: properties of predecessor before latter's death.
3. In an action for reconveyance filed by heirs, the motion to intervene by another set of heirs on ground that they are the real heirs is improper considering that the issue of heirship shall be litigated in a separate action.

Considerations:

1. Delay or prejudice that may be caused to original parties.
2. Whether intervenor's rights may be protected in separate action.

M. Subpoena (Rule 21)

Compulsory process directed to a person requiring him: (i) to attend and testify at the hearing/trial of an action, or at any investigation conducted by competent authority, or for the taking of his deposition (ad testificandum AT), and (ii) to bring with him books, documents within his control (duces tecum DT).

1. Objections to the issuance of a subpoena must be raised in a motion to quash.
2. Grounds for quashal – **FRUNT** (i) DT: (a) **unreasonable** and oppressive, (b) **relevancy** of books, documents, things do not appear, (c) **failure** to advance reasonable cost of production; (ii) AT: (d) witness **not** bound by subpoena; (iii) both: (e) witness fees and kilometrage not **tendered** when subpoena was served.
3. Witness is not bound by subpoena if: (i) lives more than 100km from the place where he is to testify by the ordinary course of travel (viatory right); (ii) SM covered is privileged; (iii) if served on adverse party, failure to serve interrogatories to parties.
4. In DT: (i) test of relevance: prima facie relevance of documents to the case must be shown; (ii) test of definiteness: books must be described as to make them readily identifiable.
5. Service of a subpoena shall be made in the same manner as personal or substituted service of summons.
6. A Person present in court may be required to testify as if he were in attendance upon a subpoena. XPN: an adverse party to whom no prior service of written interrogatories was made.
7. In case of non-compliance, witness may be: (i) arrested, or (ii) held in contempt.
8. Justified excuses: (i) viatory right [this may be invoked only in civil but not in criminal cases]; (ii) witness is a prisoner where no permission of court where his case is pending was obtained.

N. Computation of Time (Rule 22)

1. Exclude the first day, include the last day or the day of performance.
2. If last day weekend/holiday, period shall not run again until the next working day.
3. Effect of interruption: (i) Period shall begin to run from notice of the cessation of the cause of interruption; (ii) the day of the act that caused the interruption shall be excluded in the computation of period.
4. Any extension should be counted from the time of expiration of original period, even if falling on weekend/ holiday.

O. Modes of Discovery

1. Depositions (Rules 23 and 24, See **People v. Sergio, G.R. No. 240053, October 9, 2019**)

Types: (a) Pending action, (b) Before action or pending appeal

1. Deposition is XPN to GR that once complaint is filed, JAs must be attached. When due to reasons beyond the control of the party, the testimony of a witness/party cannot be taken, deposition may be allowed.
2. Who may be deposed: (i) Party; (ii) Witness. Deposition is the only mode of discovery which may apply to the witness. The others apply only to parties.
3. Scope: (i) Anything relevant; (ii) Not privileged, including trade secrets. If deposition is on ground of privileged communication, the confidential nature of the information based on law or rules must be shown.

4. Attendance of witness may be compelled through a subpoena.
5. Rules on direct examination are relevant and necessary.
6. Distinguish: (i) taking; (ii) use of depositions. The fact that one took the deposition of a person does not automatically mean that he will use the deposition.
7. Objections to admissibility: (i) Must be raised during trial not during the deposition. The deposing officer may only take note of the objections but he cannot rule on them; (ii) may be for any ground for exclusion of evidence as if the witness testifies in person.

(a) Pending action

1. May be taken at any time after filing Complaint with leave of court upon ex parte motion (non-litigious).
2. Right against self-incrimination may be invoked. If the civil case is so closely related to the criminal case, and the person sought to be deposed is both the accused and the defendant, then the civil case partakes the nature of the criminal case and the defendant in the civil case may refuse to testify since it is akin to an accused being compelled to testify in the criminal case.
3. Manner of taking: (i) Upon oral examination; (ii) Upon written interrogatories.

Effect of taking

1. The proponent of deposition does not necessarily adopt the deponent as witness. The deposition does not automatically form part of the proponent's evidence. If the proponent adopts the deponent as witness, the former is bound by the witness' credibility and may not impeach him, unless hostile witness or adverse party.
2. The adverse party cannot be prevented by the proponent from using the deposition as evidence.

Use of deposition

When may be used

1. Deposition may be used against any party (i) who was present or represented at the taking of the deposition; (ii) who had due notice thereof.
2. Deposition of a non-party may be used: (i) To impeach the testimony of deponent; or (ii) for any purpose, if the witness is DOSUE – (a) dead; (b) outside Ph or resides >100km from place of trial/hearing; (c) unable to testify due to age, sickness, infirmity, imprisonment; (d) party offering is unable to secure the attendance of witness by subpoena; (e) other exceptional circumstances in the higher interest of justice, upon application and notice. A party to a case residing outside Ph may take his own testimony and use it in the case.
3. Deposition of an adverse party (including an officer of a juridical person-party) may be used: (i) To impeach the testimony of deponent; or (ii) for any purpose, even if party-witness is not DOSUE.
4. If only part of the deposition is offered in evidence by the other party, the adverse party may require him to introduce all of which that is relevant to the party introduced.

***Beyond these, the deponent shall be considered a mere ordinary witness – take JA, present to court for cross-examination.*

Effect of use

1. The introduction of deposition in evidence makes the deponent a witness of the party introducing

the same. Any admission by the deponent will be binding on him.

2. XPNs: (i) if offered to impeach the testimony of deponent witness; (ii) if used by an adverse party for any purpose.
3. Deposition may be used: (i) despite substitution of parties; (ii) in another action involving the same subject between the same parties upon dismissal of the action where the deposition was taken.

Deposition upon oral examination

Deposing officer

1. In general: (i) Judge; (ii) Notary public; (iii) Person authorized to administer oaths, as stipulated by parties in writing.
2. Abroad: (i) On notice, before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines; (ii) before such person or officer as may be appointed by commission²² or under letters rogatory,²³ upon application and notice; (iii) Person authorized to administer oaths, as stipulated by parties in writing.
3. Disqualifications: (i) relative within the 6th degree of consanguinity or affinity of any party or counsel; (ii) Employee or counsel of any party or counsel; (iii) One who is financially interested in the action.
4. Deposing officer has no authority to rule on objections. He can only note them, and the parties may raise them during trial.
5. He shall cause the preparation of transcripts and its signing by the deponent, file the deposition in court, notify parties of the filing, and give copies to parties upon payment of reasonable cost.

Remedies of parties and witnesses

1. Protection orders – May be issued upon motion and for good cause, and upon finding of court that deposition: (i) is being conducted in bad faith; (ii) is being conducted in such a manner as to annoy, embarrass, or oppress the deponent; (iii) touches upon the irrelevant facts; (iv) encroaches on of privileged matters.
2. Motion to terminate or limit examination – May be issued upon motion/petition and for good cause at anytime during the taking of deposition, and upon finding of court that deposition: (i) is being conducted in bad faith; (ii) is being conducted in such a manner as to annoy, embarrass, or oppress the deponent. Court may order: (a) termination of taking of deposition; (b) limitation scope and manner; (c) Imposition of reasonable costs and expenses.
3. Motion to suppress evidence – May be raised (i) if the deponent did not sign the deposition and the deposing officer instead signed the same stating reasons given by deponent, if any, or (ii) in case of other defects in the manner of preparation of deposition (transcription, filing, etc.)

Deposition upon written interrogatories

1. GR: Only one set of interrogatories may be sent (directly to parties, not counsel or deposing officer). XPN: leave of court.
2. (i) The party taking shall notify the deposing officer; (ii) officer shall proceed with taking deposition of the witness in response to the interrogatories; (iii) rules on depositions upon oral examination applicable.
3. Effect of errors and irregularities before or during deposition – (i) generally waived, unless objection is timely raised: (a) as to notice, (b) disqualification of officer, (c) oral examination / other particulars, (d) form of written interrogatories, (e) manner of

²² One which designates an officer (of the Ph) for the taking of the deposition.

²³ One that is addressed to the proper judicial authority of the foreign country to conduct the deposition.

preparation, e.g., transcription, filing [objection through motion to suppress evidence]; (ii) not waived with respect to competency or relevancy of evidence, unless the ground might have been obviated or removed if presented at the time. The objection may be raised upon offer of deposition during trial.

(b) Before action or pending appeal

1. Two kinds: (i) Before action; (ii) Pending appeal.
2. Rules on deposition pending action applies regarding taking, use, and conduct.

Before action:

1. To perpetuate testimony in case an action is commenced.
2. May be made before commencement of an action in court upon verified petition in court of the place of residence of any expected adverse party.

Pending appeal:

1. To perpetuate testimony for use in the event of further proceedings in court or origin (remand or execution).
2. May be applied for before expiration of reglementary period for appeal with the court that rendered the judgment.

Remedies and sanctions for non-compliance

1. Motion to compel the deponent to answer
2. Payment of reasonable expenses + attorney's fees
3. Contempt of court
4. Arrest order
5. Court order that – (i) matters relating to the unanswered question/s shall be taken to be established; (ii) disallowing disobedient party to support or oppose designated claims or defenses, or to introduce designated evidence; (c) striking out pleadings or parts thereof, (d) staying further proceedings until order is obeyed, (e) dismissing the action or proceeding or any part thereof, (f) rendering judgment by default against disobedient party

Deposition in criminal actions:

1. There is no specific and express provision in the Rules regarding the applicability of modes of discovery in criminal proceedings. The latter is primarily governed by the Revised Rules of Criminal Procedure.
2. GR: deposition is not available in criminal cases as it will violate the accused's right to cross-examine the prosecution's witness. XPN: extraordinary circumstances – e.g., a critical witness for the prosecution of illegal recruiters in the Ph was about to be executed in Saudi Arabia. Her deposition was allowed to be taken in relation to the criminal action in the Ph (Pp v. Sergio).

2. Interrogatories to Parties (Rule 25)

1. Available only against a party (not a witness).
2. May be made with leave of court, upon ex parte motion.
3. Purpose: to elicit material and relevant facts from any adverse parties to be answered directly by the latter.
4. GR: Only one set of interrogatories may be sent (directly to parties, not counsel or deposing officer). XPN: leave of court.
5. The party served or any of its competent officer/s must directly answer the interrogatories, also in writing.
6. Scope: (i) any relevant matter; (ii) not privileged.
7. Taking and use: Rule on Depositions applicable.
8. Service of interrogatories to parties is **condition precedent** before an adverse party may be compelled by the other (i) to give testimony in

open court, or (ii) to give a deposition pending appeal. XPN: leave of court upon good cause shown.

9. Lack of prior service of written interrogatories to adverse party is also a ground for quashal of subpoena ad testificandum.
10. Remedies and sanctions for non-compliance: same with Depositions.

Depositions upon written interrogatories	Interrogatories to parties
Deponent may be a party or witness	Available only against a party
Requires conduct of hearing before a deposing officer who propounds the question to the deponent	The adverse party directly answers the interrogatories in writing without need of hearing before a deposing officer
Not condition precedent	Condition precedent before an adverse party may be called as witness or his deposition taken

3. Admission by Adverse Party (Rule 26)

Request for admission

1. Available only against a party (not a witness).
2. May be applied at any time after issues have been joined, i.e., after service of responsive pleading.
3. Scope: (i) Genuineness of any material and relevant document described in and exhibited with the request; (ii) The truth of any material and relevant matter of fact set forth in the request.
4. The request contains statements of facts or documents which the party served should admit or deny.
5. Served directly on the party himself who must file an answer.
6. Answer must be: (i) sworn; (ii) must contain specific denial, or (ii) detailing the reason why he cannot truthfully either admit or deny those matters.
7. Failure to file and serve answer amounts to **implied admission** of the matters for which admission is requested. XPN: If the factual allegations in the request for admission are the very same allegations set forth in the complaint or answer and have already been specifically denied or dealt with in the answer or reply. (i) request for admission is no longer required; (ii) failure to file answer cannot be deemed an implied admission.
8. The implied admission is **limited** only for the purpose of the pending action where the request for admission was made – (i) cannot be used for any other purpose; (ii) cannot be used against respondent in any other proceeding.
9. The party who fails to file or serve a request for admission of a material or relevant fact at issue which are and ought to be within the personal knowledge of the adverse party shall not be allowed to present evidence on such facts. XPN: leave of court upon good cause shown.
10. If requesting party proves genuineness of document or truth of a matter of fact, the court may order the denying party to pay reasonable expenses in making proof + attorney's fees.
11. Implied admission rule. – Each of the matters of which an admission is requested shall be deemed admitted unless the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny those matters.

4. Production or Inspection of Documents or Things (Rule 27)

1. Available only against a party.

2. If the documents/objects or property is in possession of 3p subpoena duces tecum may be resorted.
3. Must be upon motion + good cause shown, to the court where action is pending.
4. Order may be: (a) for the production and permission to inspect, copy or photograph documents and/or objects; (b) for permission to entry upon a property.

(a) Order for the production and permission to inspect, copy or photograph ICP documents and/or objects SPEC

1. Must be **specifically** describe/designate the documents or objects.
2. Must not be **privileged**.
3. Must constitute or contain **evidence** material to any matter involved in the action.
4. Must be in the possession, **custody**, control of respondent.

Privileged information

1. As provided under ROC
2. Confidential sources of news editors
3. Voters' vote
4. Trade secrets (Air Ph v. Rama)
5. Information in tax census returns
6. Bank deposits

(b) Order for permission to entry upon a property to inspect measure, survey, photograph the property or object therein STC

1. Must be **specifically** describe/designate the land or other property.
2. Must specify the **time**, place, and manner of inspection and taking copies and photographs.
3. Must be in the possession and **control** of respondent.

Remedies and sanctions for non-compliance

1. Court order – (i) that the character or description of the thing or land, or the contents of the paper, shall be taken to be established; (ii) disallowing disobedient party to support or oppose designated claims or defenses, or to introduce designated evidence; (c) striking out pleadings or parts thereof, (d) staying further proceedings until order is obeyed, (e) dismissing the action or proceeding or any part thereof, (f) rendering judgment by default against disobedient party
2. Arrest order.

5. Physical and Mental Examination of Persons (Rule 28)

1. May be ordered by court where action is pending in any action where the mental or physical condition of a person is in controversy.
2. Only a party may be examined, not a witness.
3. The party examined waives the confidentiality of all past and future reports of examination regarding the same mental and physical condition to which the requesting party shall be entitled if: (i) he requests and obtains a copy of the report of examining physician, or (ii) he takes the deposition of the examiner.
4. The waiver extends to: (i) the pending action; (ii) other action involving the same controversy; (iii) the testimony of every physician who has or will examine his mental or physical condition.
5. The physician-patient privilege does not cover information discovered under Rule 28.

Remedies and sanctions for non-compliance

1. Court order – (i) that the physical or mental condition of the party shall be taken to be established; (ii) disallowing disobedient party from introducing evidence of physical or mental condition; (c) striking out pleadings or parts thereof, (d) staying further proceedings until order

is obeyed, (e) dismissing the action or proceeding or any part thereof, (f) rendering judgment by default against disobedient party.

6. Refusal to Comply With Modes of Discovery (Rule 29)

*See discussions above

P. Trial (Rule 30)

1. Schedule of Trial

Schedule of **Continuous** Trial (must be provided at PTO):

1. Initial presentation of P's evidence – (i) Not later than 30d after termination of PTC; (ii) 90d
2. Initial presentation of D's evidence – (i) Not later than 30d after ruling on plaintiff's formal offer of evidence; (ii) 90d
3. Presentation of third (fourth, etc.)-party claimant evidence – (i) Date determined by the court; (ii) 90d
4. Initial presentation of rebuttal evidence – (i) Date determined by the court; (ii) 30d

Maximum period for presentation of evidence:

1. With 3p claimant – 300d
2. Without 3p claimant – 180d

Decision shall be rendered within 90d from submission of the case for resolution.

Order of trial:

1. Plaintiff evidence for claim
2. Defendant evidence for defense, counterclaim, cross claim, third-party complaint
3. Third-party defendant for defense, counterclaim, cross claim, third-party complaint
4. Fourth-party defendant, and so forth for material facts pleaded
5. Defendant in counterclaim or cross claim
6. Rebuttal evidence
7. Submission of case for decision

Trial may be dispensed when:

1. Judgment on the pleadings is proper
2. Summary judgment is proper
3. Parties entered into compromise or amicable settlement
4. Complaint was dismissed with prejudice, or has the effect of adjudication on the merits – (i) TDR; (ii) Dismissal due to fault of plaintiff
5. Cases under REPFLEC: SC/RRSP
6. Parties agree in writing upon the facts involved and submit the case on the basis of facts agreed upon (stipulation of facts).

2. Adjournments and Postponements

1. Adjournment of trial is generally discretionary upon the trial judge, subject to 1-3 limitation. The adjournment: (i) shall not exceed 1m at each instance; AND (ii) shall not exceed 3m in total. XPN: authorized in writing by the Court Administrator, SC.
2. The party who caused the postponement is warned that the presentation of its evidence must still be terminated on the remaining dates previously agreed upon.

3. Requisites of Motion to Postpone Trial for Illness of Party or Counsel

1. Must be made upon affidavit or sworn certification.
2. Must be upon motion, with proof of payment of postponement fee.
3. Must state: (i) that the presence of such party or counsel at the trial is indispensable, and (ii) that the character of his or her illness is such as to render his or her non-attendance excusable.

Q. Consolidation or Severance (Rule 31)

A procedural device to aid the court in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties.

1. Allowed when actions involve common question of law or fact are pending before the court.
2. Consolidation is not mandatory but discretionary on the court.
3. Kinds: (a) Quasi-consolidation; (b) Actual consolidation; (c) Consolidation for trial

(a) Quasi-consolidation

1. All except one of several actions are stayed until one is tried.
2. The judgment in the one trial is conclusive as to the others.

(b) Actual consolidation

1. Several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered.
2. Consolidation is often made at the lowest docketed case.

(c) Consolidation for trial

1. Several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment.
2. The actions (i) involve different issues, (ii) seek different remedies, and (iii) require the rendition and entry of separate judgments.
3. Judgment already in one action is appealable without need of severance since each action does not lose its distinct character.

Consolidation of civil and criminal aspects of a case:

1. If civil action based on a criminal act was filed prior to the criminal action, the subsequent filing of criminal action shall: (i) suspended the civil action until the criminal action is terminated, (ii) without prejudice to the consolidation of the civil case with the criminal action (primary of criminal action).
2. If consolidated, the evidence already produced in the civil case are automatically reproduced in the criminal case, subject to cross-examination/re-examination by the prosecution.

Consolidation is not proper if:

1. Jurisdiction pertains to different courts as where one case is civil and the other is criminal.
2. One proceeding involves a ministerial act by the court, e.g., issuance of writ of possession cannot be consolidated with an action for nullification of EJ foreclosure of REM.
3. The cases are governed by different rules – e.g., ordinary action/REPLEC.

R. Demurrer to Evidence (Rule 33)

1. Grounds

1. Upon the facts and the law, the plaintiff has shown no right to relief. Demurrer to evidence is in the nature of a MTD on ground of insufficiency of evidence.
2. It may be filed by defendant only after the plaintiff completed the presentation of his evidence, i.e., once court has rule on the plaintiff's offer of evidence upon issuance of order admitting or denying the admissibility of documentary/object evidence.
3. Leave of court is not required.

2. Effect of Order Denying Demurrer to Evidence

(a) If demurrer granted

1. Case will be dismissed.
2. The dismissal has the effect of adjudication on the merits. It is a final order which is appealable. Complaint should not be refiled.
3. If reversed on appeal: (i) the defendant loses right to present evidence which is deemed waived; (ii) the appellate court shall render judgment based on the plaintiff's evidence, and not remand the same to RTC.

c.f.: in criminal cases:

1. May be filed with/out leave of court.
2. If with leave of court, the accused may still adduce evidence in case of reversal.
3. If without leave of court, the accused may no longer adduce evidence in case of reversal.

(b) If demurrer denied

1. Case shall proceed. Defendant shall have the right to adduce evidence.
2. The denial is an interlocutory order: (i) not appealable; (ii) not subject to Petition for CPM even if there is GAD (express provision of ROC); (iii) no prohibition as to the filing of MR.
3. Remedy is to proceed with trial. In case of adverse judgment, assign the denial of demurrer as error on appeal.

S. Judgments and Final Orders

1. Judgments on the Pleadings (Rule 34)

a) Grounds

1. Grounds: (i) Answer fails to tender an issue; (ii) Answer admits the material allegations in the complaint. Only questions of law remain. Hence, presentation of evidence is no longer necessary.
2. Admission may be: (i) actual admission; (ii) insufficient or general denial;²⁴ (iii) negative pregnant. XPN: Allegations as to the amount of unliquidated damages are not deemed admitted even if not specifically denied
3. Also, proper when the only issue was the interpretation of contract, or the applicable law.
4. May be (i) on motion, (ii) motu proprio, (iii) included in PTO.
5. No judgment on the pleadings shall be rendered on: (i) actions for declaration of nullity or (ii) annulment of marriage or (iii) for legal separation. State must ensure that there is no collusion, and that evidence was not fabricated.
6. May be filed only by the claiming party.

b) Action on Motion for Judgment on the Pleadings

1. Court's action (grant/denial) on the MJP is not yet the judgment on the case. This is not subject of an appeal or petition for certiorari, prohibition, or mandamus.
2. The judgment itself is final and appealable via R45 since there are no more questions of fact. There can be no partial adjudication on motion.

2. Summary Judgments (Rule 35)

1. May be filed either by claiming or defending party. (i) by claiming party, at any time after responsive pleading was served; (ii) by defending party, at any time.
2. The motion must: (i) contain supporting affidavits, depositions, admissions ADA; (ii) cite the supporting ADA and the law relied upon.
3. Grounds: Pleadings + supporting ADA show: (i) that there is no genuine issue as to any material fact, and (ii) that the movant is entitled to judgment as a matter of law.

²⁴ Defendant denies by disavowal of knowledge a fact which is or ought to be within his personal knowledge.

- Also proper when the only issue remaining was the determination of the amount of damages.

a) Effect of Order Denying a Motion for Summary Judgment

- Court's action (grant/denial) on the MSJ is not yet the judgment on the case. This is not subject of an appeal or petition for certiorari, prohibition, or mandamus.
- There may be partial adjudication on motion – (i) court shall render judgment on uncontroverted facts; and (ii) conduct trial on uncontroverted facts.
- A partial summary judgment is merely interlocutory and not appealable.
- A summary judgment is final and appealable even if the court failed to specify the amount of damages, if there is no contrary order declaring further proceedings. If aggrieved party fails to appeal during reglementary period, he loses his remedy.

3. Rendition and Entry of Judgments and Final Orders (Rule 36)

Two concepts of final judgment:

- One which disposes of a case in a manner that leaves nothing more to be done by the court. And adjudication on the merits which final determines the rights and obligations of parties (c.f.: interlocutory order).
- One that is no longer appealable and is already capable of being executed because (a) the period for appeal has elapsed without a party having perfected an appeal or (b) if there has been an appeal, it has already been resolved by the highest possible tribunal (final and executory).

[1] Requirements of valid judgment on the merits

- In writing
- Personally and directly prepared by the judge
- Signed by him (judge) – minute resolutions or those signed by the Clerk of Court upon orders of the Court, are recognized in this jurisdiction.
- Stating clearly and distinctly the facts and the law on which it is based – (i) constitutional requirement; (ii) for purposes of assigning errors on appeal; (iii) notwithstanding, memorandum decisions are recognized in this jurisdiction
- Filed with the clerk of court – (i) this constitutes the rendition or promulgation of the judgment; (ii) before such filing, the judge may still change the decision.
- Court has jurisdiction.
- Rendered after due notice and hearing (due process)

Memorandum decisions

- Those which adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals.
- Recognized as valid, provided: (i) the original decision must be referred to, (ii) findings of fact and law must be incorporated; and (ii) direct access to the original decision must be provided by attaching and making the same an integral part of the decision incorporating it.

[2] Entry of judgment:

- When judgment has attained finality, it should be entered by the clerk in the book of entries of judgments. The date of finality shall be deemed the date of entry.
- A judgment attains finality if: (i) no appeal, MR, MNT was filed within the reglementary period; (ii) the same has expired for the other party, or (iii) an appeal was filed but already finally resolved by the highest court possible.

Res judicata

- A matter adjudged.
- The rule that a final judgment on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit.
- Two concepts: (i) bar by prior judgment; (ii) conclusiveness of judgment.
- Bar by prior judgment (claim preclusion) – (i) final; (ii) on the merits; (iii) rendered by a court of competent jurisdiction; (iv) identity of parties (or interest), subject matter and causes of action. A former judgment bars the prosecution of a second action upon the same claim, demand, or cause of action.
- Conclusiveness of judgment (issue preclusion/ collateral estoppel) – (i) A ruling of a court on a particular fact of issue bars its relitigation in another action between the same parties on a different claim or cause of action; (ii) it requires only the identity of parties and issues, even if there is no identity as to the cause of action; (iii) does not apply to issues of law.
- Law of the case – (i) what has been determined on appeal will remain the law of the case for the parties for as long as the facts remain the same, even if it is wrong; (ii) relates entirely to questions of law; (iii) confined in its operation to subsequent proceedings in the same case.
- Stare decisis – (i) pertains to a legal principle applied on a particular set of facts; (ii) the resolution of the court upon a certain issue involving a certain set of facts will be applied even to a different case even though involving different parties but raising the same issues and is similarly situated as that of the prior case.

Kinds of judgment: (a) Partial; (b) Several; (c) Separate

(a) Partial

- Judgment for or against on or more of the several plaintiff/s or defendant/s.
- Mere interlocutory order.

(b) Several

- Applicable when: (i) There are several defendants; (ii) whose liabilities are clearly distinct and separable.
- The several judgments for or against one will not necessarily affect the others.
- Not proper if there is common cause of action as against the several defendants. Partial judgment on such case is merely interlocutory.

(c) Separate

- Applicable when; (i) More than one claim for relief is presented in an action; (ii) which are distinct and separable.
- Court may render a judgment disposing one or some of the several claim/s.

****Both several and separate judgments are appealable via NOA + RONA.**

Parts of judgment: (d) ratio decidendi; (e) fallo; (f) obiter dictum.

(d) Ratio decidendi

- Reasoning or justification, legal and factual bases for the decision of the court

(e) Fallo

- Dispositive portion. One which contains the actual decision of the court.
- The fallo must be consistent with the ratio decidendi.

3. In case of conflict between the fallo and the body of the decision, the fallo controls since it is the portion that is subject of execution. XPN: if the inevitable conclusion from the body of the decision is so clear that there was a mere mistake in the dispositive portion, the body of the decision will prevail.

(f) Obiter dictum

1. Discussions/opinion made by the court that is not necessary for the dispositions of the case.
2. Generally not binding.

T. Post-Judgment Remedies

1. Motion for New Trial or Reconsideration (Rule 37)

Distinctions:

MR	MNT
Within the period for taking appeal: 15/30d	Within the period for taking appeal: 15/30d
DEL: (i) damages awarded are excessive; (ii) evidence is insufficient to justify the judgment; (iii) judgment contrary to law	(i) FAME; (ii) Newly discovered evidence
Second MR is absolutely not allowed since the Rules did not provide for any exception	Second MNT is generally not allowed, unless the ground was not existing or available when first motion was made
Must point out to the specific findings or conclusions (i) not supported by evidence, or (ii) contrary to law, making express reference to evidence or law	Must be accompanied by (i) affidavit of merits and/or (ii) witness affidavits, documents/ objects constituting the NDE
If granted, the court shall amend the judgment accordingly	If granted, (i) original judgment shall be vacated, (ii) action shall stand for trial de novo, (iii) material and competent evidence on record need not be retaken

Common formalities:

1. Must be in writing
2. Must state the grounds relied upon – subject to omnibus motion rule: all grounds existing at the time of filing not raised are deemed waived.
3. Must be served to the adverse party

In MR

1. The Rules presupposes a final judgment, not interlocutory order.
2. If interlocutor order: (i) not subject to the limiting 15d period of appeal.; (ii) second MR may be filed. An interlocutory order It will not lapse into finality and subject to the court's control for as long as the case is pending. Every court has the inherent power to amend and control its process and orders so as to make them conformable to law and justice (R135 S5)

In MNT

1. May be allowed in CA: (i) After perfection of appeal; (ii) Before CA loses jurisdiction over the case; (iii) based only on newly discovered evidence which could not have been discovered and produced in trial and will probably change the result of the case.
2. CA's authority to receive evidence is limited to instances (i) when it grants new trial (ii) based on newly discovered evidence (CA Rules). Under BP 129, CA has the power to (a) try cases, (b) conduct hearings, (c) receive Evidence, (d) perform acts necessary to resolve factual issues falling within its original and appellate jurisdiction.
3. Mutually exclusive with PRJ (same grounds)

a) Remedy Against Denial

Order of denial is not appealable. The proper remedy is an appeal from the judgment or final order.

b) Fresh-Period Rule

The aggrieved party has a fresh period of 15/30d to perfect his appeal upon notice of order denying MR/MNT.

1. Not applicable to administrative appeals. The adoption of the Neypes rule is subject to the discretion of the administrative body.
2. Also not application to petitions for review under R64.

2. Appeals

a) Nature of Right to Appeal

(a) Mere statutory, not constitutional right.

4. A law can be passed providing that the judgment of a court will be final and executory, and not subject to appeal.
5. One who seeks to avail the remedy must comply with the requirements set forth by law or Rules for its exercise.
6. Mode of appeal is mandatory and jurisdictional. Availing of improper mode is ground for its dismissal.
7. No transfer rule: erroneous appeal shall not be transferred to the proper court but shall be dismissed outright.

(b) Review by higher court

1. Ground: judgement of lower court is against evidence or law (questions of fact or law).
2. A court cannot review the decisions of a co-equal court as this will violate the doctrine of non-interference or judicial stability.

b) Judgments and Final Orders Subject to Appeal

(a) Judgment after trial on the merits; (b) Final order that completely disposes of the case; (c) Particular matter in the case declared by the Rules to be appealable JFP

(a) Judgment after trial on the merits

(b) Final order that completely disposes of the case

1. Dismissal on ground of PURE
2. Grant of demurer to evidence
3. Judgment on the pleadings or summary judgment

(c) Particular matter in the case declared by the Rules to be appealable

1. Generally, in instances when multiple appeals are allowed as with special civil action and special proceedings.
2. In Expropriation, order of expropriation
3. In Foreclosure: (i) order of foreclosure; (ii) order of confirmation of the foreclosure sale; (iii) order denying motion for issuance of writ of possession; (iv)
4. In Partition, order of partition and accounting
5. Order dis/allowing will
6. Order denying motion for leave to file 3p complaint insofar as movant is concerned (since the denial ends the case for him)
7. Order denying motion for leave to intervene

c) Matters Not Appealable; Available Remedies

(a) Matters not appealable SPACE ID

1. An order denying a **petition** for relief or any similar motion seeking relief from judgement
2. **Interlocutory** order – (i) denial of MTD; (ii) OMB preventive suspension order; (iii) Order of probate court that certain properties should be included in the inventory; (iv) Order appointing special administrator. N.B.: Order appointing regular administrator is appealable under R106
3. An order disallowing or dismissing an **appeal** – e.g., dismissal on ground that appeal is not the proper remedy
4. An order denying a motion to set aside a judgment by **consent**, confession or compromise on the

<p>ground of fraud, mistake or duress, or any other ground vitiating consent</p> <ol style="list-style-type: none"> 5. An order of execution – e.g., MTC order in ejectment case approving survey report of court-appointed commissioners during execution (part of execution) 6. Severed or separate judgment, while the main case is pending, unless the court allows an appeal therefrom 7. An order dismissing an action without prejudice – (i) grant of affirmative defense on ground other than PURE: <u>FEPIDUE</u>, <u>FLINC</u>, <u>JRLP</u>; (ii) dismissal upon notice by plaintiff (except TDR); (iii) dismissal upon motion of plaintiff; (iv) false CAFS or non-compliance with undertaking 8. Judgments immediately final and executory – (i) judgment declaring presumptive death; (ii) judgement in cases of ejectment in favor of plaintiff; (iii) judgments in small claims cases; (iv) RTC judgment on appeal on cases covered by RRSP (one-step appeal). <p>(b) Available remedies</p> <ol style="list-style-type: none"> 1. MR – interlocutory orders are subject to control of court while the action is still pending. 2. R65 on ground of GADALEJ. 3. Refile, if dismissal without prejudice. 4. Proceed to trial and in case of adverse judgment, assign denial of motion as error on appeal. 5. In several/separate judgments: (i) Motion for leave to appeal [if granted, appeal via NOA/RONA]; (ii) wait for judgment on entire case to be rendered, then appeal. <p><i>**If an action was dismissed on various grounds including for both with or without prejudice, the dismissal is with prejudice and the proper remedy is appeal.</i></p>	
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d) Doctrine of Finality/Immutability of Judgment

Once a judgment or final order has attained finality, it can no longer be altered, changed, or amended, even by the highest court of the land, and even at the risk of occasional errors of fact and law. The public policy behind it is that there must be an end in controversy at some point in time.

A judgment attains finality if:

1. (i) no appeal, MR, MNT was filed within the reglementary period; (ii) the same has expired for the other party, or
2. An appeal was filed but already finally resolved by the highest court possible.

<p>Exceptions:</p> <ol style="list-style-type: none"> 1. Clerical errors 2. Nunc pro tunc entries which cause no prejudice to any party – (i) only intended to put on record a judicial act done at the former time which was not previously recorded; (ii) to put on record the court's interpretation or the effect of its former judgment. 3. Void judgments – encompass grounds under R38 (PRJ) and R47 (Annulment of Judgment): FAME, Lack of jurisdiction, Deprivation of due process 4. Supervening events which render execution unjust or inequitable <p><i>Execution of judgment</i></p> <ol style="list-style-type: none"> 1. Upon finality of judgment, the court does not lose jurisdiction but retains the power to control its execution as an essential aspect of jurisdiction. 2. Finality of judgment does not divest court of jurisdiction to execute its judgment. It only loses the power to amend, modify, alter the judgment. 3. Courts may intervene in the execution of judgment if supervening events²⁵ transpire which are: (i) unforeseen; (ii) render the decision unfair/unjust, or impossible. E.g., issuance of TRO to prevent execution of death penalty against Echegaray in view of Congress' deliberation on the repeal of death penalty law. <p>Remedies against F&E Judgments</p> <ol style="list-style-type: none"> 1. R38 PRJ 2. R47 Annulment of Judgment 3. R65 Petition for Certiorari 4. Collateral attack, if the judgment is void on its face <p>COA's jurisdiction over F&E judgments against the government</p> <ol style="list-style-type: none"> 1. It has no power to disturb, alter, or modify in any respect such judgments in violation of the principle of immutability of final judgments. This applies to awards rendered by arbitral tribunals as the CIAC. 2. It has no appellate review power over the decisions of any other court or tribunal. 3. Its exercise of discretion in approving or disapproving money claims that have been determined by final judgment is akin to the power of an execution court. 	
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²⁵ After judgment was rendered but before execution.

e) Modes of Appeal (Period, Perfection, Issues to be Raised)

Mode	Applicability	Rule	Issues raised	Period ²⁶	Perfection	Nature
Ordinary appeal (appeal as matter of right)	(a) MTC to RTC	40	Fact, law, or mixed	15/30 days NOA (motion for extension of time to file is not allowed)	Upon filing in due time (NOA)/ upon approval (RONA) filed in due time with the court of origin	Appeal by matter of right. – The appellate court is dutybound to take cognizance of the appeal; it has no discretion to reject
	(b) RTC (original jurisdiction) to CA	41				
Petition for review (discretionary appeal) ²⁷	RTC (appellate jurisdiction) to CA	42	Fact, law, or mixed	15 days	Timely filing of a petition for review and the payment of docket and other lawful fees with the appellate court	It is a matter of discretion; the appellate court may opt not to give due course. ²⁸ N.B.: there was already a prior appeal, hence the second appeal is only discretionary
	CTA, QJA to CA	43	Fact, law, or mixed	15 days		
Appeal by certiorari (petition for review on certiorari) ²⁹	Appeal to SC	45	Pure questions of law	15 days	Timely filing of a petition for review on certiorari and the payment of the docket and other lawful fees	Also, a discretionary appeal

(1) Appeal from Municipal Trial Courts to Regional Trial Courts (Rule 40)

<ol style="list-style-type: none"> Covers appeals from MTC judgments to RTC. Must be filed in the court of origin and docket fees paid therein. Proof of payment shall be transmitted to appellate court with the case records. Appeal as a matter of right. Appeal may be through: (a) Notice of Appeal (NOA), or Record on Appeal (RONA) 		
Distinctions	NOA	RONA
Period	15d from notice of judgment	30d from notice of judgment
Perfection	Upon filing of NOA in due time***	Upon approval by trial court in due time
Issues to be raised	Fact, law, mixed	Fact, law, mixed
***Coupled with payment of lawful fees, and expiration of period to appeal as to the other party		
(a) NOA		
<ol style="list-style-type: none"> Mere notice to the trial court that it is appealing from its decision with notice to adverse party. No need to allege factual and legal bases for the appeal. 		
(b) RONA		
<ol style="list-style-type: none"> Filed with NOA in cases where multiple or separate appeals is allowed. RONA is not required in all special proceedings, since not all SpecPro allows multiple appeals. Must be filed with NOA. The RONA must show on its face that the appeal was filed on time. This is mandatory and jurisdictional. If not stated, the appeal is dismissible. Motion for extension of time may be allowed (but not in NOA). Must be filed with the court of origin. 		
Residual jurisdiction		
<ol style="list-style-type: none"> Once appeal is perfected, the court loses jurisdiction over the case. XPN: residual jurisdiction. Residual jurisdiction is the power of the court to act on certain matters: (i) upon perfection of appeal; (ii) but before its transmission of the record or RONA to appellate court. It cannot be invoked where no appeal was perfected, or the judgment has already attained finality. Matters covered: PWICE (i) Issue orders for the protection and preservation of the parties' rights 		

²⁶ In stating periods, always include the reckoning point.

²⁷ Petitions for review are subject to the requirements of verification and CNFS.

²⁸ Appellate court may refuse to give due course if: (1) patently without merit; (2) manifestly dilatory; (3) TURC (too unsubstantial to require consideration). MTD

²⁹ *Id.*

which do not involve any matter litigated by the appeal; (ii) Approve **compromises**; (iii) Permit appeals of **indigent** litigants; (iv) Order **execution** pending appeal; (v) Allow **withdrawal** of the appeal.

Errors considered on appeal

- GR: (i) those assigned as errors; (ii) those **closely** related to an assigned error or upon which the determination of a question properly assigned, is **dependent**.
- XPNS: JVPC (i) Errors affecting subject-matter jurisdiction or validity of the judgment; (ii) Plain and clerical errors; (iii) Appeals to RTC under R40 wherein RTC can decide on the basis of the **entire records** of the case, memoranda of parties. RTC may take cognizance of other matters in the record and not only those assigned as errors by the parties.
- The error must be of fact and/or that is reversible on appeal and must substantially affect the right of parties.
- The appellate court should not reverse a decision the ground of an error or defect which does not affect the substantial rights of the parties (harmless error rule).

****There is no conceivable situation where appeal from MTC to RTC may be taken via Petition for Review.**

(2) Appeal from the Regional Trial Courts (Rule 41)

<ol style="list-style-type: none"> Covers appeals from RTC judgments acting in original jurisdiction to CA. Also covers appeal from MTC on decisions rendered in the exercise of RTC's delegated jurisdiction in land registration and cadastral cases. Must be filed in the court of origin and docket fees paid therein. Proof of payment shall be transmitted to appellate court with the case records. Appeal as a matter of right. Appeal may be through: (a) Notice of Appeal (NOA), or Record on Appeal (RONA) – see above. 	
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(3) Petition for Review from the Regional Trial Court to the Court of Appeals (Rule 42)

Period	15d from notice of judgment
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Perfection	Upon filing of Petition for Review in due time and payment of lawful fees with the appellate court
Issues to be raised	Fact, law, mixed; even pure questions of law

- Covers appeals from RTC judgments acting in appellate jurisdiction to CA.
- XPNS (one-step appeal): (i) [Under RRSP] decisions of RTC rendered in exercise of appellate jurisdiction in cases covered by RSP is final and executory. Remedy is R65; (ii) decisions of RTC sitting as special agrarian court acting in original jurisdiction is appealable via R42, not R41 by express provision of R.A. No. 6657.
- Must be filed in the appellate court and docket fees paid therein.
- Appeal is discretionary (since second appeal already). It may be dismissed outright on the ground that the appeal was (i) patently without merit; (ii) manifestly dilatory; (iii) too unsubstantial to require consideration.
- Must be verified.
- Must be filed within 15d from notice judgment. (i) Motion for extension of time to file is allowed once for 15d; (ii) second motion may be allowed but only on most compelling reason **MCR**

CA's authority to receive evidence is limited to instances (i) when it grants new trial (ii) based on newly discovered evidence (CA Rules). Under BP 129, CA has the power to (a) try cases, (b) conduct hearings, (c) receive Evidence, (d) perform acts necessary to resolve factual issues falling within its original and appellate jurisdiction.

(4) Appeals from the Court of Tax Appeals, Civil Service Commission, and Quasi-Judicial Agencies (Rule 43)

Period	15d from notice of judgment
Perfection	Upon filing of Petition for Review in due time and payment of lawful fees with the appellate court
Issues to be raised	Fact, law, mixed

- Covers appeals from QJA judgments in the exercise of quasi-judicial functions to CA.
- Must be filed within 15d from notice of judgment or award. (i) Motion for extension of time to file is allowed once for 15d; (ii) second motion may be allowed but only on most compelling reason **MCR**
- Fresh period rule is applicable.
- QJA must be copy furnished in the petition for review or other submissions as a nominal party.

Examples of covered cases:

- Including arbitral awards of Ph Clearing House Corporation notwithstanding PCHC rules stating that its awards are appealable to the RTC. SC ruled that such rule violates B.P. 129.
- Decision/FO or **special commercial court** rendered in civil case covered by 2020 IPR Rules, even if the SCC is an RTC acting in its original jurisdiction.
- Ruling of voluntary arbitrators or panel of arbitrators. (i) MR must be filed within 10d from

³⁰ N.B.: under LC, the decision of PVA shall become final and executory within 10d from notice. The application was clarified by SC in Guagua National Colleges case.

³¹ Section 24, R.A. 876 PEGDE

(1) the award was **procured** by corruption, fraud or other undue means; cofu
(2) there was **evident** partiality or corruption of the arbitrators or of any of them;
(3) the arbitrators were **guilty** of misconduct in refusing to hear evidence pertinent and material to the controversy;

notice of award; (ii) appeal via R43 within 15d from notice of denial of MR. ³⁰
4. Also: (i) issuance of CDO by SEC; (ii) DAR Secretary decisions rendered in its QJ capacity; (iii) SOJ decisions on legality of tax ordinance.
5. Rulings of OMB in administrative cases, except: (i) CREFS: Exoneration, Censure, Reprimand, Suspension ≤1m salary, Fine ≤1m salary [R65 CA final and unappealable] (ii) criminal cases [R65 SC].

Not covered:

- NLRC awards are not appealable via R43, not included in the enumeration of QJA.
- Those rendered not in the exercise of QJ powers: (i) issuance of IRR; (ii) cancellation and/or revocation of mining firm's FTAA (purely administrative); (iii) DENR Secretary's act of approving a mining company's MPSA.

Appeal from CIAC Arbitral Awards

- Appeal from CIAC Arbitral Awards. Notwithstanding its inclusion in the enumeration of QJA. CIAC awards shall be deemed exception to CA's appellate jurisdiction over appeals from quasi-judicial agencies. R.A. No. 9285 (2004) and E.O. No. 1008 (1985) prevail over B.P. No. 129 (1981). Scope of R43 includes both questions of fact and law. However, factual findings of CIAC shall not be subject to judicial review in view of its expertise.
- R45 to SC – (i) pure questions of law; (ii) as XPN to GR that only final judgments or order of "lower courts" (not QJA) may be appealed directly to SC via R45.
- R65 to CA – (i) limited questions of fact, i.e., (a) those bearing on the integrity of the tribunal's composition,³¹ and (b) tribunal's alleged violation of Constitution or laws in the conduct of the arbitral process.
- Change in mode of appeal apply prospectively.

(5) Appeals by Certiorari to the Supreme Court (Rule 45)

Period	15d from notice of judgment
Perfection	Upon filing of Petition for Review on Certiorari in due time and payment of lawful fees with the appellate court
Issues to be raised	Pure questions of law, generally

- Appeals from RTC (acting in original jurisdiction) or CA decisions based on pure questions of law to SC. XPNS: (i) SC may review questions of fact in case of appeals covered by the Rules on Writ of Amparo/Habeas Data [period to file is 5 working days]; (ii) Arbitral awards of CIAC is directly appealable to SC via R45, even if CIAC is not a court.
- If RTC acted in appellate jurisdiction, its decision is appealable to CA via R42, even if it raises pure questions of law.
- In criminal cases, appeal to SC may be taken by way of NOA in cases if conviction imposing the penalty of DRL.
- Question of w/n a court has jurisdiction over a case is pure question of law.

(4) one or more of the arbitrators were **disqualified** to act as such under Section 9 of R.A. 876, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or drop

(5) the arbitrators **exceeded** their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

5. Must be filed within 15d from notice of judgment. Motion for extension to file may be allowed only once for 30d based on justifiable reason.
6. Fresh period rule is applicable.

(6) Review of Judgments or Final Orders of the Commission on Audit and Commission on Elections (Rule 64)

Period	30d from notice of judgment
Perfection	Upon filing of Petition for Review in due time and payment of lawful fees with the appellate court
Issues to be raised	Jurisdictional error based on GAD, pure questions of law

1. Reviews of decisions of COA and COMELEC by SC.
2. Appeal on rulings of CSC is taken to CA via R43.
3. Must be filed within 30d from notice of judgment or order.
4. Period to file is interrupted by filing of MR. Fresh period rule is not applicable, in view of the express provision of R64.

(7) Dismissal, Reinstatement, and Withdrawal of Appeal

(a) Dismissal – Erroneous appeal shall not be transferred to the proper court but shall be dismissed outright (No transfer rule).

(b) Reinstatement – If appeal was dismissed, the appellate court retains jurisdiction to reinstate it for good cause. Only if the ground for dismissal is non-compliance with technical rules of procedure, but not if the dismissal was based on jurisdictional grounds.

(c) Withdrawal

1. Matter of right before filing of appellee's brief.
2. Discretionary after such filing.

3. Petition for Relief from Judgment (Rule 38)

Period	60/6 – 60d from notice of judgment, within 6m from entry
Grounds	FAME + meritorious claim or defense

1. May be availed when a final judgement was already rendered, and: (i) it was already entered or attained finality, or any other proceeding is thereafter taken against a party in any court through FAME; (ii) a party is prevented by FAME from taking appeal.
2. Ground: FAME which could not have been prevented by exercise of ordinary diligence, and the aggrieved party is probably prejudiced in his rights. Negligence or mistake of party or counsel is not ground for PRJ. XPN: when the mistake of counsel is so palpable that it amounts to gross negligence.
3. Mutually exclusive with MNT.

Requirements:

1. Must be filed in the TC which rendered the decision, although it is an original action and not a continuation of the proceedings of the trial court. A petition for relief from judgment is not an available remedy in the CA or SC.
2. Must be verified.
3. Must be filed within 60/6. – (i) 60d after notice of the judgment, final order, or other proceedings to be set aside; (ii) not more than 6m after entry of such judgment or final order, or such proceeding was taken. XPN: if the judgment is null and void.
4. Must be accompanied by Affidavits of Merits showing (i) the FAME relied upon, AND (ii) the facts showing the petitioner's good and substantial cause of action or defense.

Injunction:

1. May be issued by the court in which the petition is filed to enjoin the execution of the judgment from which relief is sought, subject to the filing of bond by the adverse party.
2. Such injunction shall not operate to discharge or extinguish any lien which the adverse party may have acquired upon the property of the petitioner. Partial execution of the original judgment will not longer be set aside but further execution will be prevented.

Court action:

1. If granted – (i) court shall set aside the judgment or other proceeding; (ii) case shall stand as if no such judgment or other proceeding was taken; (iii) court to proceed to hear and determine the case as if a timely MR/MNT was granted; (iv) if petitioner is prevented from taking appeal, the lower court shall be required to give due course to the appeal and elevate records to the appellate court as if proper appeal was made.
2. If denied – (i) not appealable, being a mere equitable remedy; (ii) remedy is R65.

4. Annulment of Judgment (Rule 47)

Period	4y from discovery or extrinsic fraud; imprescriptible if based on lack of jurisdiction
Grounds	(i) Extrinsic fraud, (ii) lack of jurisdiction, (iii) deprivation of due process

1. Annulment of judgments/FO: (i) of RTC by CA; (ii) of MTC by RTC.
2. Involves the exercise of original jurisdiction and implies the power of a superior court over a subordinate court, although it is not a mode of appeal.
3. Available only to assail judgments or final orders, but not a writ of execution which is neither.
4. Original action and independent action. It is not a mode of appeal, nor a continuation of the proceedings in the original case.
5. Equitable recourse allowed only under exceptional circumstances when there is no available or adequate remedy.
6. May be availed when a judgment has already attained finality, and the ordinary remedies of MNT, appeal, PRJ are no longer available through no fault of petitioner, or if the judgment is a nullity due to lack of SM jurisdiction.

When not available:

1. R47 cannot be filed in SC to annul judgments of the CA as the same is not provided under the Rules.
2. There is no action for annulment of judgments/FO of CTAD – (i) cannot be filed in CTA EB since (a) it will amount to an annulment of the court's own judgment, (b) there should be no recognition of hierarchy of courts within the CTA, and (c) it violates the principle of immutability of judgments; (ii) cannot also be filed with SC since there is no remedy for annulment of judgments in SC provided for in the rules; (iii) the proper remedy is R65 petition since there are no other PSA in the ordinary course of law.

Grounds: (a) Extrinsic fraud; (b) Lack of jurisdiction; (c) Deprivation of due process.

(a) Extrinsic fraud

1. Annulment of Judgment is not an available remedy if the petition could have availed of MNT/PRJ.
2. Must be filed within 4y from discovery.

(b) Lack of jurisdiction

1. Pertains to SM jurisdiction or personal jurisdiction, not GADALEJ. Excess of jurisdiction cannot be the

subject of R47 petition as it pertains to absence of jurisdiction not the excess thereof (Heirs of Borrás v. Borrás 2022 J. Hernando).

2. E.g., proceedings conducted without impleading an indispensable party.
3. Imprescriptible, but may be barred by laches.

If granted:

1. Questioned judgment/FO shall be set aside and rendered null and void.
2. If based on lack of jurisdiction, the original action may be refiled in proper court.
3. If based on extrinsic fraud, court may, on motion, order the TC to try the case, as if a timely MNT was filed.

5. Collateral Attack on Judgments

Collateral and direct attack on judgments:

1. A direct attack on a final and executory judgment is made through an action or proceeding the main object of which is to annul, nullify, set aside, or enjoin the enforcement of such judgment – e.g., R47, R65 petitions.
2. A collateral attack on the other hand is made when in another action or proceeding to obtain a different relief, an attack on the judgment is made as an incident on the action – e.g., raised as AFD in ANS.

GR: A judgment can only be subject to direct but not collateral attack.

XPN: Patent nullity. Collateral attack is proper when the judgment is void on its face – e.g., injunction case decided by MTC, and action incapable of pecuniary estimation within RTC's EOJ.

U. Execution, Satisfaction, and Effect of Judgments (Rule 39)

Execution is the remedy for the satisfaction of judgment based on its fallo. In case of conflict between the fallo and body of the decision, the fallo generally prevails.

1. GR: The perfection of an appeal stays the execution of judgment.
2. XPNs: (i) Discretionary execution pending appeal; (ii) Immediately executory judgments even pending appeal: IRAS – injunction, receivership, accounting, support; (iii) Judgment favorable to plaintiff in ejectment suit (also immediately executory); (iv) Other judgments which may later be declared as immediately executory.

*** Even immediately executory judgments still require that the execution must be by way of motion.*

Execution may be: (a) Matter of right, or (b) Discretionary.

(a) Execution as a matter of right

1. Only final and executory judgments may be executed. XPNs: (i) immediately executory judgments, (ii) discretionary execution.
2. A judgment attains finality if: (i) no appeal, MR, MNT was filed within the reglementary period; (ii) the same has expired for the other party, or (iii) an appeal was filed but already finally resolved by the highest court possible.
3. Issuance of writ becomes **ministerial** duty of court. XPN: (i) supervening events which will render the execution of final and executory judgment unjust or inequitable; (ii) the property is in the hands of 3p whose interest is adverse to that of the judgment debtor.
4. GR: Must be filed with court of origin. XPN: May be applied with appellate court to direct the court of origin to issue the writ of execution in the interest of justice.

Motion filed with court of origin

1. Motion for execution. (i) attaching certified true copy of the appellate court's decision, and entry of judgment, (ii) with notice to other party.
2. May be filed upon finality of judgment even before remand of case records with the court of origin.

Motion filed with appellate court

1. Presupposes that a motion for execution has already been granted by the appellate court. After the grant, the prevailing party may file a Motion to direct the court of origin to issue the writ of execution.
2. Only when the interest of justice so requires may motion be filed in the appellate court.

(b) Discretionary execution

1. Applies in: (i) Execution pending appeal; (ii) Execution of several, separate, partial judgments

Execution pending appeal

1. May be filed with trial court or CA – (i) with TC, if it still has residual jurisdiction; (ii) with CA, if case records were already elevated.
2. Not a matter of right since it is mere exception to the GR.
3. Must be (i) upon motion of prevailing party with notice to the adverse party; (ii) upon duly substantiated good reasons or compelling grounds (ii) to be stated in a special order after due hearing. Good reason is what confers the court discretionary power.
4. Example of good reasons: (i) debtor is insolvent and it appears that his source of income is being exhausted for personal needs; (ii) to prevent irreparable damage, cause immediate and necessary repairs; (iii) goods subject of the action will deteriorate or perish; (iv) financial distress of prevailing party who is a natural person, and the award is need for his subsistence or for other humanitarian reasons; (vi) mere filing of bond.
5. Example of not good reasons: (i) the appeal filed by losing party was unmeritorious, frivolous, or dilatory (subject to CA's determination); (ii) financial distress of winning company; (iii) only one of the solidary debtors is insolvent; (iv) prevailing party's husband was ill and the party was willing to post a bond (husband is not a party).
6. Moral and exemplary damages cannot be executed pending appeal since these are intrinsically related to the pendency of the proceedings, including how long it will take for it to terminate.
7. A final judgment is required, although it need not be final and executory.
8. Discretionary execution may be **stayed** upon approval by the proper court of a sufficient **supersedeas bond** filed by the party against whom it is directed, conditioned upon the performance of the judgment or order allowed to be executed in case it shall be finally sustained in whole or in part.
9. Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of **restitution or reparation** of damages as equity and justice may warrant under the circumstances.
10. If there is pending MR, the motion for execution pending appeal cannot be granted.

Modes of execution: (c) by motion; (d) by independent action.

(c) Execution by motion

1. Filed within 5y from entry of judgment.
2. 5y period is suspended in case of: (i) delays attributable to the defendant, or for his benefit or advantage; (ii) stay of execution either: (a) by agreement of parties for a definite time; (b)

<p>injunction; (c) by appeal or writ of error filed by judgment debtor to prevent the execution.</p> <ol style="list-style-type: none"> 3. Writ of execution remains effective within the 5y period within which the judgment may be enforced by motion. 4. If levy was made within the 5y period, sale may be made thereafter, provided, it is made within 10y from entry of judgment. <p>(d) Execution by independent action.</p> <ol style="list-style-type: none"> 1. If motion for execution was not filed within the 5y period above, execution may still be had via independent motion filed before it is barred by the statute of limitations, i.e., within 10y from entry of judgment.³² 2. Petition for Revival of Judgment – (i) Ordinary civil action; (ii) initiatory pleading; (iii) its cause of action is the F&E judgment sought to be executed, and no longer the cause of action relied upon in the original action; (iv) the merits of the original action may no longer be re-litigated; (v) subject to the rules on jurisdiction and venue applicable to original or ordinary actions, need not be filed in the court which rendered the decision. 3. Execution of the revived judgment may be made by motion within 5y from its entry, and thereafter, before it is barred by statute of limitations. 4. Under RRSP, MTC has jurisdiction over Petitions for Revival of Judgment render by MTC. <p>5/10y periods not applicable in:</p> <ol style="list-style-type: none"> 1. Land registration, cadastral cases wherein the right to ask for writ of possession is imprescriptible. Prescription does not lie against the registered owner. 2. Judgment for support which can always be executed by motion since the obligation is a continuing one and the court never loses jurisdiction to enforce the same. 3. If the judgment does not require execution, which is not a proper subject of execution. E.g., dismissal of action for failure to prosecute. <p><u>Execution based on subject matter: (e) Execution of judgments for money; (f) Execution of judgments for specific act; (g) Execution of special judgments; (h) Recognition and enforcement of foreign judgment</u></p> <p>(e) Execution of judgments for money</p> <ol style="list-style-type: none"> 1. In general: (i) demand for payment; (ii) if unable or insufficient: (a) levy on real property, (b) garnish on personal property; (iii) execution sale. 2. Sheriff must demand immediate payment from judgment debtor before levy in the form of cash, check payable to creditor, any other forms of payment acceptable to creditor. <p>Levy of real property:</p> <ol style="list-style-type: none"> 1. If he cannot pay, or insufficient, levy on properties of debtor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution. (i) obligor must be given option which properties to levy; (ii) failure to choose is deemed waiver of the right, the sheriff shall then levy on the personal property, then real properties. 2. Levy segregates the property of obligor for satisfaction of the judgment award and creates a lien thereon in favor of the judgment obligee. 3. Property levied shall be sold at public auction to satisfy the judgment award. <p>Garnishment of personal property:</p> <ol style="list-style-type: none"> 1. Garnishment may be availed of for personal property not capable of manual delivery, and 	<p>under possession or control of 3p – e.g., bank deposits, credits in favor of 3p.</p> <ol style="list-style-type: none"> 2. Done by: (i) service of notice upon the person having possession or control of credits in favor of judgment obligor; (ii) 3p shall make a report w/n the funds in his custody are sufficient to satisfy the debts of the judgment obligor. If sufficient, the amount of judgment debt shall be delivered to judgment obligee, meanwhile, the lawful fees shall be delivered to the court. 3. Garnishment may be availed of in parallel with levy. <p><i>Properties that may be levied/garnished:</i></p> <ol style="list-style-type: none"> 1. Properties unquestionably belonging to judgment debtor. 2. Not exempt from execution. 3. The VAWC Law authorizes claim for support based on retirement benefits or salaries of H [covers any claim from the “employer” without making any distinction as to whether the employer is private or government]. This prevails over the exemption from execution of retirement benefits of enlisted personnel under P.D. 1638. <p><i>Properties exempt from execution:</i></p> <ol style="list-style-type: none"> 1. Family home 2. Ordinary tools of trade 3. Beasts of burden (3) 4. Necessary clothing and personal articles 5. Household furniture and utensils 6. Provisions for individual or family use for four months 7. Professional libraries and equipment 8. One fishing boat and accessories of fisherman, not more than 100k 9. Salaries for his personal services within the four months preceding the levy necessary for the support of his family 10. Lettered gravestones 11. Life insurance benefits 12. Right to receive legal support from the Government 13. Properties specially exempted by law <p>**Exemption does not apply in cases of action for: (i) recovery of purchase price, and (ii) enforcement of lien on the specific property.</p> <p>Public sale:</p> <ol style="list-style-type: none"> 1. Property levied or garnished is sold at public auction. 2. Upon sale, title is immediately vested upon the purchaser (inchoate), subject to the judgment obligor’s right of redemption. 3. Redemption may be made within 1y from the date of registration of certificate of sale, during which the judgment obligor shall be entitled to the possession and fruits of the property. 4. It is the failure to redeem which divests the owner of rights over the property. <p>(f) Execution of judgments for specific act</p> <ol style="list-style-type: none"> 1. In general: (i) pertains to judgments requiring the person directed in the order to perform specific acts; (ii) may be satisfied by personal or substituted performance. 2. Action for conveyance of property 3. Sale of property 4. Judgment for delivery or restitution of real property 5. Removal of improvements – (i) requires special order of the court (issued on motion and upon hearing) + reasonable opportunity for the defendant to remove the same; (ii) only if there is
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³² Art. 1144 NCC.

<p>failure to remove the improvements despite notice may these be demolished.</p> <p>6. Delivery of personal property</p> <p><i>Judgment for delivery or restitution of real property</i></p> <ol style="list-style-type: none"> 1. In ejectments cases. 2. [Three-day notice rule] Officer shall demand the losing party to vacate peaceably within 3wd and restore possession to the property of obligee by giving him notice of the writ of execution and making demand for him to comply with the same within a reasonable time (usu. 3-5 days). N.B.: Writ in ejectment cases cannot be enforced in the same day that the sheriff received the same. 3. In case of refusal, sheriff may bodily remove the defendant and his belongings from the property. If necessary, help of peace officers may be sought, and any other reasonable means may be employed. 4. GR: Contempt is not a remedy against the respondent or judgment obligor since the writ of execution is directed to the sheriff. XPN: If the defendant executes acts of possession or ownership, he may be held in contempt. <p>(g) Execution of special judgments</p> <ol style="list-style-type: none"> 1. Requires the performance of any other act that those in §9 (money judgment) and §10 (specific acts) 2. Failure to comply is punishable by contempt. 3. E.g., Judgment for recognition of illegitimate filiation. <p>(h) Recognition and enforcement of foreign judgment</p> <ol style="list-style-type: none"> 1. In action in rem, foreign judgment is deemed conclusive upon the title to the thing. 2. In action in personam, the foreign judgment is merely presumptive, and not conclusive, of a right as between the parties and their successors in interest by a subsequent title. 3. In both cases, the foreign judgment is susceptible to impeachment in our local courts on the grounds of: (i) want of jurisdiction or notice to the party, (ii) collusion, (iii) extrinsic fraud, or (iv) clear mistake of fact or law. JCEM 4. Foreign judgments cannot be taken judicial notice by Ph courts and must be proven as facts. 5. R108 Petition for Cancellation/Correction entry in the civil registry may be availed of for the recognition of foreign divorce and decree, and make the related cancellation/correction of entries. <p><u>Remedies against execution:</u></p> <ol style="list-style-type: none"> 1. R65 2. Quashal of writ of execution – available only in exceptional circumstances as when: (i) the writ varies the judgment; (ii) supervening events; (iii) writ directed against exempt property; (iv) controversy never submitted to judgment of court; (v) terms of judgment not clear enough and there remains room for interpretation; (vi) writ was improvidently issued; (vii) writ is defective in 	<p>substance, issued against wrong party, or judgment debtor was declared paid or otherwise satisfied or writ was issued without authority.</p> <ol style="list-style-type: none"> 3. Terceria 4. Examination of judgment debtor – (i) to appear and be examined concerning his property and income; (ii) persons other than the judgment debtor may also be examined; (iii) RTC Pasig can examine the officers of judgment obligor corporation whose principal business address in Makati City based on the RTC's supervisory control over its executory process, notwithstanding last sentence of R39 S36³³ 5. 6. Motion for installment payments – to require judgment obligor to pay in fixed monthly installments where his salary or earnings are more than necessary for the support of his family. <p><i>Terceria</i></p> <ol style="list-style-type: none"> 1. Remedy of a person not party to an action whose property was made the subject of execution. 2. 3p executes an affidavit (i) setting forth his title or right of possession over the property and stating the grounds for the title; (ii) serving the same upon the officer making levy and on judgment obligee; and (iii) filing the same with the Court. 3. Under jurisprudence, the 3p must show that he has prima facie/bona fide claim over the property. 4. The officer served shall not be bound to keep levied property. XPN: If the obligee files a bond to indemnify claimant in sum not less than the value of property levied, approved by the court to indemnify the third-party claimant. 5. Action against the bond must be filed within 120d from its filing. 6. This is without prejudice to the other remedies that may be availed of by the 3p to vindicate his claim. (i) File motion before the court who decided the case; (ii) Action to nullify the levy; (iii) Action for recovery of possession of the property wrongfully seized with damages as against the sheriff or anyone who colluded with him (cumulative remedies). 7. Terceria is not applicable in case of demolition. It applies only in cases of money judgment where there is levy of the debtor's property, not when the judgment sought to be executed is for performance of a particular act. <p><u>Death of either party</u></p> <ol style="list-style-type: none"> 1. Of judgment obligee – execution may issue upon the application of his executor, administrator or successor in interest. 2. Of judgment obligor – (i) judgment based on contract shall be presented as claim against the estate; (ii) judgment not based on contract shall be executed against E/A.
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³³ No judgment obligor shall be so required to appear before a

court or commissioner outside the province or city in which such obligor resides or is found.

IV. Provisional Remedies

A. Nature, Purpose, and Jurisdiction Over Provisional Remedies

Comparison	Attachment	Injunction	Receivership	Replevin
Purpose	Security for the satisfaction of the award or judgment	To preserve status quo pending determination of case on the merits; prevent grave or irreparable injury	To preserve property; prevent loss, dissipation, wastage	To recover possession of personal property
Relief	Levy/garnishment of property	Restrain or require the performance of act/s	Appointment of administrator	Delivery of personal property
Jurisdiction	Court where action is pending	Court where action is pending, SC/CA or any of its members	Court where action is pending, SC/CA or any of its members	Court where action is pending
When filed	At the commencement of action or at any time before entry of judgment	At any stage of action or proceeding, prior to judgment or final order	During pendency of action in TC, or even during pendency of appeal	At the commencement of action or at any time before answer
Nature	Ancillary	Ancillary or primary	Ancillary or primary	Ancillary
Grounds	Generally, fraudulent concealment, disposition of property to subvert the award; or defendant tries to abscond	Generally, the damage, injury or injustice that may be caused to the applicant as a result of the commission or continuance of defendant's act/s	Generally, property or fund is in danger of being lost, wasted, etc.	Generally, ownership or rightful possession of property unlawfully deprived
Requirements	Affidavit and bond	Affidavit and bond	Affidavit and bond	Affidavit and bond
Bond	Amount fixed by court	Amount fixed by court	Amount fixed by court	Double the market value of property stated in the applicant's affidavit
Summons	Prior and contemporaneous to levy or attachment	Prior and contemporaneous with notice of raffle	Not applicable	No requirement; only service of order to defendant
Counterbond	Available to discharge the attachment	Available to dissolve the injunction but conditional on the defendant's showing that he will suffer grave or irreparable injury, and the applicant can be fully compensated	Available to deny/discharge the receiver	Available require return of the property
Additional bond	None	None	Receiver's bond	None
Terceria	Applicable	Not applicable	Not applicable	Applicable

B. Preliminary Attachment (Rule 57)

Nature	(i) Directed upon the properties of the adverse party constituting the same as security of the satisfaction of the claims of the plaintiff; (ii) it is an invasive/oppressive measure; (iii) Ancillary to a main action, although independent thereof; (iv) Creates lien over the property
Purpose	(i) Primarily, to secure the satisfaction of the award or judgment; (ii) may also be availed to acquired jurisdiction over the action by actual or constructive seizure of the property
Jurisdiction	With the court where the main action is pending

- Must be filed at the commencement of action or at any time before entry of judgment. Either included in the complaint, or in a separate petition.
- May be issued ex-parte or upon motion with notice and hearing.

Exclusive grounds: **CAFERN**

- Against a party who is **about** to depart from the Philippines with intent to defraud his creditors.
- In an action for money or property **embezzled** or fraudulently misapplied or converted to his own use by a public officer, or any officer/person in a fiduciary capacity, or for a willful violation of duty.
- Against a party who **conceals**, removes, or disposes **CRD** of property unjustly or fraudulently taken to prevent it from being found or taken by the applicant or an authorized person.
- Against a party who has been guilty of a **fraud** in contracting the debt or incurring the obligation.
- Against a party who has **removed** or disposed of his property, or is about to do so, with intent to defraud his creditors.
- Against a party **non-resident** not found in the Philippines.

Notes:

- Mere failure to pay despite repeated demands does not automatically constitute fraud, which must be alleged with sufficient particularity.
- Cannot be the subject of WPA: (i) moral damages; (ii) exemplary damages; (iii) unliquidated or contingent claims. **MEU**

General requirements: Affidavit of merit + Attachment bond

- Affidavit of merit – (i) existence of sufficient **cause** of action; (ii) **grounds**; (iii) no **sufficient** security **CGS**
- Attachment bond – Executed to the adverse party to answer for costs and damages that may result from the issuance of WPA.

Stages:

- (i) Order granting the application; (ii) Issuance of writ; (iii) Implementation.
- Writ of attachment is directed to the sheriff ordering him to attach the property of the adverse party: (i) sufficient to satisfy the applicant's demand, and (ii) not exempt from execution, unless the latter makes a deposit or gives counterbond.

Implementation:

- Personal jurisdiction is not required for the first two, but mandatory at the stage of implementation since it is when the court implements coercive measures. Hence, enforcement of the writ shall be made with prior or simultaneous service of summons.
- Property to be attached must be: (i) in Ph; (ii) sufficient to satisfy the applicant's demand; (iii) not be exempt from execution.
- After attachment, the sheriff must execute a return indicating: (i) Full statement of proceedings; (ii) Complete inventory of property attached; (iii) Counter-bond given, if any.

- Property attached may be sold at public auction if: (i) perishable, or (ii) interests of the party will be subverted by the sale. Proceeds shall be deposited in court to be disposed based on the judgment on the action.

Manner of attachment:

- Real property – (i) By filing a copy of order of attachment with the RD; (ii) by leaving a copy thereof with the occupant or his agent.
- Personal property capable of manual delivery – (i) By taking and safe-keeping in his custody; (ii) by issuing receipt therefor.
- Stocks, shares, interest – By leaving a copy of the writ and notice of attachment, with the president or managing agent.
- Personal property not capable of manual delivery – By leaving a copy of the writ and notice of attachment, with the debtor or, the person having control of the credit.
- Interest in property belonging to estate – (i) By serving a copy of the writ and notice of attachment, to the E/A or personal representative of decedent; (ii) filing the same with the court where estate proceedings is pending; (iii) serving the same to heir, legatee, devisee.
- Property in custodia legis – (i) By filing a copy of the writ with the proper court or QJA; (ii) By serving notice of attachment upon the custodian.

Discharge of attachment:

- Two modes: (i) by cash deposit or counterbond; (ii) by other grounds through a Motion to discharge attachment.

By cash deposit or counterbond

- Does not require any other ground.
- The deposit or bond stands as security for the satisfaction of judgment in lieu of the property sought to be attached.
- Must be upon motion for discharge on security given and after due notice and hearing.
- Action on the bond may be had: (i) when judgment become executory; (ii) after demand from sureties; and (iii) after notice and summary hearing in the same action.
- Standby Letter of Credit, Certificates of title cannot substitute cash deposit or counterbond.

By other grounds

- Does not require deposit or counterbond.
- Grounds: **IBE** (i) improper or irregular issuance or enforcement [e.g., not based on exclusive grounds]; (ii) insufficiency of attachment bond; (iii) excessive attachment – which were not cured forthwith.
- Discharge may be made upon notice and hearing.
- The party against who the attachment was directed who prevailed in having the same discharged may also be awarded damages.
- The defendant may not move for the discharge of attachment when it is issued upon the same ground which is at the same time the applicant's cause of action by showing the falsity of the claims. Otherwise, the hearing will amount to an adjudication on the merits.

***When property attached is claimed by a 3p, Terceria is available remedy (See discussion on Execution of Judgments).*

Disposition of attached property

- If attaching party prevails: (i) the property attached shall be sold and proceeds thereof applied to satisfy the judgment; (ii) deficiency may be collected as in ordinary execution; (iii) excess shall be returned to the judgment obligor.

- If adverse party prevails: (i) the property attached, or its proceeds shall be delivered to him; (ii) attachment shall be discharged; (iii) adverse party may recover on the attachment bond upon notice and hearing, which award shall be included in the final judgment.

C. Preliminary Injunction (Rule 58)

Nature	(i) An order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency, or person, to refrain from/perform a particular act or acts; (ii) may be a main case or merely ancillary to another case; (iii) oppressive/intrusive remedy.
Purpose	To preserve the status quo until the merits of the case can be heard fully
Jurisdiction	(i) Court where the action is pending; (ii) SC/CA, or any of their members

- May be granted at any stage of action or proceeding, prior to judgment or final order
- A status quo ante order **SQAO** is akin to a TRO which is automatically dissolved upon dismissal of the main case.
- Status quo is the last actual, peaceful, uncontested status of the parties that preceded the actual controversy, i.e., that which existed at the time of the filing of the case.
- The provision in OMB Law which bars courts from issuing a TRO or WPI against investigation conducted by OMB is unconstitutional for encroaching on SC's rulemaking authority.
- If the propriety of issuance of WPI was questioned before an appellate court, (i) the issuing court loses jurisdiction; (ii) the dissolution by issuing court despite pending appeal amount to GAD and violates judicial courtesy.

Kinds: (i) Preliminary prohibitory injunction; (ii) Preliminary mandatory injunction

- PPI – An order to **refrain** from particular act/s
- PMI – An order to **perform** particular act/s

Requisites: CMU

- Applicant's **clear** and unmistakable right to be protected which is directly threatened by an act sought to be enjoined – (i) injunction is not available if the right is doubtful, disputed, contingent, or vitiated by any substantial challenge or contradiction.
- Material** and substantial invasion of applicant's right.
- Urgent** and paramount necessity **UrPaN** for the injunction to prevent the serious/irreparable damage. – (i) must be incapable of pecuniary compensation; (ii) the application/petition for injunction must not allege any amount of damages, otherwise, it may be denied.

Requirements for application: Affidavit + Injunction Bond

- Affidavit – (i) must be verified; (ii) showing facts which entitles the applicant to the relief demanded.
- Injunction Bond – (i) Executed to the adverse party to answer for costs and damages that may result from the issuance of WPI/TRO; (ii) served to the other party; (iii) WPI shall be issued upon approval of bond.

Application in Complaint:

- Complaint shall be raffled only after notice to and in the presence of the adverse party or person to be enjoined.
- Prior or contemporaneous service of summons with the notice to the defendant, who must be in the Ph.

- Summary hearing to be conducted within 24 hours after sheriff's return of service and/or records are received by the branch.
- Action on the application shall be made only after parties are heard in summary hearing.

Grant and effectivity

- GR: Hearing and prior notice to the party or person to be enjoined is required before preliminary injunction may be granted.
- XPns: (i) 20d ex parte TRO; (ii) 72h ex parte TRO. **The total period of effectivity of TRO shall not exceed 20d, including the original 72h.** Ex parte injunctive relief cannot be issued, only ex parte TRO.
- TRO ipso facto loses effectivity upon expiration of period. No court can extend the same for the same reason it was issued.
- If issued by CA, 60d; if by SC, effective until further orders.

20d ex parte TRO

- 20-day ex parte TRO from date of service may be issued.
- Great or irreparable injury** to applicant before the matter can be heard on notice is shown.
- Within the 20d the judge must order defendant to (i) show cause why injunction shall not be granted; (ii) determine propriety of its issuance: (ii) render the proper order.

72h ex parte TRO

- 72-hr ex parte TRO from issuance may be issued by Executive/Presiding judge (before raffle) – (i) if EJ, limited to 72h; (ii) if PJ, 72h-20d.
- If **extreme urgency and grave injustice and irreparable injury** to the applicant before the matter can be heard on notice is shown.
- Within 72h, judge shall conduct summary hearing to determine propriety of extending TRO until application for preliminary injunction can be heard.

Grounds for dissolution:

- Insufficiency of application
- Other grounds – (i) change in the status quo; (ii) resolution of the application will require a determination of the merits of the case; (iii) applicant's right is doubtful or disputed.
- (i) Irreparable damage to the person enjoined, (ii) while applicant can be fully compensated for damages he may suffer, (iii) person enjoined files a bond.
- Extent too great (modification).

Judgment:

- Final injunction may be issued if it appears that applicant is entitled to have the act/s complaint of permanently enjoined.
- If not, the defendant may recover on the injunction bond after notice and hearing, which award must be included in the judgment.

Government infrastructure projects:

- TRO/WPI cannot be issued to stop government infrastructure projects (R.A. No. 8975). However, RTC has power to issue permanent injunctions.
- SC has power to issue TROs or WPIs on government infrastructure projects.
- If the TRO is needed in the interim, the petitioner cannot resort directly to SC as it will violate the DHC. Effectively, TRO/WPI is not available as interim relief to the party.
- The prohibition from issuance of TRO/WPI applies only to courts and not to a cease-and-desist order issued by the National Commission for Culture And The Arts.

D. Receivership (Rule 59)

Nature	(i) Remedy to place the subject matter of litigation under the administration of a person appointed by the court to prevent loss, damage or injury; (ii) Auxiliary remedy
Purpose	Prevention of imminent danger to property
Jurisdiction	(i) Court where the action is pending; (ii) SC/CA, or any of their members

- Requirements for application: Affidavit + Bond
- Failure to comply with court order to deliver property to receiver is punishable by contempt.
- A receiver may perform acts of administration, but the investment of funds requires (i) court order, and (ii) written consent of all the parties.
- Receivership may be terminated if necessity for receiver no longer exists, either motu proprio, or on motion, and after notice and hearing. Defendant may recover on the applicant's bond after notice and hearing, which award must be included in the judgment.

Grounds: PMAF

- Property subject of the action is in danger of being lost, removed, or materially injured **LRM** unless receiver is appointed to administer and preserve the same.
- Stipulation in mortgage contract, if the collateral is in danger of being wasted, dissipated, or materially injured and that its value is probably insufficient to discharge the mortgage debt.
- After judgment, to preserve the property pending appeal, dispose it according to the judgment, otherwise carry judgment into effect.
- In other cases where the appointment of receiver is the most feasible and convenient means of preserving, administering, or disposing the property in litigation. **FC PAD**

Bonds:

- Applicant's bond – (i) executed by applicant to the defendant to answer for costs and damages that may result from the appointment of receiver; (ii) condition precedent for appointment of receiver.
- Counterbond – executed by defendant to the applicant to discharge the order for appointment of receiver.
- Receiver's bond – filed by receiver before entering his duties.

E. Replevin (Rule 60)

Nature	Application for the recovery and delivery to a party of the possession of personal property subject of the action
Purpose	(i) Both principal (to recover) and provisional remedy (to retain pending action); (ii) partly in rem (re: recovery of property) and personam (re: recovery of damages)
Jurisdiction	Court where the action is pending

- Must be applied for at the commencement of action or at any time **before answer**.
- Right to break in is inherent in replevin if: (i) property is concealed a building or enclosure; (ii) sheriff made a prior demand of delivery; (iii) property was not delivered.
- Defendant is entitled to return of the property if: (i) he files a counterbond, or (ii) the property was not delivered to the applicant.
- Judgment on the case shall include: (i) a determination of who has the right of possession over the property; its valuation; the delivery of property or payment of its value to the person entitled, and (ii) award of damages and costs, OR (iii) award of damages to defendant from the replevin bond after notice and hearing.

5. If the replevin case was dismissed, the writ of seizure becomes functus officio (ancillary). The property must be restored to the prior possessor.

Requirements for application: Affidavit + Replevin Bond

1. Affidavit – (i) applicant is the owner or rightful possessor of the property particularly described; (ii) it is wrongfully detained by the defendant; (iii) it is not placed in custodia legis; (iv) actual market value.
2. Replevin Bond – 2x the market value stated on the Affidavit, executed to the defendant for: (i) return of property, (ii) damages that may result from the taking.

***When property attached is claimed by a 3p, Terceria is available remedy (See discussion on Execution of Judgments).*

V. Special Civil Actions

A. Jurisdiction and Venue

B. Interpleader (Rule 62)

Jurisdiction	MTC/RTC – (i) if SM is real or personal property, depending on assessed value; (ii) if SM is performance of obligation, IPE
Venue	R4 depending on whether real or personal action

Proper in a case involving conflicting claims upon the same SM, where the claims are made against a person who either: (i) has no interest in the SM; (ii) whose interest over it is undisputed by the claimants.

1. Requisites – (i) two or more conflicting claimants, (ii) claim the same SM, (iii) against one has no or undisputed interest.
2. The party against whom the claims are made may file an interpleader action to compel the claimants to litigate among themselves.
3. Upon filing, other actions shall be suspended pending determination of the parties' rights in the interpleader case. E.g., another court may not take cognizance of a replevin case despite notice of pending interpleader case. Otherwise, it will be guilty of GAD and disrespect of co-equal branch.
4. Even if the defendants are identified and made to litigate as between or among themselves, the case will not be dismissed on the ground that plaintiff has no interest in the case. It is necessary for the plaintiff to be a party to bind him to the court's decision.
5. Each of the conflicting claimants may file MTD on ground of impropriety of the interpleader action, in addition to other grounds under R16 (rules on special civil actions primarily governs) within the period for filing answer (15d). (i) filing of MTD tolls the running of period to file answer, (ii) if denied, the defendant may file answer within the remaining period or 5d, whichever is longer.
6. A conflicting claimant may be declared in default if he fails to file an answer, on motion of the other party.

C. Declaratory Relief and Similar Remedies (Rule 63)

Jurisdiction	For declaratory relief: RTC (IPE)
	For similar remedies: MTC/RTC – (i) if SM is real or personal property, depending on assessed value; (ii) if SM is performance of obligation, IPE
Venue	R4 depending on whether real or personal action

1. SC generally has no original jurisdiction over petitions for declaratory relief even if: (i) pure questions of law, or (ii) the instrument to be construed is the Constitution. XPN: transcendental importance.

Two types of relief: (a) Declaratory Relief; (b) Similar Remedies

1. Court action on declaratory relief is discretionary while it is mandatory for similar remedies.
2. Declaratory relief does not involve an actual case or controversy; similar remedies do.

(a) Declaratory Relief

1. Proper if: (i) A person is interested under written instrument, and (ii) his rights thereon are affected by a government regulation, (iii) before the breach or violation of such right. He may file an action for declaratory relief: (iv) to determine the question of construction or validity arising from the instrument, and (v) for the declaration of the rights and duties under the relevant government regulation.
2. It requires that there be no adequate remedy available through other existing forms of action or proceeding.
3. Court action is discretionary as it may refuse to exercise its power to construe the instruments and declare the rights of the parties: (i) the decision will **not terminate** the uncertainty or controversy; or (2) where declaration is **not necessary** and proper under the circumstances.
4. All those whose interest will be affected by the declaration shall be made parties. If not impleaded, they are not bound. – (i) SolGen must be notified and heard if at issue is the validity of statute, EO or government regulation, or the constitutionality of an ordinance; (ii) public prosecutor of public attorney of LGU, in case of ordinances [although they need not be impleaded].
5. E.g., declaratory relief is proper to: (i) question the validity of GSIS rules on the computation of retirement benefits, (ii) ordinance imposing duty to pay business permits upon dentists when they are exempted under a DILG Circular.
6. Not proper in: (i) political questions; (ii) declaration of citizenship; (iii) moot and academic questions; (iv) to challenge PAN issued by BIR.

(b) Similar Remedies **RQ RC**

1. Reformation of instrument
2. Quieting of title
3. Removal of clouds
4. Consolidation of ownership

D. Certiorari, Prohibition, and Mandamus (Rule 65)

1. Definition and Distinctions

Distinctions	Certiorari	Prohibition	Mandamus
Directed against public respondent (tribunal, board, officer TBO)	Judicial or QJ	Judicial, QJ, ministerial	Ministerial
Error of jurisdiction	(i) Lack, excess, GADALEJ; (ii) no PSA remedy in OCL	Lack, excess, GADALEJ; (ii) no PSA remedy in OCL	(i) Unlawful neglect to perform positive duty; (ii) unlawful exclusion of a person from due enjoyment of right or office; (iii) no PSA remedy in OCL
Primary relief sought	Annulment or modification of judgment or proceedings	Desistance from further proceedings in the matter specified	(i) Performance of the ministerial duty; (ii) payment of resulting damages
Common formalities	Verified, CAFS	Verified, CAFS	Verified, CAFS
Common procedural requirement	Prior MR	Prior MR	Prior MR
Accompanying documents	CTC of judgment, order, resolution	CTC of judgment, order, resolution	N/A since no judgment, order, or resolution, only refusal to perform an act
Nature of remedy	Corrective remedy; used for re-examination of some action of an inferior tribunal	Preventive remedy	In the nature of a special judgment, i.e., one which directs the performance of a specific act
SM	Directed to the cause or proceeding in the lower court and not to the court itself	Directed to the Court itself	Directed to the Court itself

2. Requisites, When, and Where to File

Generally, Petitions for CPM are resorted to correct jurisdictional errors and keep lower courts within the bounds of their jurisdiction. Jurisdictional errors may pertain to: (i) want of jurisdiction, (ii) excess of jurisdiction, (iii) GADALEJ.

1. Without jurisdiction – the court acted with absolute lack of authority, legal power, or right to hear and determine a cause/s.
2. In excess of jurisdiction – the court transcends its power or acts without any statutory authority; or results when an act, though within the general power of a tribunal, board or officer (to do) is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting.
3. With grave abuse of discretion – capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.

When and where to file:

1. When – 60d from notice of judgment, subject to fresh period rule.
2. Where to file:
 - i. RTC, for acts/omissions of MTC, TBO
 - ii. CA, for acts/omissions of RTC, TBO, or QJA [exclusive], w/n in aid of appellate jurisdiction
 - iii. SB, for acts/omissions of RTC, TBO, only in aid of appellate jurisdiction
 - iv. COMELEC, for acts/omissions of MTC, RTC in election cases.
 - v. SC (i) following hierarchy of courts, unless direct resort to SC is justified upon showing of special and important reasons, clearly and specifically set out in the motions, (ii) to review acts of any branch or instrumentality of the government where there is allegation of GAD under expanded judicial review.
3. Public and private respondents must be joined. Public respondent is mere nominal party.

4. Courts may issue TRO/WPI to enjoin related proceedings below. Otherwise, the latter shall proceed.
5. If found patently unmeritorious: (i) damages may be adjudged against petitioner up to 3x the costs; (ii) petitioner and counsel shall be solidarily liable; (iii) erring lawyer may be subject to disciplinary actions.

Nature:

1. Original and independent action, not a continuation of the proceedings below. CAFS required.
2. Its filing does not interrupt the proceedings in the lower courts, and the latter must proceed with the principal case within 10d from the filing of the petition. XPN: If the superior court issued TRO or WPI, upon application of petitioner showing meritorious ground and urgency to prevent serious damage.
3. It does not divest the court of jurisdiction over the principal case validly acquired.

Certiorari

1. Not a substitute for lost appeal. (i) Appeal and certiorari are mutually exclusive; (ii) If appeal is available, it must be resorted to, even if one of the imputations is that the TC acted with GADALEJ; (iii) XPN: if appeal is not PSA remedy, e.g., as remedy to question grant of motion for execution pending appeal, R65 may be filed despite pendency of the appeal.
2. Writ of certiorari is prerogative writ, not demandable as a matter of right, and never issued except in the exercise of sound judicial discretion. One who seeks of the writ must apply for it in the manner and strictly in accordance with the provisions of the rule.
3. Generally, only questions of jurisdiction may be raised. XPN: SC may consider pivotal factual matters overlooked by the lower court in the interest of substantial justice.
4. c.f.: expanded concept of judicial review under Const. VIII(1). Even when a branch or instrumentality of the government does not perform a judicial, quasi-judicial, or ministerial function, the Constitution mandates the exercise of judicial review when there is an allegation of grave abuse of discretion.

5. Issuance of writ of certiorari is a judicial function, it cannot be issued by a QJA.
6. A court may treat a R65 Petition as R45 if: (i) filed within the reglementary period; (ii) errors of judgment are averred; (iii) there is justifiable reason for the relaxation of the rule.

When available:

1. Immediately final and executory judgments – (i) Summary judgment/Judgment on the pleadings; (ii) Judgment of acquittal; (iii) Judgment declaring presumptive death under FC Art. 41; (iv) Cases covered by Small Claims Rules, RRSP (after one appeal to RTC)
2. PC determination – (i) SOJ resolutions in affirming, reversing, or modifying the resolutions of prosecutors – the determination of PC is not a QJ function subject to appellate review of CA under R43. It is also not a ministerial function; (ii) OMB's determination of PC.
3. Default judgment, if there is GADALEJ.
4. Interlocutory orders.

When not available:

1. Denial of MTQ since the PSA remedy is to proceed with trial, and in case of adverse judgment, assign the denial of MTD as error on appeal, unless there is GADALEJ.
2. Issuance of writ of possession to purchaser in public action since the duty is ministerial despite pending issue of the nullity of the EJ foreclosure. Its performance is compellable by mandamus.
3. Withdrawal from Rome statute which is a political question.
4. Denial of 3p claim (Terceria) – not subject to appeal (non-party), nor R65 since there is PSA remedy, i.e., the filing of separate reivindicatory action.

Mandamus:

1. Covers only ministerial duties, i.e., one required under the law to be performed resulting from office, trust, or station. If discretionary act, mandamus may lie only to compel the performance of an act but not to control the exercise of discretion (e.g., a court cannot be compelled to grant a MNT, although it may be required to act on the motion).
2. Requisites: (i) the petitioner must have clear and unmistakable right to the performance of the act demanded; (ii) the respondent has clear and peremptory duty enjoined by law or by reason of official station.
3. Writ of execution may issue to compel the performance of the ministerial act, as well as for the satisfaction of award of damages.
4. Non-compliance is punishable by contempt (in the nature of special judgment).
5. Not available – (i) To enforce contractual obligations; (ii) to compel parties to enter into a contract (e.g., the award of a contract to the winning bidder); (iii) to compel the filing of criminal information (executive function discretionary to the prosecutor); (iv) to confer degree, awards, distinctions in the military service (discretionary, part of academic freedom); (v) to compel DepEd to deduct union fees from the teachers' salaries (the union has no right to compel).

Court actions not subject to appeal, CPM:

1. Order denying demurrer to evidence
2. Court action on motion for judgment on the pleadings
3. Court action on motion for summary judgment

3. Exceptions to Filing of Motion for Reconsideration Before Filing Petition

GR: prior MR is mandatory, which is considered the PSA in OCL.

XPNS:

1. Pure questions of law.
2. Public interest is involved.
3. Extreme urgency is obvious as any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable.
4. Special circumstances warrant immediate or more direct action.
5. Order is a patent nullity, as where the court a quo has no jurisdiction, or there is deprivation of due process (including ex parte proceedings where petitioner had no opportunity to object).
6. Questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court or are the same as those raised and passed upon in the lower court.
7. If under the circumstances, a motion for reconsideration would be useless.
8. In a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable.

****N.B.:** *there are rules under ordinary civil action where MR is prohibited, e.g., on the court action on the affirmative reliefs.*

E. Quo Warranto (Rule 66)

A demand by the state against some individual or corporation to show by what authority they are holding a franchise or privilege appertaining to the state, which by the Constitution and laws they cannot legally exercise without grant and authority from the state. It is an action against the usurpation of public office, position, or franchise.

1. Purpose: (i) To determine the right to the contested public office, privilege or franchise; (ii) to oust the holder from its enjoyment, if proper.
2. Collateral attack on title to public officer's title is not allowed. The proper remedy is a direct attack via quo warranto proceedings.
3. Grounds: **UFC** (i) **Usurpation** of public office, position or franchise; (ii) a public officer commits a ground for the **forfeiture** of his office; (iii) **corporations de facto**.
4. Judgment on quo warranto proceedings is **prospective**. It does not include correction or reversal of the acts taken under the ostensible authority or franchise.

Proceedings:

1. Must be brought in the name of RP (file by SolGen), and exceptionally in the name of private individuals.
2. May be filed by a private individual if (in his own name): (i) he claims right (not mere preference) to the office; (ii) he was able to show a clear right to the same.
3. SolGen or public prosecutor: (i) shall file if (a) **directed** by President, or (b) upon **complaint**, if there are good reasons to believe that any case above can be established by proof; (ii) may file upon **request** or upon relation of another person.
4. All persons claiming right to the public office, position, franchise shall be made parties, and their rights determined in the same action.
5. Taxpayers cannot intervene in a quo warranto suit since do not possess the required legal interest – (i) they do not claim the title or office, (ii) they are not charged with usurpation.
6. May be filed with SC/CA/RTC of area where respondent resides or in City of Manila, if filed by

SolGen [concurrent jurisdiction, subject to the rule on the hierarchy of courts].

Prescriptive period

1. 1y: (i) from the time the cause of ouster, or the right of petitioner to the position or office arose; (ii) from entry of judgment (in favor of petitioner) for recovery of damages resulting from usurpation.
2. But the prescriptive period does not apply if the action is brought by the state. Prescription does not lie against the government.
3. The inaction of the officer claiming right to the office is considered waiver of his right thereto, or acquiescence or consent to the matter he is questioning, so as not to put the title to public office under continued uncertainty.

c.f.: Impeachment

1. Impeachment is not the sole ground to remove an impeachable officer. Quo warranto may lie if the grounds are present.
2. Impeachment as sole mode of removing an impeachable officer, presupposes in the first place that the officer is eligible to hold the office and his assumption thereof is legal.
3. SC as PET has sole authority to judge the qualifications of Pres and VP. Quo warranto was provided as a remedy to question the qualifications of both the President and VP, both impeachable officers. Hence, it shows that even impeachable officers may be the subject of a quo warranto proceedings.
4. The provision on impeachment does not preclude quo warranto action to question the impeachable officer's qualifications to assume office.
5. Impeachment and quo warranto are distinct proceedings. They may be instituted and proceed simultaneously.
6. Both seek the ultimate removal of an incumbent government officer.

Distinctions	Quo warranto	Impeachment
Nature	Judicial	Political
Jurisdiction	Cognizable only by the Supreme Court	Congress is the prosecutor, the trier, and the judge
End result	Ouster + additional penalties as reimbursement of costs to the rightful holder of office; further judgment as justice requires	Removal and perpetual political disqualification from holding public office; presupposes the validity of election or appointment
Purpose	To determine the legal right, title, eligibility, or qualifications of the incumbent to the contested public office and oust the holder of its enjoyment	To determine whether the public officer committed any of the impeachable offenses and vindicate the breach of the trust
Nature of holding	The official is a de facto officer who does not enjoy security of tenure	The official is a de jure officer who enjoys security of tenure and can be removed only upon just cause (impeachable grounds) and observance of procedural due process
Process	Judicial determination	Political process undertaken by Congress
Governing rules	Dictated by the Rules of Court	Const., Rules of impeachment promulgated by Congress
Ground	Act/omission committed prior to or at the time of appointment/ election	Only acts committed by an impeachable official as such

relating to an official's qualifications as to render such appointment or election invalid is a proper subject of a quo warranto petition. Such act/omission if committed during incumbency cannot be the subject of a quo warranto petition.

during his incumbency may be the subject of impeachment, but not acts committed by him prior election or appointment as impeachable official.

F. Expropriation (Rule 67; See also Guidelines for Expropriation Proceedings of National Government Infrastructure Projects, Sec. 4, RA 8974)

1. Procedure for the exercise of eminent domain powers.
2. SM may be real or personal property.
3. Incapable of pecuniary estimation.

1. Two Stages in Every Action for Expropriation

1. Determination of the lawful right of plaintiff to take the property sought to be expropriated (authority and public purpose) – Order of Expropriation
2. Determination of just compensation – Order Fixing the Just Compensation.

****Subject to multiple appeals via NOA + RONA.**

2. Order of Expropriation

Issue is whether plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

1. If yes, Order of expropriation shall issue.
2. Order of expropriation is a final order and may be subject to appeal (NOA + RONA). If pure questions of law, R45 to SC.
3. If appealed: (i) will not toll the proceedings for the ascertainment of JC; (ii) will not prevent the plaintiff from entering the property and appropriating the same for the public use stated in the Complaint (immediately executory even pending appeal).
4. If the judgement finding the expropriation proper was reversed on appeal, the case shall be remanded to the RTC for: (i) to restore property's possession to the defendant; (ii) to determine the damages recoverable as a result of the plaintiff's possession.
5. If no defendant appeared, the Court may issue an Order of appropriation upon finding that the complaint is sufficient in form and substance. However, the defendant cannot be declared in default. The latter does not lose his standing with the court and may still participate in the proceedings for the determination of JC.

3. Ascertainment of Just Compensation

1. JC is reckoned from the time of taking or of filing of the petition, whichever is earlier.
2. Measure is the owner's loss, not the taker's gain. Must be real, substantial, full, ample. **RSFA** (i) add consequential damages, (ii) consequential benefits [pertains to those accruing to the property not taken as a result of the expropriation]. The award of CGT and transfer taxes to the owner as consequential damages is not proper since this is solely for his account and cannot be reimbursed from the government.
3. Determination of JC is judicial in nature.
4. Upon issuance of Order of Expropriation, the Court must appoint Commissioners consisting of 3 competent, disinterested persons. The

appointment of commissioners is a **mandatory** requirement as an indispensable and a substantive right of the parties.

5. The report of Commissioners is not binding until the Court accepts and renders judgment on the same.
6. In case of uncertain ownership, the court will adjudge who is entitled to the JC in the same proceedings. Pending determination, court may order that the amount be paid to court for the benefit of the person to be so adjudged entitled thereto.
7. Interests shall be paid from the time of taking, or after tender.

4. Rights of Plaintiff Upon Judgment and Payment

1. Conditions for taking: (i) filing of complaint; (ii) due notice to defendant; (iii) **Deposit** to AGDB of the assessed value of the property for taxation purposes (real property), or amount provisionally fixed by the court (personal property). Under R.A. No. 8974, the government shall make direct payment to the owner equivalent to 100% of the zonal valuation of the property.
2. Upon issuance of order of expropriation, the plaintiff shall be entitled to enter or retain the property and appropriate the same for the public use stated in the Complaint. The order is immediately executory even pending appeal.

G. Foreclosure of Real Estate Mortgage (Rule 68)

1. Judicial Foreclosure

1. Action quasi in rem file against a defendant for the purpose of subject his interests over a property to the obligation or loan burdening the same.
2. Real action. Jurisdiction depends on the assessed value of the property as alleged in the complaint.
3. Jurisdiction over the person is not required for the court to proceed and validly render judgment so long as it has jurisdiction over the res. Summons by publication or other modes of extraterritorial service is enough to acquire jurisdiction over the res.

Two stages: (a) Determination of the existence of debt, demandability, and amount due – Order for payment or sale; (b) Determination of non-payment – Order for public sale

(b) Determination of non-payment

1. If the action for foreclosure was found proper, the Court shall order the mortgagor to pay his debt within 90-120d from entry of judgment, and in case of failure to pay, for the mortgaged property to be sold at public auction.
2. Equity of redemption is the right of the mortgagor to extinguish the mortgage debt and prevent the sale of the property by paying the debt and related costs within the said 90-120d, or even after the foreclosure sale but before its confirmation.

Public sale:

1. Must be upon motion of judgment obligee upon issuance of Order for payment or sale.
2. Judgment obligor may restrain the foreclosure sale upon application and filing of bond. If sold, he retains the right to possess the property as well as its fruits until the expiration of the redemption period.
3. After the sale, the purchaser may file a motion for the confirmation of sale, with notice to the parties. After the expiration of redemption period without redemption, he may consolidate title in his name.

Possession of property

1. Possession may be transferred to purchaser: (i) Upon finality of order of confirmation OR (ii) upon expiration of redemption period, when allowed.

The issuance of writ of possession becomes a ministerial duty. XPN: If property is in actually possession with interest adverse to judgment obligor.

2. Questions on the validity of the mortgage or manner of foreclosure shall be ventilated in a separate proceeding, not in the proceeding for issuance of writ of possession so as not to interfere with the court's ministerial duty.

Disposition of proceeds

1. Shall be applied to: (i) costs of sale; (ii) satisfaction of judgment debt.
2. Excess shall be paid to: (i) junior encumbrancer in order of priority; (ii) mortgagor or person entitled.
3. Deficiency judgment may be obtained by the plaintiff by way of motion in the same proceedings. This is a personal action.

Doctrine of election of remedies

1. The may institute either a personal action for debt or a real action to foreclose the mortgage. The remedies deemed alternative and not cumulative. An election of one remedy operates as a waiver of the other.
2. A remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint in an action for foreclosure of mortgage.
3. A suit brought before a foreign court having competence and jurisdiction to entertain the action is sufficient to elect the chosen remedy.

****Subject to multiple appeals via NOA + RONA.**

2. Extrajudicial Foreclosure (Act No. 3135, as amended)

EJ foreclosure may be availed only if there is SPA authorizing the mortgagee to cause the sale of the mortgaged property inserted in the mortgage instrument itself, or in an instrument attached and made an integral part of said instrument.

1. No action will be filed in court and the sale may be made by a notary public.
2. The agency is not extinguished by death of either party.
3. Public sale may be done after compliance with the notice (20d in 3 public places) and publication (3 successive weeks in NPGC) requirements. The Mortgagor has no right to waive the publication requirements under Act No. 3135. Any such waiver is void for being contrary to public policy and law.
4. Mortgagor has right of redemption (see below).
5. Immediately executory, not appealable.
6. Prescribes in 10y from time the right of action accrues, i.e., when the mortgagor defaults in the payment of his obligation.
7. Deficiency may be recovered by filing an ordinary collection suit within the same 10y prescriptive period.

Remedy against issuance of writ of possession

1. If redemption period already lapsed, separate action and not appeal.
2. If within redemption period, appeal, as provided for under Act No. 3135 §8.

3. The General Banking Law of 2000 (Sec. 47, RA 8791)

Right of redemption

(a) In judicial foreclosure proceedings, there is generally no right of redemption, only equity of redemption where the mortgagor may prevent the sale of the property upon payment of the mortgage debt and costs.

XPN: Under GBL, if the mortgagee is a bank, the mortgagor has the right of redemption:

1. If natural person, 1y from the registration of the order confirming the sale.
2. If juridical person, 3m months after issuance of certificate of foreclosure sale, or its registration, whichever comes earlier.
3. The right remains even if the mortgagee bank already assigned its rights to the mortgage to a non-bank entity.

(b) In EJ foreclosure proceedings, there is generally a right of redemption within 1y from the date of registration of certificate of sale.

H. Partition (Rule 69)

1. Real action. Jurisdiction depends on the assessed value of the property as alleged in the complaint.
2. May cover undivided estates composed of either real or personal property or both, to the extent applicable.
3. Under NCC, the right of co-owners to demand the partition of a co-owned property is imprescriptible. The dismissal of an action for partition with prejudice on due to fault of petition (FAC) cannot bar the re-filing of an action for partition. Substantive law prevails over procedural rules.
4. The Rules is without prejudice to the right of parties to agree on the partition of the property through suitable instruments of conveyance without need of court action.

Two stages: (a) Determination of existence of co-ownership and propriety of partition – Order for partition an accounting; (b) Division of property and determination of shares of the co-owners

1. Co-owners may agree to the division of property. If unable, court shall appoint at most 3 competent disinterested persons (Commissioners) to aid in the division.
2. If the property cannot be divided it may be: (i) assigned to one co-owner, upon reimbursement of others' shares; (ii) sold and proceeds divided among the co-owners.
3. The Report of Commissioners is not binding until accepted and confirmed by the Court.

Judgment:

1. For partition, assignment, or sale
2. For recovery and payment of just share of rents and profits

I. Forcible Entry and Unlawful Detainer (Rule 70)

Available whenever a person is unlawfully deprived of material possession of the property.

1. MTC has jurisdiction regardless of the assessed value of the property. Governed by RRSP.
2. Acceptance of rentals pending FE/UD action does not constitute waiver of default in the payment of rentals.
3. If the defendant vacates, the action is rendered moot and academic.
4. The court may provisionally determine the issue of ownership only for the purpose of determining who has the better right of possession. The judgment shall be conclusive only as to possession but not as to ownership and shall not bar an action between the parties respective title to the property. The pendency of any action involving title to the property will not deprive the MTC of jurisdiction over the FE/UD case.
5. Not a proper action to resolve boundary disputes. The proper remedy is accion reivindicatoria.

Two kinds of accion interdical: (a) Forcible Entry; (b) Unlawful Detainer

(a) Forcible Entry

1. Requisites – (i) prior physical possession; (ii) dispossession FISTS; (ii) filed within 1y from dispossession/discovery (stealth)
2. Prior physical possession can be acquired by: (i) material occupation, (ii) by the fact that a thing is subject to the action of one's will (constructive), or (iii) by the proper acts and legal formalities established for acquiring such right – e.g., donations, succession, execution and registration of public instruments, inscription of possessory information titles.
3. Tax declarations are proof of possession in the concept of an owner.

(b) Unlawful Detainer

1. Requisites – (i) defendant's posseisio is inceptively lawful; (ii) expiration or termination of the right to hold possession rendering the possession unlawful; (iii) Prior demand to pay or comply with conditions of the lease or other contract and vacate; (iv) Non-compliance with the demand after 15d in case of land or 5d in case of buildings; (vi) filed within 1y from last demand.
2. Expiration of redemption period in pacto de retro sale without redemption renders the vendor-a-retro's possession illegal.
3. Possession by mere tolerance is rendered unlawful by demand to vacate.
4. A contract to sell which entitles the vendee to possess is valid ground for possession. He cannot be dispossessed until the contract is rescinded.
5. Mortgagee does not have the right to eject tenants of the mortgagor since the mortgage does not transfer title to the property.
6. Rescission and UD are not mutually exclusive remedies. The lessor is not required to first bring an action for rescission (based on violation of contract) before filing ejectment case.

Distinctions	FE	UD
Defendant's possession	Inceptively unlawful	Inceptively lawful but becomes unlawful upon expiration of right, or demand to vacate
Previous demand	Not required	Jurisdictional
Prior physical possession	Plaintiff must prove	Not an element
1y period	From dispossession or discovery	From date of last demand

Judgment:

Action in personam

1. GR: Does not bind persons who are not parties to the case. XPN: (i) trespasser, (ii) squatter, (iii) agent of defendant fraudulently occupying the property to frustrate the judgment, (iv) guest or occupant with permission of defendant, (v) transferee pendente lite, (vi) sub-lessee, (vii) co-lessee; (viii) member of the family, relative or privy of defendant.
2. "Immediate member" of the family includes the spouse, direct descendants and ascendants by consanguinity or affinity, but not brother-in-law.
3. Death of the defendant will not automatically terminate the proceedings his successors will be bound.

Immediately executory

1. (i) If favorable to plaintiff, and (ii) plaintiff moves for execution.
2. To stay execution: (i) Defendant must perfect appeal to RTC, (ii) he files supersedeas bond approved by MTC executed in favor of plaintiff; (iii) deposit rentals due to the appellate court from time to time during pendency of appeal.

3. If the defendant fails to pay rentals, the court may order execution of judgment restoring plaintiff in possession of property: (i) upon motion; (ii) on proof of failure to make the required payments.

****MTC decision is appealable to RTC. RTC's judgment not appealable (one-step appeal).**

1. Differentiated from Accion Publiciana and Accion Reivindicatoria

Accion interdictal	Accion publiciana	Accion reivindicatoria
Special civil action/ summary action for ejectment: FE/UD	Ordinary civil action	Ordinary civil action
Recovery of physical or material possession	Plenary action to recovery of possession	Recovery of possession as an incident of ownership
Must be filed within 1y from dispossession/ discovery (FE) or last demand (UD)	May be filed (i) within 1y if not constituting FE/UD; or (i) beyond 1y for any valid ground	Maybe filed before or after 1y, subject to the applicable prescriptive periods
MTC	MTC/RTC depending on assessed value	MTC/RTC depending on assessed value

J. Contempt (Rule 71)

Contempt is (i) the disregard or disobedience to the rules or orders of a judicial body, or (ii) an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as (a) to disturb the proceedings or (b) to impair the respect due to such body.

1. Inherent in all courts to: (i) preserve order in the judicial proceedings, (ii) enforce judgments, order and mandates and the due administrative of justice, and (iii) promote respect of the courts for the stability of the institution.
2. Jurisdiction is with the RTC of the place where the contempt was committed.

Kinds: (a) direct, (b) indirect, (c) civil/criminal

(a) Direct

1. Misbehavior in the presence or so near a court as to cause interruption in the proceedings.
2. Includes: (i) Disrespect towards the court, (ii) Offensive personalities towards others, (iii) Refusal to be sworn or to answer as witness, (iv) Refusal to subscribe an affidavit, if lawfully required to do so. E.g., filing or pleading derogatory, offensive, malicious statements.
3. Summary proceedings.
4. Judgment of contempt is immediately and not appealable but may be the subject of R65. Filing of petition will suspend execution of judgment while pending resolution IF the person held in contempt files a bond.

(b) Indirect

Specific acts

1. Misbehavior of an officer of a court in the performance of his official duties or in his official transactions.
2. Disobedience of or resistance to a lawful writ, process, order, or judgment, including the act of a person who, after being ejected from any real property by the judgment or process, enters such real property, for the purpose of executing acts of ownership or possession, or disturbs the possession given to the person adjudged to be entitled thereto – N.B.: mere refusal to vacate the real property is not ground for contempt since the writ of execution is directed to the sheriff.
3. Abuse or unlawful interference with the processes or proceedings of a court not constituting direct contempt.

4. Improper conduct tending to impede, obstruct, or degrade the administration of justice.
5. Assuming to be an attorney or an officer of a court and acting as such without authority.
6. Failure to obey a subpoena duly served.
7. The rescue of a person or property in the custody of an officer by virtue of an order or process.
8. E.g., (i) violation of injunction; (ii) failure to comply with judgment containing special order like deliver of real property; (iii) when ejected tenant returns to the premises BUT not when the losing party refused to surrender the property.

Proceedings:

1. GR: a non-party cannot be held in contempt. XPN: if he acted in conspiracy with a party in violating the courts' orders.
2. May be commenced: (i) motu proprio, or (ii) by formal written charge (verified petition).³⁴ Respondent must be given opportunity to comment.
3. May be filed with: (i) RTC or court of equivalent rank; (ii) if committed against lower court, action may be filed in (a) RTC of the place in which the lower court sits; (b) concerned MTC subject to appeal to the RTC. In other cases, the judgment is not appealable.
4. Punishment includes fine and imprisonment. Indefinite incarceration is available even in civil contempt proceedings.

(c) Civil/criminal

Distinctions	CIVIL	CRIMINAL
Nature	Remedial	Punitive
Act	Failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore, an offense against the party in whose behalf the violated order was made	Conduct directed against the authority and dignity of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect
Interest protected	To preserve and enforce the rights of the private party to an action and to compel obedience to a judgment intended for his benefit	Government, courts, and people are interested in its prosecution
Purpose	To aid the enforcement of some duty, essentially a remedy to coerce a person to do the thing required; to compensate the aggrieved party	To preserve the power and vindicate the authority and dignity of the court, and to punish for disobedience of its orders
Characterization	Civil in nature	Sui generis: neither civil nor criminal but partakes elements of both
Applicable principles and rules	Those applicable to criminal contempt proceedings are generally not applicable	Those applicable to criminal cases; strict construction
Double jeopardy	Cannot be invoked	May be invoked

VI. Special Proceedings and Special Writs

Special proceeding

Remedy by which a party seeks to establish a status, right or particular fact **SRP**

Civil Action	Special proceeding
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³⁴ Initiatory pleading.

A party sues another for (i) enforcement, (ii) protection of right, or (iii) prevention, (iv) redress of wrong EPPR	A party seeks to establish SRP
Formal demand of right by one against another	Petition for declaration of SRP
Adversarial	Non-adversarial (in re:)

Subject matter

- (a) Settlement of estate of deceased persons.
- (b) Escheat.
- (c) Guardianship and custody of children.
- (d) Trustees.
- (e) Adoption.
- (f) Rescission and revocation of adoption.
- (g) Hospitalization of insane persons.
- (h) *Habeas corpus*.
- (i) Change of name.
- (j) Voluntary dissolution of corporations.
- (k) Judicial approval of voluntary recognition of minor natural children.
- (l) Constitution of family home.
- (m) Declaration of absence and death.
- (n) Cancellation of correction of entries in the civil registry.

****Not exclusive.**

Notes

1. SpecPro are proceedings *in rem*.
2. Rules in ordinary action apply only suppletorily.
3. Earnest efforts at compromise between family members is not applicable in SpecPro since it is not a civil suit.
4. CNFS is applicable (suppletory) in SpecPro, absent special rule.

A. Settlement of Estate of Deceased Persons

1. Venue and Process (Rule 73)

Process overview (Judicial settlement)

1. Filing of petition – in/testate
2. Setting petition for hearing (notice, publication)
3. Initial hearing (jurisdictional requirements)
4. Trial
5. Rendering of Order
6. Filing of claims
7. Payment of debts
8. Distribution and partition of estate
9. Closing

Jurisdiction

1. (i) MTC has EOJ if estate value $\leq 2M$, exclusive of interest, damages, attorney's fees, and costs **EIDA**; (ii) RTC has EOJ if estate value $> 2M$ **EIDA**
2. Allegation of the probable value of the gross estate is jurisdictional. If the actual value turned out to be in excess of the jurisdictional amount, the court is not ousted of jurisdiction since Sec. 2 requires only the declaration of probable value.
3. Extent of probate court jurisdiction – (i) court of limited jurisdiction; (ii) primarily concerned with (a) administration, (b) liquidation, (c) distribution of estate [including determination of heirs]
4. **The compulsory or intestate heirs may commence an ordinary civil action to enforce their ownership rights acquired by virtue of succession³⁵ without necessity of prior and separate judicial declaration of the status as heirs** – (i) XPN if there is already a pending SpecPro for the settlement of deceased's estate, or for determination of heirship;³⁶ (ii) the ruling in the ordinary action (a) shall only be in relation to the cause of action raised, and (b) shall bind only the parties to the case. Successional rights vest from the moment of death of the decedent.

³⁵ E.g., declaration of nullity of deed or fore recovery or reconveyance of property.

5. GR: the probate court cannot pass upon title to properties (including bank account in the name of 3p) claimed to be part of the estate. XPNs: (i) for the limited purpose of determining the propriety of its inclusion in the inventory. Such determination is merely provisional and not conclusive. (ii) when all heirs appeared in the proceeding and the rights of 3p are not impaired. Here, the determination is conclusive. The proper remedy is for the E/A to file an ordinary action for recovery of property against the 3p in an ordinary action.	
Venue	
1. (i) If decedent-resident, place of residence at time of death; (ii) if decedent-nonresident, place where estate is located – to the exclusion of others.	
2. MTD on ground of improper venue – (i) if apparent on the face of petition, allowed; (ii) if not, not allowed. Wrong venue may be questioned only in an appeal from the court in original case	

2. Summary Settlement of Estates (Rule 74)

Methods of summary settlement: (a) EJ settlement, including self-adjudication; (b) Agreement in action for partition; (c) Settlement of small value estate

(a) EJ settlement

1. Fundamental requisites: (i) decedent left no will; (ii) and no debts; (iii) heirs are all of age, or minors are represented by guardians.
2. How settlement done (2+ heirs): (i) by public instrument registered with RD; (ii) filing of bond equivalent to value of personal property;* (iii) publication [1x per week for 3 consecutive weeks].**
3. If sole heir via Self-Adjudication: (i) execution of Affidavit of Self Adjudication ASA; (ii) filing ASA with RD; (iii) posting of bond;* (iv) publication.**
4. Notwithstanding, **oral partition by heirs is valid**. The public instrument/affidavit are not requirements for validity of EJ partition as this was not prescribed by ROC as such.

(b) Agreement in action for partition

1. Fundamental requisites: (i) decedent left no will; (ii) and no debts; (iii) heirs are all of age, or minors are represented by guardians.
2. Presupposes: (i) heir/s filed an action for partition; (ii) they entered into a compromise for the settlement of the estate; (iii) court approved the compromise agreement.

(c) Settlement of small value estate

Remedy of heir deprived of lawful participation in estate:

1. To compel judicial settlement of estate.
2. Must be filed within 2y after the settlement and distribution.
3. Applies to (a) (b) (c).

Remedy of **party** to EJ settlement:

1. To assail validity of the EJ settlement.
2. Must be made within 2y after the settlement and distribution; otherwise, he is barred.
3. The 2y prescriptive period applies only to those who participated or had notice of the EJ partition, but not 3p who had not notice.

Remedy of heir deprived of lawful participation in estate who did not participate or had no notice of EJ partition:

1. Action for reconveyance based on implied trust.
2. (i) Must be filed within 10y upon issuance of new title over the property, or from actual notice (if unregistered). (ii) but imprescriptible if the plaintiff

³⁶ If there is already pending SpecPro, the heirs are already barred from filing ordinary civil action.

is in possession of property sought to be reconveyed [in the nature of quieting of title].

3. Allowance or Disallowance of Wills (Rule 76)

Necessity of probate: "no will shall pass real or personal estate unless it is proved and allowed in the proper court".

Purpose of probate:

1. To determine extrinsic validity of will: (i) compliance with legal formalities under NCC; (ii) testator is of sound and disposing mind when he executed the same.
2. To determine due execution of the will: (i) voluntariness in making the dispositions; (ii) testamentary capacity, i.e., soundness of testator's mind as to (a) nature of his estate, (b) objects of his bounty, (c) character of the testamentary act.
3. (i) the probate court cannot pass upon intrinsic validity of the will. (ii) XPNs: (a) if apparent in the face of will.³⁷

Who may file petition for probate:

1. Ante-mortem: testator himself during his lifetime;
2. Post-mortem: (i) executor; (ii) devisee/legatee D/L; (iii) interested persons [e.g., heirs/creditors].

Contents of petition:

1. The jurisdictional facts.
2. The names, ages, and residences of the heirs, D/L.
3. The probable value and character of the property of the estate (determines jurisdiction).
4. The name of the person for whom letters are prayed.
5. The name of the person having custody of the will, if not delivered to court.

Jurisdictional facts

1. The fact of decedent's death.
2. The value of the gross estate within the jurisdiction of the court.
3. The residence of the decedent in the province where the probate court sits at the time of his death, or the fact that he left estate in the province, if he is not an inhabitant of the Philippines.

Process overview:

1. Filing of petition – (i) if testate, for probate of will; (ii) if intestate, for appointment of administrator.
2. Setting case for hearing (Order)
3. Publication [1x per week for 3 consecutive weeks NPGC]
4. Notice to executor, designated/known heirs, D/L – (i) 20d prior, if mail or 10d prior if personal service; (ii) notice is mandatory and publication is not sufficient is the residence of H/D/L are known. Otherwise, proceedings will be annulled.
5. Hearing
6. Decision – (i) if testate, dis/allowing will; (ii) if intestate, appointing an administrator.

Manner of proving will

1. Depends on whether will is contested or not.
2. If ante-mortem – (i) the will may be proved by the fact that the testator affirms the will and his signature; (ii) oppositor has burden to prove otherwise.
3. If not contested – (i) notarial will may be proved by 1 subscribing witness; (ii) holographic will may be proved by one witness who knows the handwriting and signature of testator or by expert witness.
4. If contested – (i) notarial will shall be proved by (a) all subscribing witness, and (b) notary public. (c) If a subscribing witness testify against it the will, failed to remember, or of doubtful credibility, the will may still be allowed based on the testimony of

other witnesses and all evidence presented; (ii) holographic shall be proved by 3 witness who know the handwriting and signature of testator or by expert witness.

5. If witnesses are dead, insane or non-residents – proof may be in the form of: (i) testimony of other witnesses as to the sanity of testator and due execution of the will; (ii) proof of handwriting of testator and of subscribing witnesses, or any of them.

Lost or destroyed will

1. If notarial: Proof required – (i) execution and validity of will; (ii) existence of will at time of testator's death; (iii) fraudulent or accidental destruction of will during testator's lifetime without his knowledge; (iv) provision of will must be proved by two credible witnesses.
2. If holographic: (i) may be probated if there is photocopy; (ii) may no longer be probated if no copy remains. Consideration is the determination of the authenticity of testator's handwriting.

Grounds for disallowance:

1. Not executed or attested as required by law;
2. Testator was insane, mentally incapacitated to make the will at the time of its execution;
3. Executed under duress, or the influence of fear or threats;
4. Procured by undue or improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;
5. The signature of testator was procured by fraud, trick, or he did not intend that the instrument should be his will at the time of fixing his signature thereto.

After allowance of will:

1. Issuance of certificate of allowance of will be signed by judge and attested by seal of court;
2. Recording and filing of certificate by clerk;
3. Recording of will in the RD where land is located.

Allowance of will proved outside Ph

1. Reprobate is allowed.
2. What must be proved – (i) due execution of will in accordance with foreign law [lex loci celebrationis]; (ii) residence of testator in foreign country; (iii) admission of will to probate; (iv) allowance of will by probate court; (v) law of the foreign country on the procedure and allowance of will.

Allowance of will executed outside Ph

1. Prior probate in foreign country is not required before will executed abroad may be given effect in Ph
2. Applicable laws: (i) place of residence; (ii) place of nationality; (iii) Ph laws [processual presumption]

Allowance of will executed in Ph by foreigner

1. May be probated in Ph applying Ph law [lex loci celebrationis].

Executor/Administrator

Disqualifications

1. Minor
2. Non-resident
3. Unfit to execute duties of trust – (i) in court's opinion; (ii) due to (a) drunkenness, (b) improvidence, (c) want of understanding or integrity, (d) conviction of offenses involving moral turpitude.

Executor

³⁷ E.g., preterition.

1. Person named in the will to carry out its provisions.
2. Competent, accepts the trust, and give bond as required by rules.
3. He is issued letters testamentary upon allowance of the will.

Administrator

1. Person appointed by court to administer or settle the estate, if: (i) no testator was named in will; (ii) executor named is incompetent, refuses trust or fails to give bond.
2. He is issued letters administration by court.
3. Order of preference – (i) surviving spouse, next of kin,³⁸ or both; or person/s requested by them; (ii) principal creditor/s; (iii) other persons selected by court.
4. Principal consideration in the appointment of administrator is the person's interest in the estate. Deviation with the preference must be supported by strong, valid, sufficient reason.
5. Appointment of co-administrators is allowed: (i) to have the benefit of their judgment, and have different interest represented at all times; (ii) when justice and equity demands representation of opposing parties; (iii) where estate is large, or intricate to settle; (iv) for the best interest of the estate; (v) when desired by the person entitled to administer the estate to have an associate.
6. Special administration – (i) may be appointed in case of: (a) delay in granting letters testamentary/administration by any cause, or (b) the executor/administrator has a claim against the estate;³⁹ (ii) he shall take possession and charge of the estate until appointment of executor/administrator.
7. Powers of administrator – (i) To possess and manage the estate; (ii) To pay debts and expenses of administration; (iii) To access, examine, copy books and papers; (iv) To compromise with debtor of the decedent.
8. Grounds for removal: (i) neglect to render account or settle the estate; (ii) neglect to perform an order or judgment of court, or a duty expressly provided by the rules; (iii) absconds; (iv) becomes insane or incapacitated to discharge the trust.

****SpecPro for settlement of estate is susceptible of multiple appeals via Record on Appeal.**

1. The order denying motion for leave to intervene in probate case is appealable by filing both NOA and RONA.

4. Claims Against the Estate (Rule 86)

Upon issuance of letters testamentary/administration, the court shall issue a notice requiring all persons having **money claims** against the decedent to file them with the clerk of court.

1. Statute of non-claims. The court shall fix the period for filing claims which shall not be less than 6m nor more than 12m from the first publication of notice. (i) the period is mandatory; (ii) it supersedes the statute of limitation.
2. Claims not filed within the fixed period shall be barred. XPNs: (i) creditor may **apply** with the court for a new period not exceeding 1m before entry of order of distribution for good cause shown; (ii) creditor can set up his claim as **counterclaim** in an action filed by executor/administrator.

Covered claims:

1. Contractual money claims⁴⁰ – includes (i) implied/quasi-contracts; (ii) action for damages for breach of contract of carriage

2. Claims for funeral expenses
3. Claims for expenses for last sickness of decedent
4. Money judgments

****Ordinary courts have no jurisdiction to take cognizance of these cases as they must be filed in the SpecPro for the settlement of the estate of the deceased.**

Money judgments

1. The death of decedent shall not cause the dismissal of the action against him but shall be allowed to continue until entry of final judgment. The decedent shall be substituted by the heir/s, or the E/A.
2. In case of adverse judgment against decedent: (i) if based on contractual obligation, (a) motion for execution shall not be granted, (b) instead the money judgment shall be filed as a claim against the estate; (ii) if not based on contractual obligation (e.g., action for damages against decedent based on torts), the money judgment may be executed against the executor or administrator.
3. The creditor may proceed against the surviving solidary debtor. Where the debt is solidary, the estate is not an indispensable party.

Remedies of creditor-mortgagee

1. To waive the mortgage and claim the entire debt from the estate;
2. To judicially foreclose the mortgage and prove the deficiency as an ordinary claim against the estate;
3. To rely exclusively on the mortgage and foreclose the same at any time, without right to claim for deficiency.

Claims by E/A

1. E/A shall notify the court in writing;
2. Court shall appoint a special administrator to adjust the claim

Process overview

1. Filing of claims with supporting evidence
2. Filing of answer within 15d
3. Approval of uncontested claims, or trial of contested claims
4. Judgment

Actions which may be brought by/against E/A

1. Generally, actions that survive the decedent's death.
2. Includes: (i) action to recover property or interest therein; (ii) action to recover damages for injury to persons or property.
3. Heir/s may bring suit for or on behalf of the estate if: (i) the E/A refuses to bring suit; (ii) E/A is alleged to have participated in the act complained of; (iii) pending filing of administration proceedings; (iv) pending administration proceedings before the appointment of administrator.
4. Creditor/s may bring suit for or on behalf of the estate if: (i) there is deficiency of assets in the hands of E/A for the payment of debt; (ii) deceased made fraudulent conveyance during his lifetime; (iii) subject of conveyance would be liable to attachment by anyone of them during his lifetime; (iv) E/A has no intention to file; (v) motion for leave is granted; (vi) creditor files a bond [accion pauliana].

5. Payment of the Debts of the Estate (Rule 88)

³⁸ Compulsory or legal heirs.

³⁹ Including appeal from dis/allowance of will.

⁴⁰ Express, implied, due, not due, contingent.

6. Sales, Mortgages, and Other Encumbrances of Property of Decedent (Rule 89)

7. Distribution and Partition (Rule 90)

Distribution and partition shall be made:

1. When the debts, funeral expenses, expenses of administration, allowance of the widow, and inheritance tax have been paid, or
2. Prior to the payment of claims and charges, upon giving of bond by distribute/s conditioned upon payment of such obligations.

Effect of order of distribution:

1. It terminates or brings to a close the in/testate proceedings, and
2. relieves E/A of his duties.

Remedy of heir excluded from the project partition:

1. To file a motion for re-opening of intestate proceedings within the prescriptive period
2. Alternative: the heir has no more remedy. The intestate proceeding may no longer be reopened. Being a proceeding in rem, the heir is deemed to have constructive notice thereof. The order of closing, having been final and executory may no longer be disturbed (preferred).
3. An independent civil action for the annulment of the project partition is also improper as it will sanction interference with the probate proceedings by a court of equal jurisdiction (principle of non-interference or judicial stability).

When probate court may issue writ of execution

1. To satisfy contributive shares of H/D/L in possession of decedent's asset;
2. To enforce payment of expenses of partition;
3. To satisfy cost when a person is cited for examination.

B. Guardianship

Trust relations whereby the guardian acts for the ward whom the law regards as incapable of managing his own affairs and intended to safeguard the rights and interests of the ward, who may either be minor or an incompetent.

1. Rules 97 to 97 applies to guardianship of incompetents.
2. Guardianship of minors is governed by the Rule on Guardianship of Minors RGM

Kinds of guardian:

1. Legal guardian – (i) by provision of law, without need of judicial appointment; (ii) parents are joint guardians of their common minor children's persons and property; (iii) in case of conflict, the father's decision prevails unless there is contrary judicial order; (iv) they must post a bond with court if the minor's property >50k.
2. Guardian ad litem – court-appointed competent person for the purpose of a particular action involving a minor.
3. Judicial guardian – court-appointed competent person after proper proceedings for the person, property, or both, of the ward, to represent the latter in all acts and litigations.

Incompetents:

1. Persons suffering the penalty of civil interdiction;
2. Hospitalized lepers;
3. Prodigals;
4. Dead and dumb who are unable to read and write;
5. Persons of unsound mind, even though they have lucid intervals;
6. Persons who cannot, without outside aid, take care of themselves and manage their property.

1. Venue (Rule 92)

Incompetent ward

1. Resident ward – RTC where the ward resides.
2. Non-resident ward – RTC of the place where is property is situated.

Minor ward (under RGM)

1. Jurisdiction is with the Family Court.
2. Venue – (i) if resident, place of residence; (ii) if non-resident, place where property is situated.

2. Appointment of Guardians (Rule 93)

Who may petition for appointment guardian:

Resident ward

1. Parent or lawful guardian;
2. Friend, relative, or other person;
3. Minor, if at least fourteen years;
4. The DOH/DSWD Secretary, for an insane who should be hospitalized, or an isolated leper.

Non-resident ward

1. Friend or relative;
2. Anyone interested in the estate of the ward, in expectancy or otherwise.

Minor ward (under RGM)

1. Relative;
2. Other person on behalf of minor;
3. Minor, if at least fourteen years;
4. The DOH/DSWD Secretary, for an insane who should be hospitalized, or an isolated leper.
5. If non-resident – (i) relative or friend; (ii) any interested person.

Contents of petition:

1. Jurisdictional facts;
2. Name, age, residence of prospective ward;
3. Grounds rendering appointment necessary or convenient;
4. Name, age, residence of minor/incompetent's relatives within the 4th civil degree, caretakers, or custodians;
5. Probable value and character of ward's estate;
6. Name of proposed guardian;
7. Verification and certification against non-forum shopping.

Jurisdictional facts

1. The fact of minority or incompetency;
2. Appointment of guardian is necessary or convenient

Grounds for petition (minor ward under RGM):

1. Death, continued absence, or incapacity of his parents;
2. Suspension, deprivation or termination of parental authority;
3. Remarriage of his surviving parent, if found unsuitable to exercise parental authority; or
4. When the best interests of the minor so require.

Process overview:

Incompetent ward under ROC

1. Setting of hearing.
2. Notice. N.B.: publication is not required.
3. Filing of opposition by interested parties. – (i) Grounds: (a) Majority or competence of the supposed ward; (b) Unsuitability of the person for whom letters are prayed for; (ii) Relief/s: (a) Dismissal of the petition; (b) Issuance of letters of guardianship to himself or any other suitable person.
4. Hearing on the merits.
5. Issuance of letters guardianship.

Minor ward under RGM

1. Filing of petition

2. Setting of hearing.
3. Case study report.
4. Opposition to petition.
5. Hearing of petition and opposition.
6. Filing of bond.
7. Decision.
8. Sending of decision to LCR and RD.

Qualifications of guardian (minor ward under RGM):

1. Moral character;
2. Physical, mental and psychological condition;
3. Financial status;
4. Relationship of trust with the minor;
5. Availability to exercise the powers and duties of a guardian for the full period of the guardianship;
6. Lack of conflict of interest with the minor; and
7. Ability to manage the property of the minor;
8. Must be within the jurisdiction of the court (resident)⁴¹

Preference in appointment of minor's guardian (under RGM)

1. Surviving grandparent
2. Oldest brother or sister over 21y;
3. Actual custodian over 21y;
4. Relationship of trust with minor;
5. Any other person, who would serve the best interests of the minor, as determined by the court.

Guardian's bond:

1. Must be given before the letter guardianship are issued.
2. Conditions: (i) To make and return inventory of property within 3m; (ii) To faithfully execute the duties of his trust; (iii) To render true and just account of ward's estate.
3. Action against the bond: may be prosecuted (i) in the same proceeding, or (ii) in a separation action for use and benefit of the ward or other interested person.

3. General Powers and Duties of Guardians (Rule 96)

Sale or encumbrance S/E of property:

1. Guardian must petition the court which issued letter guardianship, indicating that the S/E is for the benefit of the ward, which must be shown to the court. N.B.: It is not required to state that estate's income is insufficient to maintain the ward, his family, or his education.
2. Court shall issue an order directing next of kin and other interested persons to appear on the date of hearing.
3. Next of kin and other interested persons shall be heard.
4. Court shall either grant or deny the petition.
5. The order of sale shall be effective only for a period of 1y. If not sold within 1y, the guardian loses authority to sell the property, unless he applies anew.

General powers and duties:

1. To have the care and custody of the ward's person, and the management of his estate.
2. To pay ward's debts out of his estate.
3. To settle accounts, collect debts, prosecuted and defend suits for the ward.
4. To manage the estate frugally.
5. To make inventory and accounting.

Remedy in case of suspected embezzlement of property

1. To file complaint with guardianship court against anyone suspected to have embezzled, concealed, conveyed money, goods, interest, written instrument belonging to ward or his estate. N.B.:

the complaint may be filed by the guardian, ward, or interested person.

2. Court may cite the suspected person to appear for examination and make such other orders to secure the ward's estate.
3. However, the guardianship court cannot order the delivery of the ward's property found to be embezzled, concealed or conveyed since it only exercises special and limited jurisdiction.

4. Termination of Guardianship (Rule 97)

Grounds for termination:

Incompetent ward

1. Declaration of competency of incompetent ward
2. Removal/resignation of guardian

Minor ward (under RGM)

1. Ward is of legal age already.
2. Death of ward.

Grounds for removal:

Incompetent ward

1. Insanity.
2. Incapacity or unsuitability to discharge the trust.
3. Wastage or mismanagement of estate.

Minor ward under RGM

1. Insanity.
2. Incapacity or unsuitability to discharge the trust.
3. Wastage or mismanagement of estate.
4. Failure to render account or make a return for thirty (30) days after the same was due.

C. Writ of Habeas Corpus (Rule 102)

Objectives:

1. To inquire into the cause of a person's detention.
2. If found illegal, to order his release.

Coverage:

Generally

1. Cases of illegal confinement or detention.
2. Cases of deprivation of rightful custody of any person from the person entitled thereto.

Also, in cases of:

3. Deprivation of constitutional right resulting in restraint of person.
4. Lack of jurisdiction of court to impose sentence.
5. Excessive imposition of penalty, as to the excess.

Jurisdiction:

1. SC or any member – (i) enforceable anywhere in Ph; (ii) returnable to: (a) SC or any member, (b) CA or any member, (c) RTC or any judge.
2. CA or any member – (i) enforceable anywhere in Ph; (ii) returnable to: (a) CA or any member, (b) RTC or any judge.
3. RTC or any judge – (i) enforceable only within the judicial region; (ii) returnable to issuing court or judge.
4. SB – (i) EOJ but only in aid of its appellate jurisdiction; (ii) SB may issue the writ only with respect to cases appealable to it.
5. Hierarchy of courts shall be observed. Hence, if the petition is based on GCTA, direct recourse is improper since the ground requires determination of factual issues. It should have been filed before RTC/CA.⁴²

Who may file petition:

1. The party for whose relief it is intended.
2. By some person on behalf of the person in whose behalf the petition is filed.

Form and contents of petition:

⁴¹ Vancil v. Belmes 2001.

⁴² In the case, the convict was also not entitled to GCTA since he was convicted of heinous crimes.

1. The person in whose behalf the application is made is imprisoned or restrained.
2. The officer or person by whom he is imprisoned or restrained.
3. Place where he is imprisoned or restrained, if known.
4. Copy of commitment or cause of detention, of the fact that the imprisonment or restraint is without legal authority. N.B.: if the convict was confined by virtue of final judgment, the copy of detention and judgment of conviction must be attached.
5. Signature and verification.

****If the court finds the petition sufficient in form and substance, the court issue the WHC (mere interlocutory order).**

When writ is not allowed:

1. The person is under custody by virtue of process issued by the court or judge. E.g., if a commitment order was issued by the judge by virtue of the filing of an information against the person detained (or issuance of other legal process), he is no longer entitled to the writ, notwithstanding that his arrest or detention was inceptively illegal (cured).
2. By virtue of judgment or order of a court of record which has jurisdiction to issue the process, render judgment or make order.
3. The person is charged or convicted.
4. The person is suffering imprisonment under lawful judgment.
5. Under R.A. No. 6975, as amended, PNP officers facing administrative charges may be placed under restrictive custody by the PNP Chief.
6. When a 19-y.o. voluntarily joined anakbayan. Mere allegation of brainwashing is not sufficient to grant the writ for being speculative.

[Peremptory] Writ of Habeas Corpus:

1. Directed to an officer or non-officer in custody of the subject requiring him to produce the body of the person confined before the court or judge designated, at the time and place specified.
2. c.f.: writ of preliminary citation, which requires the respondent to show cause why the peremptory writ shall not be granted.
3. The officer shall also make due return of the writ, with the day and cause of detention of the subject.

c.f.: Privilege of the writ of habeas corpus

1. The production of subject's body before the court commanded under the WHC is merely a preliminary step to the hearing of petition. It does not constitute a ruling on the propriety of the remedy.
2. The WHC is an interlocutory order requiring the production of subject's body. Whereas the privilege of the WHC is the decision on the merits issued after the return is filed and hearing was conducted, and upon finding that the subject is illegally detained or the person having custody of him has no legal authority. In the latter, petition shall be granted and the privilege of WHC shall be issued.
3. What may be suspended by the President upon declaration of martial law is the privilege of the WHC, not the issuance of WHC.

Contents of return

1. Whether the party to whom writ is directed has or has not in his custody the party to be produced.
2. If he has custody, the authority and cause of restraint, attaching copy of the writ, order, or other process, if any.
3. If he has custody, and the party is not produced due to sickness or infirmity of the latter, the nature and gravity of such sickness or infirmity.

4. If he has prior custody, which is subsequently transferred, the details of the transfer as: to whom, at what time, for what cause, and by what authority.

Hearing on the return

1. If it appears that the prisoner is under a warrant of commitment in pursuance of law, the return shall constitute prima facie evidence of the cause of restraint;
2. If the restraint is by any private authority, the return shall constitute only a plea of the facts set forth.

Appeal

1. Within 48h from notice of judgment.
2. What is appealable is the privilege of the WHC.

1. Writ of Habeas Corpus in Relation to Custody of Minors (A.M. No. 03-04-04-SC)

Coverage:

1. Petition for custody of minors
2. Petition for habeas corpus

Jurisdiction:

1. Family Courts have EOJ – (i) enforceable within the judicial region only; (ii) may be filed before regular court in case of unavailability, subject to immediate referral to Family Court once available, or if there is no FC.
2. But SC, CA, or their members has concurrent jurisdiction re: Petition for habeas corpus – (i) enforceable anywhere in Ph; (ii) returnable to FC or regular court where the petitioner resides or where the minor may be found.

The provision regarding substitute parental authority shall not be applied by the court mechanical. It shall still conduct trial to determine who shall have the custody of the child for his best interest.

D. Change of Name (Rule 103)

Venue

1. RTC of the province where petitioner resides.
2. RTC in the City of Manila.

Coverage:

1. Change of surname.
2. Change of first and surname.

****If change of first name only, R.A. No. 9048 applies.**

Grounds (Republic v. Hernandez)

1. The name is ridiculous, dishonorable, or extremely hard to write and pronounce.
2. When the change results as a legal consequence such as legitimation.
3. The change will avoid confusion.
4. When one has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage.
5. A sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudicing anybody.
6. When the surname causes embarrassment, that there is no showing that the change of name was for fraudulent purposes or that it will prejudice public interest.

By virtue of change of sex

1. Not allowed, if due to sex reassignment.
2. Allowed, if due to biological condition.

Contents of petition:

1. That the petitioner has been a bona fide resident of the province where the petition is filed for at least 3y prior to the date filing.

2. The cause for the change name.
3. The name asked for.
4. Signature and verification.

Publication:

1. Failure to state the ground for change of name in publication is jurisdictional defect.
2. However, the defect is deemed waived if the OSG did not raise the same before the trial court but only on appeal.

Surname of illegitimate children:

1. May use the father's surname if the filiation was expressly recognized by the father through a record of birth appearing in the civil register, or when admission in a public document or private handwritten instrument is made by him.

Surname of legitimate children:

1. May use the surname of mother if there are justifiable grounds.
2. The FC provision states that legitimate children shall principally use the father's surname. However, "principally" does not mean "exclusively".

Surname of married woman

1. Doctrine of coverture – H&W are one, and the "one" is the H.
2. She may use (permissive): (i) maiden first name and surname + H's surname; (ii) maiden first name and H's surname; (iii) H's full name, prefixing "Mrs."
3. Under Ph Passport Act – (i) a married woman has option to use a married name, or continue using maiden name in her passport; (ii) but once she chose to use his H's surname, she cannot revert to maiden name, except if case of: (a) H's death; (b) divorce; (c) annulment; (d) nullity of marriage.

E. Cancellation of Correction of Entries in the Civil Registry (Rule 108)

Coverage:

1. Substantial cancellations or corrections of entries in civil registry.
2. R.A. No. 9048 removed from the ambit of Rule 108 the correct of clerical errors.
3. A change of status from "married" to "single" cannot be made in a petition for recognition of divorce decree where a Rule 108 petition should have been filed. However, in a Rule 108 proceeding, the issue of recognition of foreign divorce decree may be passed upon and marriage certificate ordered cancelled.

Who may file:

1. Any person interested in any act, event, order, or decree concerning the civil status of persons which has been recorded in the civil register.

Where to file:

1. RTC of the province where the civil registry is located.
2. Venue is not jurisdictional and waivable.

Form and contents:

1. Verified

Entries subject of cancellation or correction:

1. births;
2. marriage;
3. deaths;
4. legal separations;
5. judgments of annulments of marriage;

6. judgments declaring marriages void from the beginning;
7. legitimations;
8. adoptions;
9. acknowledgments of natural children;
10. naturalization;
11. election, loss or recovery of citizenship;
12. civil interdiction;
13. judicial determination of filiation;
14. voluntary emancipation of a minor; and
15. changes of name.

Coverage:

1. Both clerical and substantial errors.
2. Hence, proceedings may either be summary or adversarial.
3. But legitimacy and filiation of children, validity of marriage, cannot be collaterally attacked in a petition for correction of entries.

Effect of failure to implead interested parties:

1. Will not nullify the proceedings as it is cured by publication (action in rem).
2. The Republic and LCR must be impleaded.
3. But in 2020 case, the SC held that failure to implead the Republic where the change sought is substantial⁴³ is fatal.
4. In case of petition by government EE to change his year of birth from 1952 to 1956, the CSC is and indispensable party since his service to the government will be extended.

F. Clerical Error Law (RA No. 9048, as amended by RA 10172)

Coverage: BiNCS

1. **Clerical** or typographical error in an entry in civil register.
2. Change of first **name** or nickname, but not surname, in the civil register.
3. Day and month in the date of **birth**.
4. **Sex** of a person where it is patently clear that there was clerical or typographical error or mistake in the entry.

Clerical errors:

1. (i) Visible to the eyes; (ii) obvious to the understanding; (iii) may be corrected by referring to existing records.
2. Entry of omitted middle name where the person has a right by law to use the middle name, and may be made by referring to existing records, e.g., use of mother's surname as middle name.
3. Change of sex may be made on strength of medical certification by government physician that petitioner is "phenotypically male".

Who can make the administrative correction:

1. City or municipal registrar.
2. Consul general.

Relation with Rules 103 and 108

1. If the correction sought is within the coverage of R.A. No. 9048, the petitioner must first file a verified petition with the concerned civil registrar.
2. Judicial remedies may be availed only upon denial of the administrative petition (exhaustion of administrative remedies).
3. If the correction sought is both clerical and substantial, a single petition under Rule 108 should be filed to avoid multiplicity of suits. (i) R.A. No. 9048 did not divest trial courts of jurisdiction over petitions for correction of clerical errors; (ii) LCR's authority while primary is not exclusive.

⁴³ Change of daughter's status from married to unmarried.

G. Writ of Amparo (A.M. No. 07-9-12-SC)

To whom available:

1. Any person whose life, liberty, security is (i) violated, or (ii) threatened with violation, by an unlawful act or omission of a public official or EE, or of a private individual or entity.
2. It shall cover (i) extralegal killings, (ii) enforced disappearances, or (iii) threats thereof.
3. Extralegal killing – killings committed without due process of law, including legal safeguards or judicial proceedings.
4. Enforced disappearances – arrest, detention, or abduction of a person by a government official, organized groups, or private individuals acting with the direct or indirect acquiescence of the government under conditions which places the person outside the protection of law such as: the refusal of the State to disclose the fate or whereabouts of the person concerned; or a refusal to acknowledge the deprivation of liberty.

Nature:

1. Curative – to facilitate the punishment of those involved.
2. Preventive – to break the expectation of impunity.
3. Judgment shall consist of anything that will protect the life, liberty and security of the subject person.

When not available:

1. If there is no government involvement participation, direct or indirect.
2. If the matter merely involves property or commercial rights – e.g., threatened demolition of dwelling pursuant to final and executory order of demolition; trespass over one's property.
3. If the matter merely involves right to travel – e.g., issuance of hold departure order.
4. To obtain custody of minor child from the DSWD.

Who may file (successive):

1. By the aggrieved party, or any qualified person successively.
2. Any immediate family member: spouse, children, parents.
3. Ascendants, descendants, collateral relatives within the fourth civil degree of consanguinity or affinity.
4. Any concerned citizen, organization, association, or institution.

Against whom may be filed:

1. Public officer or EE
2. Private individual or entity – although government involvement remains an indispensable element.

Where to file

1. RTC of the place where the threat, act or omission was committed or any of its elements occurred
2. Sandiganbayan, CA, or any justice of such courts – (i) enforceable anywhere in Ph; (ii) Returnable to the issuing court, or any of its justices, or to the RTC of competent jurisdiction
3. Supreme Court, or any justice of such courts – (i) enforceable anywhere Ph; (ii) Returnable to the SC, or any of its justices, or to the SB or CA, or any of its justices, or to the RTC of competent jurisdiction.

Contents of petition

1. Personal circumstances of the petitioner.
2. The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation.
3. The right to life, liberty and security of the aggrieved party violated or threatened with

violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits.

4. The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report.
5. The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act, or omission; and
6. The relief prayed for.
7. Verification.
8. Supporting affidavits must be attached.

*****If the court finds the petition sufficient in form and substance, it shall issue the writ. Otherwise, it shall immediately dismiss the case.***

1. It is not proper for the court to issue summons to the respondent and require them to file an answer.
2. Respondents should instead be required to file a return, after which a summary hearing shall be conducted.
3. If the respondent fails to file a return, the petition shall be allowed to adduce evidence ex-parte.
4. N.B.: the writ of amparo is merely an interlocutory order; it is the privilege of the writ which constitutes final judgment on the merits.

Compliance with contents of petition

1. Non-compliance is ground for dismissal of petition;
2. But may be relaxed by the court. E.g., in case of – (i) failure to attach supporting affidavits but the allegations are substantial; (ii) defective verification.

Filing of return

1. Constitutes the comment or answer of the respondent to the petition.
2. Must be verified return and filed with supporting affidavits within five (5) working days from service of the writ (not extendible, except on highly meritorious grounds).
3. Failure to file return shall authorized the presentation of evidence ex-parte.
4. Hearing on the return shall be summary.

Contents of return

1. Lawful defenses of the respondent. N.B.: general denial is not allowed. Any defense not pleaded are deemed waived (omnibus motion rule).
2. Steps or actions taken by respondent to determine the fate or whereabouts of the aggrieved party and the person/s responsible for the threat, act, or omission.
3. Relevant information in respondent's possession.
4. If the respondent is a public official or employee, the actions taken or to be taken: (i) to verify the identity of the aggrieved party; (ii) to recover and preserve relevant evidence; (iii) to identify relevant witnesses and obtain statements from them; (iv) to determine the cause, manner, location and time of death or disappearance, or the pattern or practice causing the same; (v) to identify and apprehend the person or persons involved; (vi) to bring the suspected offenders before a competent court.
5. Other relevant matters

Standard of diligence:

1. If private individual respondent, he must prove observance of ordinary diligence in the performance of duty.
2. If public officer respondent, he must prove observance of extraordinary diligence in the performance of duty.

Prohibited motions:

1. **Motion to dismiss;**
2. Motion for extension of time to file opposition, affidavit, position paper and other pleadings;
3. Dilatory motion for postponement;
4. **Motion for a bill of particulars;**
5. Counterclaim or cross-claim;
6. Third-party complaint;
7. Reply;
8. Motion to declare respondent in default;
9. Intervention;
10. Memorandum;
11. Motion for reconsideration of interlocutory orders or interim relief orders; and
12. **Petition for certiorari, mandamus, or prohibition against any interlocutory order.**

Interim reliefs: (a) Temporary Protection Order; (b) Inspection Order; (c) Production Order; (d) Witness Protection Order

(a) Temporary Protection Order

(b) Inspection Order

1. Must be via verified motion.

(c) Production Order

1. Must be via verified motion.

(d) Witness Protection Order

Quantum of proof:

1. Substantial evidence applying totality of evidence test, i.e., the consideration of all the pieces of evidence adduced in their totality.
2. Evidence otherwise inadmissible (e.g., hearsay) may be admitted if consistent with other admissible evidence adduced.

Judgment:

1. Shall be rendered within ten 10d from submission of petition for decision.
2. Court to grant the privilege of the writ and other appropriate reliefs, if allegations in the petition are proven by substantial evidence; court to deny if otherwise.

Appeal:

1. To SC under Rule 45 raising **questions of fact** or law, or both.
2. Must be filed within 5 working days from the date of notice of the adverse judgment.

Consolidation:

1. Petition shall be consolidated with the criminal action subsequently filed.
2. If a prior criminal action was filed, not petition shall be commenced. The reliefs under the writ shall be available by way of motion in the criminal action, subject to the Rules on Writ of Amparo.

H. Writ of Habeas Data (A.M. No. 08-1-16-SC)

To whom available:

1. To any person whose **right to privacy** in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting, or storing **GCS** of data or information regarding the person, family, home, and correspondence of the aggrieved party.
2. It seeks to protect a person's right to control information regarding oneself, particularly in instances when such information is being collected through unlawful means in order to achieve unlawful ends.

3. Not confined to cases of extralegal killings and enforced disappearances.

Not available:

1. For mere violation of right to privacy is not ground of issuance of the writ. **Nexus** between violation of right to privacy and the threat to life, liberty or security of a person must be established.
2. Where there is violation of right to privacy there being no expectation of privacy (*Vivares v. STC*).
3. Where the subject is immune from suit, e.g., Pres. Duterte.
4. In case of convict since there is no expectation of privacy for a convict. He is always subject to supervision, monitoring of persons in authority.

Strands of right to privacy:

1. Locational or situational privacy – one felt in physical space, violated by trespass and unwarranted search and seizure.
2. Decisional privacy – right of individuals to make certain kinds of fundamental choices with respect to their personal and reproductive autonomy.
3. **Informational privacy** – usually defined as the right of individuals to control information about themselves (covered by WHD).

Against whom may be filed:

1. Public official or employee
2. Private individual or entity engaged in the gathering, collecting, or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party.
3. "engaged in the GSC of information" – the entity need not be engaged in the business of collecting or storing data so long as they are able to acquire personal information about another.

Who may file:

1. Any aggrieved party
2. In cases of extralegal killings and enforced disappearances, successively: (i) Any immediate family member: spouse, children, parents; (ii) Ascendants, descendants, collateral relatives within the fourth civil degree of consanguinity or affinity.

Where to file:

1. RTC of the place where the petitioner or respondent resides or has jurisdiction over the place where data or information is GCS, at petitioner's option.
2. SC, CA, SB, or any justice of such courts – (i) if the action concerns public data files of government offices; (ii) if issued by CA or SB, returnable before the issuing court or justice or RTC in [1]; if issued by SC, returnable before the CA, SB, or any of their justices, or RTC in [1].
3. Writ is enforceable anywhere in Ph, regardless of which court issued.

Contents of petition:

1. The personal circumstances of the petitioner and the respondent;
2. The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party;
3. The actions and recourses taken by the petitioner to secure the data or information;
4. The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known;
5. The reliefs prayed which may include: (i) the updating, rectification, suppression or destruction of the database or information or files kept by the

respondent, (ii) the prevention of the act complained of; (iii) other just and equitable reliefs.

***If the court finds the petition to be sufficient in form and substance, it shall issue the WHD.*

Filing of return:

1. Written verified return shall be filed with supporting affidavits within 5 working days from service of the writ (not extendible except on highly meritorious ground).
2. General denial of the allegations in the petition is not allowed.
3. Subject to omnibus motion rule: defenses not raised are deemed waived.

Contents of petition:

1. Lawful defenses of the respondent; (i) national security; (ii) state secrets; (iii) privileged communications; (iv) confidentiality of the source of information of media; (v) others
2. If the respondent is in charge or in possession or in control of the data or information: (i) a disclosure of the data or information about the petitioner, the nature of such data or information, and the purpose for its collection; (ii) the steps or actions taken by the respondent to ensure the security and confidentiality of the data or information; and (iii) the currency and accuracy of the data or information held
3. Other relevant matters.

Hearing on petition:

1. If the respondent invokes the above defenses, hearing may be conducted in the judge's chambers.
2. Summary hearing.

Prohibited motions:

1. **Motion to dismiss;**
2. Motion for extension of time to file return, opposition, affidavit, position paper and other pleadings;
3. Dilatory motion for postponement;
4. **Motion for a bill of particulars;**
5. Counterclaim or cross-claim;
6. Third-party complaint;
7. Reply;
8. Motion to declare respondent in default;
9. Intervention;
10. Memorandum;
11. Motion for reconsideration of interlocutory orders or interim relief orders; and
12. **Petition for certiorari, mandamus, or prohibition against any interlocutory order.**

Judgment:

1. Shall be rendered within ten (10) days from the time the petition is submitted for decision.
2. Court to grant the privilege of the writ and other appropriate reliefs, if allegations in the petition are proven by substantial evidence; court to deny if otherwise.
3. Grant of privilege of the writ by: (i) enjoining the act complained of, or (ii) ordering the deletion, destruction, or rectification of the erroneous data or information.

Appeal:

1. To SC under Rule 45 raising questions of **fact** or law, or both, within 5 working days from the date of notice of the adverse judgment.

Consolidation:

1. Petition shall be consolidated with the criminal action subsequently filed.

2. If a prior criminal action was filed, not petition shall be commenced. The reliefs under the writ shall be available by way of motion in the criminal action, subject to the Rules on Writ of Amparo.

I. Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC)

Two special proceedings: (a) Writ of Kalikasan; (b) Writ of Continuing Mandamus

1. Temporary Environmental Protection Order (TEPO)

Environmental Protection Order (EPO)

1. Order issued by the court directing or enjoining any person or government agency to perform or desist from performing an act in order to protect, preserve or rehabilitate the environment.

T[emporary]EPO

Conditions for ex parte issuance

1. A verified complaint under the Rules contain a prayer for issuance of EPO;
2. It appears that the matter is of extreme urgency;
3. It appears the applicant will suffer grave injustice and irreparable injury if the TEPO is not issued.

Who shall issue

1. Executive judge of the multiple-sala court before raffle, or
2. Presiding judge of a single-sala court.

Effectivity

1. 72 hours from date of the receipt of the TEPO by the party or person enjoined.
2. Within 72 hours, summary hearing shall be conducted to determine whether TEPO may be extended until the termination of the case.
3. The TEPO may be lifted at any time as circumstances may warrant.

Dissolution

1. Ground: the issuance or continuance of TEPO would cause irreparable damage to the party or person enjoined, while the applicant may be fully compensated for such damages as he may suffer;
2. Conditions: (i) Upon motion of party enjoined, supported by affidavits; (ii) Applicants must be given opportunity to oppose the motion, also by affidavits; (iii) Conduct of hearing; (iv) Posting of a sufficient bond by the party or person enjoined.

Prohibition against TRO or WPI

1. Except the Supreme Court, no court can issue a TRO or writ of preliminary injunction against lawful actions of government agencies that enforce environmental laws or prevent violations thereof

Conversion of TEPO to EPO, or issuance of writ of continuing mandamus

1. In the judgment, the court may convert the TEPO to a permanent EPO or issue a writ of continuing mandamus directing the performance of acts which shall be effective until the judgment is fully satisfied.

Grant of TEPO in petition for continuing mandamus

1. The court in which the petition is filed may grant a TEPO for the preservation of the rights of the parties pending such proceedings.

2. Writ of Continuing Mandamus

When issued:

1. Writ issued in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied.

<p>2. Issued when there is allegation that any agency or instrumentality of the government or officer (i) unlawfully neglects the performance of which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law, rule or regulation or a right therein, or (ii) unlawfully excludes another from the use and enjoyment of such right and (iii) there is no other plain, speedy or adequate remedy in the course of law</p> <p>3. Relief sought: judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied.</p> <p>Against whom may be issued:</p> <ol style="list-style-type: none"> 1. Agency or instrumentality of the government or officer, but not private individuals. <p>Where to file:</p> <ol style="list-style-type: none"> 1. RTC exercising jurisdiction over the territory where the actionable neglect or omission occurred. 2. CA, SC. <p>Issuance of the writ</p> <ol style="list-style-type: none"> 1. If the petition is sufficient in form and substance, the court shall issue the writ. 2. Respondent will also be required to comment on the petition within 10d from receipt of a copy. 3. Pending proceedings, the court may grant a TEPO for the preservation of the rights of the parties. <p>Conduct of proceedings</p> <ol style="list-style-type: none"> 1. Hearing to be conducted after the comment is filed or the time for the filing thereof has expired. 2. Summary in nature; court or judge may require the parties to submit memoranda. 3. Petition shall be resolved within 60d from the date of the submission of the petition for resolution. <p>Judgment; grant of privilege of the writ</p> <ol style="list-style-type: none"> 1. To require respondent to perform an act or series of acts until the judgment is fully satisfied and to grant such other reliefs as may be warranted resulting from the wrongful or illegal acts. 2. To require the respondent to submit periodic reports detailing the progress and execution of the judgment. – such periodic reports shall be contained in partial returns of the writ, with final return made upon full satisfaction of judgment. <p>Monitoring of compliance</p> <ol style="list-style-type: none"> 1. The court may, by itself or through a commissioner or the appropriate government agency, evaluate and monitor compliance. 2. Petitioner may submit its comments or observations on the execution of the judgment. 	<ol style="list-style-type: none"> 5. Any accredited or registered public interest group 6. On behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation. <p>Contents of petition:</p> <ol style="list-style-type: none"> 1. The personal circumstances of the petitioner; 2. The name and personal circumstances of the respondent or if the name and personal circumstances are unknown and uncertain, the respondent may be described by an assumed appellation; 3. The environmental law, rule or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. 4. All relevant and material evidence consisting of the affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence; 5. The certification of petitioner under oath that: (i) petitioner has not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and no such other action or claim is pending therein; (ii) if there is such other pending action or claim, a complete statement of its present status; (iii) if petitioner should learn that the same or similar action or claim has been filed or is pending, petitioner shall report to the court that fact within 5 days therefrom; and 6. The reliefs prayed for which may include a prayer for the issuance of a TEPO. <p>Where to file:</p> <ol style="list-style-type: none"> 1. SC or any stations of the CA. 2. Cannot be filed with RTC. <p>Issuance of writ</p> <ol style="list-style-type: none"> 1. If the petition is sufficient in form and substance, the court shall issue an order within 3 days from the date of filing of the petition. 2. Order shall: (i) Issue the writ; (ii) Require the respondent to file a verified return under the Rule 3. Clerk to issue the writ, including a cease and desist order and other temporary reliefs effective until further order. <p>Return on the writ:</p> <ol style="list-style-type: none"> 1. Written verified return filed within a 10 working days from service of the writ (non-extendible). 2. General denial of allegations in the petition shall be considered as an admission of said allegations. 3. All defenses not raised in the return shall be deemed waived. 4. In case of failure to file, the court or judge shall proceed to hear the petition ex parte.
<p>3. Writ of Kalikasan</p> <p>To whom available:</p> <ol style="list-style-type: none"> 1. To a natural or juridical person, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces. 2. The writ is categorized as a special civil action. <p>Who may file:</p> <ol style="list-style-type: none"> 1. Natural or juridical person 2. Entity authorized by law 3. People's organization 4. NGO 	<p>Contents of return:</p> <ol style="list-style-type: none"> 1. All defenses to show that respondent did not violate or threaten to violate, or allow the violation of any environmental law, rule or regulation or commit any act resulting to environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces; 2. Including affidavits of witnesses, documentary evidence, scientific or other expert studies, and if possible, object evidence, in support of the defense. <p>Prohibited motions:</p> <ol style="list-style-type: none"> 1. Motion to dismiss; 2. Motion for extension of time to file return; 3. Motion for postponement;

4. Motion for a bill of particulars;	
5. Counterclaim or cross-claim;	
6. Third-party complaint;	
7. Reply; and	
8. Motion to declare respondent in default.	
Summary hearing	
1. Upon receipt of the return, court of judge may conduct preliminary conference (a) to simplify the issues, and (b) to determine the possibility of obtaining stipulations and admissions from the parties;	
2. The hearing including the preliminary conference shall not extend beyond 60d.	
Judgment	
1. Shall be rendered within 60d from the time the petition is submitted for decision;	
2. Court to either grant or deny the privilege of the writ;	
3. Grant of privilege of the writ by: (i) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage; (ii) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment; (iii) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court; (iv) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and (v) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.	
4. Revocation of permits and ECCs may be granted in a petition for Writ of Kalikasan, even if not expressly mentioned by the Rules.	
Appeal	
1. To SC under Rule 45, raising questions of fact or law, within 15 working days from the date of notice of the adverse judgment.	
Institution of separate actions	
1. Filing of petition for writ of kalikasan shall not preclude the filing of separate civil, criminal, administrative actions.	
Writ of Kalikasan	Writ of Continuing mandamus
Unlawful act or omission of any person involving environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.	(i) Unlawful neglect in performing an act which the law specifically enjoins as a duty resulting from an office, trust, or station in connection with the enforcement or violation of an environmental law, rule or regulation or a right therein, or (ii) unlawful exclusion of another from the use and enjoyment of such right
Public or private respondent	Public respondent
Petitioners may be natural or juridical person, entity authorized by law, people's organization, NGO, any accredited or registered public interest group, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation	Petitioner must be personally aggrieved by the unlawful act or omission (RPI)
May be filed with SC, or any stations of CA	May be filed with RTC, SC, CA

Contains provisions for discovery measures such as ocular inspection order, production order, etc.	No provision for discovery measures.
Does not allow payment of damages	Allows payment of damages for malicious neglect of the performance of respondent's legal duty

VII. Criminal Procedure

A. General Concepts

1. Criminal Jurisdiction; Concept and Requisites for Exercise

(a) SM jurisdiction; (b) Personal jurisdiction; (c) Venue – jurisdictional in criminal cases

(a) SM jurisdiction

- Fixed by law.
- The IPRA did not deprive the courts of jurisdiction over criminal offenses, even as between people who belong in the same tribes.

MTC EOJ **ROBoT 6.5 N (RRSP: ROBoT 1.5 N)**

- Violation of **traffic** laws, rules, regulations;
- Violations of **rental** law;
- Violation of municipal and city **ordinances**;
- Violation of **B.P. Blg. 22**, regardless of amount;
- Criminal cases where the prescribed **penalty** is imprisonment ≤6y, regardless of fine (RRSP if ≤1y, 50k, or both)
- Offenses involving damage to property through criminal **negligence** (RRSP if imposable fine is ≤150k (RRSP); ordinary procedure if >150k).
- Offenses where the only prescribed penalty is fine ≤50k (RRSP if ≤1y, 50k, or both).

Under RRSP

- Prohibited motions – (i) MTQ, (ii) MR, (iii) MTD. XPNs: (a) lack of SMJ, (b) failure to comply with barangay conciliation.
- Prescriptive period is interrupted only upon filing of information or complaint in court, not if with OCP. XPN: B.P. Blg. 22.
- Court shall not issue arrest warrant – (i) court will issue notice of hearing; (ii) bench warrant may be issued, and bail required if accused fails to attend.
- Bail is generally not required.

RTC EOJ **DEAL CHIME**

- Not falling within the **exclusive** jurisdiction of any court, tribunal, body
- Violation of OEC
- Libel**, regardless of penalty
- Violation of Comprehensive Dangerous **Drugs** Act CDDA
- Money** laundering cases. XPN: if committed by public officers or private persons in conspiracy with them within SB jurisdiction
- Violations of **IPR**
- Violation of **Cybercrime** Prevention Act
- Crimes punishable under the **CARL**
- Crimes against **humanity**

Family Courts EOJ **MD CVD**

- Criminal cases where accused/s <18y, ≥9y, or where victim/s is/are minor at the time of the commission. If the minor-victims were already dead, FC does not have jurisdiction.
- Violation of CDDA involving minors
- Violations of Child Abuse Act R.A. No. 7160
- Cases of domestic violence against women and children
- Cases of violence against women and their children R.A. No. 9262

Sandiganbayan

- Violations of Anti-Graft Law

2. Bribery and corruption of public officials
3. Violation of R.A. No. 1379 (Law on Forfeiture of Illegally Acquired Wealth)
4. Office-related offenses – (i) committed in the course of the performance of the duties; (ii) could not have been committed without the office.
5. Criminal offenses in sequestration
6. Plunder
7. Money laundering committed by public officers, or private persons in conspiracy with them

Covered officers:

1. Executive ≥ SG27. XPNs: (i) Provincial governor, (ii) City mayor; city counselors; (iii) Members of the diplomatic corps; (iv) Members of the armed forces (colonel up); (v) Prosecutors; (vi) Directors, officers, trustees, managers of GOCC. SB has no jurisdiction over BIR Regional Director <SG27
2. Congress ≥ SG27
3. Judiciary
4. ConCom
5. Other public officers ≥ SG27
6. Private individuals – (i) charged as co-principal, accomplice, accessory with the public officer; (ii) joint trial in the proper court.

RTC Jurisdiction:

1. If information: (i) does not allege damage to government or bribery; (ii) alleges damage or bribery but not exceeding 1M.
2. Appealable to SB.
3. **Anti-home court provision** R.A. No. 10660 – if the case fall within the RTC jurisdiction, the same shall be tried in the judicial region other than where the official holds office (undue influence consideration).

****CDDA (special law) prevails over P.D. No. 1606. Hence, Sen. De Lima's case of alleged illegal drug trading is within RTC jurisdiction.**

OMB

1. Administrative cases (QJ) – R43 CA
2. Criminal case, PC determination (executive) – R65 SC
3. Preventive suspension orders (interlocutory) – R65 CA

(b) Personal jurisdiction

1. Acquired through: (i) arrest, (ii) voluntary submission.
2. Voluntary submission includes the filing of pleading seeking affirmative relief.
3. The court may have personal jurisdiction over the accused although he may not be in its actual custody.
4. c.f.: custody of court – (i) required for an application for bail;⁴⁴ (ii) not required in a motion to set aside no bail recommendation and to fix the amount of bail, where only personal jurisdiction is required.
5. Personal jurisdiction is not required in resolving a MTQ a warrant of arrest.

(c) Venue

1. Jurisdictional in criminal cases.
2. The case must be filed in court of the place where the crime was committed or any of its essential elements occurred.

Elements of criminal jurisdiction are:

1. The offense is one which the court is by law authorized to take cognizance of;

2. The offense must have been committed within its territorial jurisdiction; and
3. The person charged with the offense must have been brought into its forum for trial forcibly by warrant of arrest or upon his voluntary submission to the court.

2. When Injunction May be Filed

GR: Injunction will not lie to enjoin a criminal prosecution (public interest).

XPNs:

1. To afford adequate protection to the constitutional rights of the accused
2. Necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions
3. Existence of a pre-judicial question which is sub-judice
4. Lack or excess of authority
5. Prosecution under an invalid law, ordinance or regulation
6. Double jeopardy is clearly apparent
7. Court has no jurisdiction over the offense
8. Persecution rather than prosecution
9. Charges are manifestly false and motivated by the lust for vengeance
10. Clearly no prima facie case against the accused and a MTQ on that ground has been denied
11. Preliminary injunction has been issued by the SC to prevent the threatened unlawful arrest

B. Prosecution of Offenses (Rule 110)

Offenses are prosecuted through the institution of criminal actions. Criminal actions are instituted either through a Complaint or Information.

- (a) WHAT: Complaint v. Information
- (b) HOW to institute criminal actions
- (c) WHERE to institute criminal actions
- (d) WHO must prosecute offenses

(a) WHAT: Complaint, Information

Complaint	Information
Sworn written charge of offense against a person	Written accusation of an offense against a person
Subscribed by offended party, peace officer, other public officer charged OPP with the enforcement of the law violated (other than the fiscal)	Subscribed by the prosecutor
Not necessarily filed the court	Filed with the court

Sufficiency of Information: (1) name of accused, (2) name of offended party, (3) offense, (4) date of commission, (5) place of commission; (6) Signature; (7) Other contents

(1) Name of accused

1. GR: must include (i) name, (ii) surname, (iii) appellation or nickname
2. If unknown – (i) fictitious name + statement that his true name is unknown; (ii) once discovered, the name must be inserted in the information and record.
3. If multiple– (i) all must be named, (ii) may be indicated by et. al. in subsequent pleadings.

(2) Name of offended party

1. Natural persons. – GR: must include (i) name, (ii) surname, (iii) appellation or nickname. If unknown: (i) fictitious name + statement that his true name is unknown; (ii) once discovered, the name must be inserted in the information and record.

⁴⁴ A person cannot apply for bail if he is not under the actual custody of the court.

2.	Juridical persons – (i) name or known designation; (ii) averment that it is a juridical person, or organized in accordance with law is not required.
3.	In crimes against property – (i) property must be described with sufficient particularity; (ii) if property is determinate, failure to designate the name of offended party is not fatal; (iii) if property is generic, failure to designate the name of offended party is fatal and may result to acquittal. “Various jewelry amounting to 705k” is sufficient description.
4.	In crimes against honor – (i) the designation of the offended party is material, (ii) improper designation may lead to the acquittal.
5.	Erroneous designation is generally not fatal as the remedy is to simply amend the information.
(3) Offense – Designation, Acts/Omissions, Circumstances	
1.	GR: a complaint or information must charge only one offense. XPN: when the law prescribes a single punishment for various offenses (complex crimes).
2.	Designation – (i) the name of the offense given by law, or the sub/section of the law punishing it if no specific name; (ii) failure to indicate the specific provision of law is not fatal when the crime is designated by its statutory name; (iii) “murder, or at the very least homicide” is fatally defective and violative of accused’s right to be informed of the nature and cause of accusation against him.
3.	Acts/Omissions – (i) stated in ordinary and concise language; (ii) tests: (a) will a person of common understanding know what offense is being charged, (b) will the court be able to pronounce judgment; (iii) “investment” without stating that funds were given under trust, administration or commission is insufficient to constitute estafa; (iv) mere allegation that the accused sold shabu without specifics as to whom sold, amount, etc. is also insufficient; (v) The offense is determined not by the caption, but the material allegations of acts and omissions constituting the same.
4.	Circumstances – (i) Qualifying and aggravating circumstances must be alleged otherwise, they cannot be appreciation to qualify the offense or increase the penalty; (iii) even if proven during trial without objection; (iv) “qualified by treachery” is insufficient for being mere conclusion of law, however, the defect is waived if not raised in MTQ on ground of a failure to substantially comply with the prescribed form; (v) variance doctrine.
(4) Date of commission	
1.	General averment is sufficient, i.e., as near as possible to the actual date of its commission. Precision is not required. “on or about”
2.	GR: Variance in date alleged and date proven is generally not fatal. The erroneous allegation is deemed supplanted by evidence. XPNs: (i) if date constitutes material ingredient of the offense; (ii) if the discrepancy is so great that it induces the perception that the information and the evidence are no longer pertaining to one and the same offense. This is violative of the accused’s right to be informed of the nature and cause of accusation against him.
3.	Relevant for reckoning prescriptive periods.
(5) Place of commission	
1.	GR: General averment is sufficient so long as it shows that the offense was committed or some of its essential elements occurred within the jurisdiction of the court. XPN: Specific averment necessary if the particular place (i) constitutes an essential element of the offense charged or (ii) is necessary for its identification.

2.	In perjury, venue may be the place of execution or notarization.
3.	In BP 22, venue may be the place of deliver of check, or where it was dishonored.
(6) Signatures	
1.	Must be signed by investigating prosecutor.
2.	Approved by provincial or city prosecutor. – absence or non-compliance is mere formal defect.
(7) Other contents	
1.	Witnesses
2.	Bail recommendation
3.	List of attachments
Amendment and substitution	
Amendment	Substitution
Refers to the same offense charged in the original information or to an offense which necessarily includes or is necessarily included in the original charge	Requires or presupposes that the new information involves a different offense which does not include or is not necessarily included in the original charge
Original is not dismissed	Original is dismissed upon filing of new one charging the proper offense
There may or may not be mistake in the charging of proper offense	There is necessarily a mistake in charging the proper offense
R110 S14(1)	R110 S14(2)
Before or after plea	Before or after plea
Formal or substantial	Necessarily substantial
With/out leave of court	Leave of court necessary (dismissal)
Retaking of PI/plea not required if only formal	Retaking of PI/plea is required
Evidence need not be retaken	Evidence must be retaken
Accused cannot invoke double jeopardy	Accused can invoke double jeopardy
May be done after rendition of judgment	May be done only before rendition of judgment; ** accused may move for substitution
Amendment	
1.	In case of variance in allegation and proof, the erroneous allegation is deemed supplanted by the evidence presented during trial without need of amendment.
Before plea	
1.	GR: matter of right
2.	XPN: if the amendment (i) downgrades the offense, or (ii) excludes an accused – (a) must be made upon motion of prosecutor, (b) with notice of offended party, and (c) leave of court.
After plea	
1.	Formal – (i) must be with leave of court, (ii) must not prejudice the rights of the accused. (a) when a defense would no longer be available; (b) when evidence would no longer be available; (c) when evidence would no longer be applicable.
2.	Substantial – not allowed , unless beneficial to accused.
3.	Formal or substantial; tests – (i) ED Test: Is the evidence and defense that accused had in the original information still available to him under the amended information? (ii) NEO Test: Nature and essence of the offense charged.
4.	Amendment to include a new accused and allegation of conspiracy renders self-defense unavailable – (i) either formal amendment that will prejudice the rights of accused, or (ii) substantial amendment. Not allowed after plea in either case.
Substitution	
1.	The dismissal of an information, upon filing of a new one charging the proper offense, provided that the accused will not be placed in DJ.

2. **If offense charge is rape by sexual intercourse, CA's order to substitute the information and charge RSA is improper since substitution is allowed only before rendition of judgment.

(b) HOW to institute criminal actions

1. Depends on w/n PI is required.
2. If required, by filing complaint with prosecutor for PI (421)
3. If not, (i) by directly filing the complaint/information with the MTC; (ii) by filing the complaint with the OCP. In Manila and Chartered Cities, complaint shall be filed only with the OCP; direct filing is not allowed.
4. [3] covers: (i) no PI required; (ii) valid warrantless arrest where PI required but no inquest prosecutor is available.

Effect of institution

1. Interrupts the running of the prescriptive period – (i) of the offense; (ii) of the civil action (a) which cannot be instituted separately, or (b) whose proceeding has been suspended.⁴⁵
2. XPNs: (i) Contrary provision in SPL; (ii) RRSP, interruption is only upon filing of complaint/information in court **ROBoT 1.5 N, except BP22**
3. Interruption upon filing with: (i) court – (a) even if for purposes of PI; (b) even if court has no jurisdiction; (ii) with prosecutor's office; (iii) with investigative body having authority under the law (e.g., with SEC for violations of SRC); (iv) with for offenses within SB jurisdiction.
4. The period runs again when the proceedings terminate without conviction or acquittal, e.g., discharge of accused because no prima facie case was shown.
5. No distinction whether RPC/SPL offense.

(c) WHERE to institute criminal actions

1. Venue is jurisdictional in criminal cases. It must be filed in the place where the crime was committed or any of its essential elements occurred.
2. If committed on vehicle or vessel – place of departure and destination, all territories passed.
3. If exercising extraterritorial jurisdiction,⁴⁶ court where action was first filed. **RPC + HIT CV**
4. In online libel, where article was first published, not where it is first accessed. Venue is residence of complainant.
5. In B.P. Blg. 22 cases, may be filed either in the situs of drawee or collecting bank.

(d) WHO must prosecute offenses

1. Prosecution of all criminal offenses [criminal aspect] must be under the **direction and control** of the public prosecutor. – (i) RPI is the State; (ii) private complainant is merely a witness. XPNs (see below**)
2. On appeal/R65 in case of acquittal or dismissal⁴⁷ – (i) on criminal aspect, only OSG may represent the People by express provision of RAC, PD 478. Conformity of the ACP is insufficient; (ii) on civil aspect, may be filed by private complainant in his own name.

3. Absence of authority or prior approval of the provincial or city prosecutor is not a jurisdictional defect. It is merely procedural infirmity which may be raised as ground in MTQ (failure to comply substantially with the formalities). Failure to raise the same in MTQ constitutes waiver.

Intervention of private complainant

On civil aspect

1. His interest is limited to the civil liability and may intervene for such purpose.
2. In case of acquittal, he may also appeal on the civil aspect.

On criminal aspect, the private complainant may prosecute the case if: **

1. Authorized by public prosecutor – (i) upon approval by court, (ii) under his direct control and spv. The authority need not be in writing.
2. Delegated by public prosecutor – (i) only in case of heavy schedule and lack of prosecutors; (ii) upon written authority by the Chief of the Prosecution Office or the Regional State Prosecution Office; and (iii) approval by court. Private prosecutor may prosecute the case even in the absence of public prosecutor until the termination of trial.
3. If public prosecutor is not available in the MTC, case may be prosecuted by OPP. The authority terminates upon (a) actual intervention of prosecutor, or (b) elevation of the case with RTC.
4. All pleadings filed by the private prosecutor must be with the written conformity of the public prosecutor.

In private crimes DCASAL

1. The action must be initiated solely by the offended parties or their authorized representatives.
2. Done by filing a complaint – (i) the complaint must be attached in the INF, or (ii) presented in evidence [PI records do not form part of case records].
3. The requirement is jurisdictional, and ground for MTQ.
4. Defamation imputing CASAL shall be brought only upon complaint of offended party.
5. Concubinage, Adultery – (i) upon complaint of offended spouse; (ii) must include both offenders; (iii) before consent/condonation or pardon.⁴⁸
6. Seduction, Abduction, Acts of lasciviousness – (i) upon complaint of offended party, parents, grandparents, guardian [successive]; (ii) before express pardon; (iii) state may prosecute if: (a) offended party dies or becomes incapacitated before she can file the complaint, and (b) she has no known parents, grandparents or guardian.
7. Rape is no longer private crime (crime against persons) and may already be prosecuted de officio.

C. Prosecution of Civil Action (Rule 111)

(a) Institution, (b) Deferment/Suspension, (c) Extinction

(a) Institution

1. GR: When a criminal action is instituted, the civil action for the recovery of civil liability arising from

⁴⁵ As GR, if civil action arising from criminal act was instituted prior to the filing of criminal action, the filing of latter shall suspend the former until the criminal case is terminated.

⁴⁶ (i) RPC Art. 2. SCoPIN. (a) Ship; (b) Counterfeiting of coins, bills, notes, RP securities; (c) Introduction of such counterfeits in Ph territory; (d) Committed by public officers in exercise of functions; (e) Crimes against National Security and the Law of Nations.

(ii) human trafficking; (iii) illegal recruitment; (iv) terrorism or terrorism financing; (v) cybercrimes, if any damages is caused

to natural or juridical person who at the time of commission was in Ph; (v) VAWC (psychological abuse).

⁴⁷ Acquittal or dismissal of the case is generally barred as it will violate accused's right against DJ. XPNs: (i) if the judgment is a nullity (lack of jurisdiction, deprivation of due process); (ii) one of the elements of DJ is not present.

⁴⁸ Consent/condonation or pardon deprives the offended spouse of authority to file the complaint.

<p>the offense (ex-delicto) charged CARCLAO shall be deemed instituted with the criminal action.</p> <ol style="list-style-type: none"> XPNS: WaRP (i) waiver, (ii) reservation, (iii) prior institution. XPN to XPN: reservation is not allowed in (i) BP 22. If civil action is institution prior to criminal action, the former shall be suspended, or consolidated with the latter; (ii) Crimes involving public officers falling within jurisdiction of SB, RTC, MTC; (iii) Theft, coercion, seduction (not involving defamation, fraud, physical injuries) Reservation – (i) must be made before the prosecution starts presenting evidence, (ii) cannot be instituted until entry of judgment in the criminal case, (iii) prescriptive period is suspended in the meantime. The accused may not file counterclaim, cross-claim or third party complaint. He may prosecute his cause of action in a separate civil action. <p>Filing fees:</p> <ol style="list-style-type: none"> For actual damages – GR: No filing fees. XPN: As otherwise required by rules, e.g., BP 22 (amount of check is considered actual damages) For other damages – (i) if specified, filing fees must be paid at the time of filing, (ii) if not, first lien on judgment award. <p>(b) Deferment/Suspension</p> <ol style="list-style-type: none"> If criminal action is commenced prior to the civil action, the CARCLAO cannot be instituted until final judgment has been entered in the criminal action (deferment). If civil action is commenced prior to the criminal action: (i) the former shall be suspended in whatever stage before judgment on the merits until final judgment is rendered in the criminal action. Prescriptive period also tolled, or (ii) consolidated with the criminal action upon motion of the offended party before judgment on the merits. If consolidated, (a) evidence produced on civil action is deemed reproduced at criminal action, subject to right to prosecution to cross-examination, and present of additional evidence, (b) civil and criminal actions shall be tried and decided jointly. XPNS: The prior civil action is not suspended if: (i) Independent civil actions, (ii) Prejudicial question. An action for legal separation with ancillary remedy of support pendente lite is not CARCLAO is a subsequent criminal action for bigamy. The former cannot be suspended. Only CARCLAO is suspended. <p>Independent civil actions</p> <ol style="list-style-type: none"> (i) Shall proceed independently of the criminal action, (ii) reservation is not required; (iii) shall require only a preponderance of evidence, (iv) leave of court where the criminal action is pending is not required, (v) result of criminal action is immaterial, even if the court in the criminal case declares that the act from which civil liability may arise did not exist NCC: (i) Art. 32: Liability for obstruction or violation of basic rights, (ii) Art. 33: In cases of defamation, fraud, and physical injuries PDF (generic), (iii) Art. 34: When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property; (iv) Art. 2176: QD. The same act or omission may produce two different causes of action, one from crime and another from QD. The only limit is that the offended party may not recover damages twice for the same act or omission (NCC). <p>Prejudicial question</p>	<ol style="list-style-type: none"> If the civil action involves a prejudicial question, it is the criminal action that will be suspended until the former is terminated. Elements: PIRJ (i) Previously instituted civil action, (ii) raising issues intimately related to those upon which the criminal prosecution would be based, (iii) the resolution of said issues is determinative of the guilt or innocence of the accused, or whether or not the criminal action may proceed, and (iv) jurisdiction to try said question must be lodged in another tribunal. The accused may file petition for suspension of the criminal action in the OCP or court conducting PI, or in the court where the criminal action is pending at any time before the prosecution rests. Action for declaration of nullity is PQ in bigamy (Pulido). <p>(c) Extinction</p> <p><i>Extinction of penal action</i></p> <ol style="list-style-type: none"> GR: does not carry with it extinction of the civil action. XPN: CVL is extinguished if there is finding in the judgment in the criminal action that the act/omission from which the CVL may arise did not exist. The private offended party may appeal the civil aspect despite the acquittal of the accused even without conformity of the private prosecutor or the OSG. Judgment of acquittal does not bar an action for damages based on the same act/omission, subject the rule against double recovery. <p><i>Death of accused</i></p> <ol style="list-style-type: none"> Before arraignment, case shall be dismissed. After arraignment, (i) CML and CVL ex delicto are extinguished; (ii) ICA (32, 33, 34, 2176) and CVL from other sources are not extinguished. Civil action may be brought against the estate or legal representative of the deceased. Adverse judgment may be executed (not filed as claim against the estate since not arising from contract). <p>D. Preliminary Investigation (Rule 112)</p> <p>Inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that: (i) a crime has been committed, and (ii) the respondent is probably guilty thereof and should be held for trial.</p> <ol style="list-style-type: none"> Statutory (not constitutional) right but essential component of criminal due process. Substantive, not a mere formal or technical right. Administrative proceeding, not judicial. Required when impossible penalty ≥ 421. Not required when: (i) impossible penalty < 421; (ii) impossible penalty ≥ 421 but – (a) lawful warrantless arrest, (b) inquest is conducted, or (c) even without inquest, in the absence or unavailability of an inquest prosecutor. <p><i>Inquest</i></p> <ol style="list-style-type: none"> Formal and summary investigation conducted by inquest prosecutor in cases where a person has been arrested without warrant for an offense requiring PI and made for the purpose of determining validity of warrantless arrest and whether there is PC to file the information. Inquest investigation does not fulfill the requirement of PI before the filing of INF except when the accused was lawfully arrested without a warrant. When there is no arrest at all, as when the accused was merely invited, PI is required if impossible penalty is 421. <p><i>Lack of PI</i></p> <ol style="list-style-type: none"> Remedy: (i) Motion for conduct of PI – (a) must be invoked before filing of complaint/information, or
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within 5d upon learning of its filing in court; (b) he must waive provisions under Art. 125 of RPC;⁴⁹ (ii) apply for bail; (iii) MTQ on ground of lack of personal jurisdiction, in case of unlawful warrantless arrest.

2. Lack of PI is not jurisdictional – (i) If raised timely, the case shall not be dismissed but the court shall either (a) conduct PI, or (b) remand it to lower court or prosecutor for its conduct; (ii) if not raised timely, the objection is deemed waived.
3. Lack of PI will not affect validity of the arrest warrant.
4. Lack of PI will not result in automatic grant for bail. Bail hearing is mandatory. N.B.: application for bail is not deemed waiver of lack of jurisdiction over the person of the accused, nor of objections to the illegality of the arrest.

Who may conduct PI: **PCAM NaREL**

1. Provincial or City Prosecutors and their assistants
2. MTC judges
3. National and Regional State Prosecutors
4. Other officers as may be authorized by law

Who may approve (filing/dismissal of complaint/INF) **PC POD**

1. Provincial or City Prosecutors
2. Prosecutor General or Deputy
3. OMB or Deputy

***Approval by improper authority is mere formal defect which may be raised in MTQ. Otherwise, deemed waived.*

Procedure:

1. Filing of complaint – (i) with sworn affidavits of complainants and witnesses, other supporting documents; (ii) personal examination of complainant is not indispensable.
2. Action of investigating officer. Either – (i) Dismiss, or (ii) Issue subpoena + complaint, affidavits, documents to respondent. If respondent cannot be subpoenaed, the investigating prosecutor may resolve the complaint based on the evidence before him.
3. Submission of counter-affidavit – (i) sworn; (ii) res inter alios acta and hearsay are not proper to be invoked in PI; (iii) investigating prosecutor may call clarificatory hearing.
4. Issuance of resolution >> administrative appeal.
5. Filing of information.

Resolution

1. If PC not found, he shall recommend the dismissal of the complaint.
2. If PC found, he shall prepare the resolution and information.

Approval

1. Approval of resolution. No complaint/information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of superior **PC POD**
2. If recommendation of dismissal is disapproved – (i) PC POD may, by himself, file the INF, or (ii) direct another prosecutor to do so without conducting another PI.

Appeal

1. Appealable to SOJ – (i) resolutions of the Prosecutor General, (ii) resolutions of the Provincial/City Prosecutors in cases cognizable by the RTC
2. Not appealable to SOJ – (i) resolutions of the Provincial/City Prosecutors in cases cognizable by MTC; (ii) appealable to (a) Prosecutor General as the Regional State Prosecutor in the NCR and (b)

the Regional State Prosecutors with respect to their respective regions; (iii) resolutions of the latter are final and not appealable to SOJ, subject only to his residual review powers “to afford fair play and prevent the miscarriage of justice”.

3. Appeals on resolution of SOJ – (i) to CA via R65; (ii) to OP if: (a) offense involved is punishable by reclusion perpetua or death, (b) New and material issues are raised which were not previously presented before SOJ, (c) The prescription of the offense is not due to lapse within 6 months from notice of the questioned resolution, (d) The appeal or petition for review is filed within 30 days from notice; (iii) resolution of OP is appealable to CA via R43.
4. Effect of filing petition for review with SOJ – (i) shall not hold the filing of information; (ii) arraignment may be suspended for a maximum period of 60d.
5. Effect on arraignment – (i) if the accused has already been arraigned, the SOJ shall not give due course the petition for review; (ii) if the accused was not yet arraigned – (a) the pending petition for review will not bar the arraignment, (b) the arraignment shall prevent SOJ's exercise of his review authority, (c) the accused may move for the suspension of arraignment for a maximum period of 60d from the filing of petition.

Filing of information

1. Judge shall personally evaluate the prosecutor's resolution and supporting documents.
2. Actions: (i) dismissal, if no PC found [appealable final order], (ii) issuance of arrest warrant/commitment order, if PC found, (iii) order prosecutor to present additional evidence, if doubtful.
3. The judge cannot remand the same to the prosecutor for the re-conduct of PI.
4. The judge cannot overturn the prosecutor's finding of PC. If evidence was found wanting, the proper procedure is for the judge to revoke the warrant previously issued, if any, and order the prosecutor to submit additional evidence.
5. The judge is not obliged to first resolve a MTQ even if grounded on lack of jurisdiction before issuing an arrest warrant.
6. Arrest warrant need not be issued if: (i) accused already under detention, (ii) accused already under custody by virtue of valid warrantless arrest, (iii) offense is penalized by fine only, and (iv) cases covered by RRSP.

***Once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. The filing of a motion to dismiss by the public prosecutor does not guarantee the dismissal of the information.*

Record

1. Record of PI shall not form part of the record of the case.
2. Judge may order (on motion or motu proprio) its production or any part of such record if: (i) necessary in the resolution of the case or any incident therein, or (ii) to be introduced as evidence in the case by the requesting party.

Instance of PC determination (4)

1. PI – whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial.

⁴⁹ Period for delivery of prisoners to judicial authorities.

2. Issuance of arrest warrant – whether a warrant of arrest or a commitment order, shall be issued and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.
3. Hot pursuit arrest – 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.
4. Issuance of search warrant – whether a search warrant shall be issued, and only upon probable cause in connection with one specific offense 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 things to be seized.

1. Executive vs. Judicial Determination of Probable Cause

Executive	Judicial
Conducted by prosecutor during PI	Made by judge to determine propriety of the issuance of arrest warrant
Whether (i) a crime has been committed, and (ii) the respondent is probably guilty thereof and should be held for trial.	Whether there is necessity for placing the accused under custody in order not to frustrate the ends of justice.
Not subject to judicial review except on ground of GAD via R65 ⁵⁰ (R43 not proper)	Dismissal of information for lack of PC is an appealable final order

E. Arrest (Rule 113)

The taking of a person in custody so that he may be bound to answer the commission of an offense.

1. Done by: (i) actual restraint, (ii) voluntary submission to custody of the person making the arrest.
2. Methods of arrest: (i) Arrest with warrant; (ii) Warrantless arrest by police officer; (iii) Warrantless arrest by private person.

1. Arrest Without Warrant, When Lawful

(a) In flagrante delicto, (b) Hot pursuit, (c) Arrest of escapee

(a) In flagrante delicto

1. (i) in the presence of the arresting officer, (ii) the person to be arrested has committed, is actually committing, or is attempting to commit an offense.
2. Requisites: (i) the person to be arrested executed an **overt act** indicating that he has just committed, is actually committing, or is attempting to commit a crime, (ii) such overt act is done in the presence or within the view of the arresting officer.

(b) Hot pursuit

1. Requisites: (i) At the time of the arrest, an offense had in fact just been committed, (ii) the arresting officer has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it.
2. Not "personal knowledge" – (i) previous arrest, existing criminal record, or reputation of person to be arrested, (ii) tip received earlier from a reliable and regular informer, even if the tip materialized. Especially if the tip was given several days, giving the police officers time to secure a judicial warrant; (iii) that a person was acting unusual, strange or suspicious.

(c) Arrest of escapee

1. Requirements: (i) 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 (ii) has escaped while being transferred from one confinement to another.

Execution:

1. By police officer: Inform the person to be arrested: (i) of his authority, (ii) of the cause of the arrest.
2. By private person: Inform the person to be arrested: (i) of intention to arrest, (ii) of the cause of the arrest.
3. XPN for both: (i) if person to be arrested is engaged in the commission of offense, (ii) he is pursued immediately after the commission of offense, (iii) he escaped, flees, or forcibly resists before the officer has opportunity to so inform him, (iv) if giving the information will imperil the arrest.

Effects of illegal arrest:

1. Must be raised before entering his plea. Otherwise, deemed waived.
2. Not per se a ground for acquittal since it merely affects personal jurisdiction over the accused.
3. Waiver of an illegal arrest is not a waiver of an illegal search. If the warrantless arrest was found illegal, the search incident thereto is necessarily illegal. Evidence obtained therefrom is inadmissible in evidence.

Additional instances:

1. Arrestee escapes R113 S13
2. Bondsman arrest R114 S23
3. When an accused out on bail attempts to depart Ph without permission of the court where the case was pending

Search incident to lawful warrantless arrest

1. If accused was validly arrested without warrant, he may be subject to bodily search (up to his immediate control) for any dangerous weapon or anything that may constitute proof of the commission of the offense.

ATA S29

1. Authorized the detention of persons arrested up to 14d upon written authority of ATC.
2. This provision did not constitute an additional ground for a valid warrantless arrest, but merely an XPN to Art. 25 RPC.

2. Requisites of a Valid Warrant of Arrest

Shall issue only (i) upon probable cause (ii) to be determined personally by the judge (iii) after examination under oath or affirmation of the complainant and the witnesses he may produce, (iv) and particularly describing the person to be seized.

Execution:

1. Inform the person to be arrested: (i) of the cause of the arrest, and (ii) the fact that a warrant has been issued for his arrest, unless (a) he flees, (b) forcibly resists before the officer is able to inform him, or if giving the information will imperil the arrest.

3. Determination of Probable Cause for Issuance of Warrant of Arrest

Upon filing of the information, conducted by the judge, to determine whether a warrant of arrest or a commitment order, if the accused has already been arrested, shall be issued and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

⁵⁰ SOJ Resolution.

F. Bail (Rule 114)

1. Nature

If a person is under detention by legal process, he shall not be released or transferred, except: (i) upon order of court, or (ii) if admitted to bail.

1. Bail is the security given for the release of a person in custody of law to guarantee his appearance in court when required – (i) During arraignment, (ii) For identification, (iii) During promulgation.
2. Bail is constitutional right of the accused, except those charged with RP when the evidence of guilt is strong. Excessive bail shall not be required (also constitutional right).
3. Failure to appear at trial without justification and despite due notice is not a ground for revocation of bail but deemed waiver of right to be present. Trial may proceed in absentia.
4. It is effective throughout trial until promulgation of judgment by the RTC.
5. A witness may be required to post bail if: (i) in case of substitution of information R110 S14, (ii) to secure the attendance of material witness R119 S14.
6. Res judicata is not applicable in bail application. Even if the first application was denied, the accused may file a second application. This is mere interlocutory order subject to the control of the court while the case is pending.
7. A person in custody of law may also be released: (i) on his own recognizance, or (ii) that or a responsible person.

Application for bail does not bar the following defenses:

1. Illegality of the warrantless arrest.
2. Illegality of the arrest warrant.
3. Irregularity or lack of PI.

****Must be raised before entering plea. Otherwise, deemed waived.**

When bail not required:

1. If provided for by law or Rules.
2. If person has been in custody for a period equal or more than the maximum imposable penalty – he shall be released immediately without prejudice to the continuation of trial or proceedings on appeal.
3. If maximum penalty is destierro.
4. When court decided to issue summons.

2. When a Matter of Right; Exceptions

(a) Before or after conviction by inferior courts, (b) Before conviction by RTC of offense not punishable by DRL

1. Modifying circumstances shall not be considered in determining the penalty to be used for the purpose of fixing bail. Complexing of a crime with another crime is also a modifying circumstance which should not yet be considered.

3. When a Matter of Discretion

(a) After conviction by RTC of offense not punishable by DRL, (b) After conviction of offense punishable by >6y

(b) After conviction of offense punishable by >6y

1. Bail shall be denied or cancelled bail-negating circumstances were present.
2. Bail-negating circumstances: **PREFR** (i) convict is a **recidivist**, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration (repeat offender); (ii) accused has previously **escaped** from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification; (iii) accused committed the offense while under **probation**, parole, or conditional pardon; (iv) **flight risk**; (v) there is undue **risk** that he may commit

another crime during the pendency of the appeal. Prosecution has the burden of proof.

3. Even in the absence of bail-negating circumstances, the application may still be denied on ground that there is no substantial ground for the reversal of conviction.

(c) After a person is charged with offense punishable by DRL

1. Where evidence of guilt is strong.
2. But there are humanitarian considerations.

Non-bailable offenses

1. (i) Offense punishable by DRL; (ii) When evidence of guilt is strong – (a) prosecution has burden of proof, (b) evidence on bail hearing deemed automatically reproduced at trial. Strength of evidence is determined in relation to the offense charged.
2. Upon finality of the judgment of conviction, and once he commenced service of sentence. XPN: the accused applies for probation within the reglementary period.

G. Arraignment and Plea (Rule 116)

Arraignment

Court proceeding where the accused, for the first time, is formally informed of the nature and cause of accusation against him.

1. Personal presence of accused is required. He must personally enter his plea.
2. Made in open court by the judge or clerk.
3. Private offended party must appear for plea bargaining, determination of civil liability, other relevant matters. If absent, the accused may be allowed to plead guilty to a lesser offense necessarily included in the offense charged with conformity of the prosecutor alone.

Duties of the court

1. To inform the accused of his right to counsel, and ask him if he desires one
2. To assign counsel de oficio, unless the accused is allowed to defend himself in person, or has employed a counsel of his choice

Remedies before arraignment

1. Motion for bill of particulars
2. Motion for issuance of production or inspection order
3. Motion to quash
4. Motion for suspension on specific grounds

Grounds for suspension

1. Accused appears to be suffering from unsound mental condition effectively rendering him unable to fully understand the charge against him and plead intelligently thereto – (i) court to order mental examination, (ii) court may order confinement for purposes of the exam, if necessary.
2. PQ
3. Petition for review of the resolution of the prosecutor pending with DOJ or OP. (i) period of suspension shall not exceed 60d (mandatory) from filing of the petition for review with the reviewing office; (ii) trial shall proceed after 60d even though the reviewing office has not yet made issued a resolution.
4. Motion for bill of particulars

Plea

1. A plea shall either be guilty or not guilty.
2. Not guilty plea shall be entered for accused if he **refuses** to make a plea.
3. Guilty plea shall be deemed withdrawn and not guilty plea shall be entered for accused if: (i) he

- makes **conditional** plea, (ii) he pleads guilty but presents **exculpatory** evidence.
- If the guilty plea was deemed withdrawn but not guilty plea was entered, the proceedings are null and void since there is no plea on record. There can be no judgment in absentia.

Plea bargaining

- Guilty plea to a lesser offense that is necessarily included in the offense charged may be allowed.
- When: (i) at arraignment, (ii) after arraignment and before trial upon withdrawal of not guilty plea.
- Requires consent of: (i) court, (ii) prosecutor, and (iii) offended party, unless he fails to attend the arraignment.
- Plea to a lesser penalty for the same offense is not allowed in Ph (this is considered conditional plea). Only a plea to a lesser offense, which offense must be necessarily included in the offense charged.
- Plea bargain without prosecutor's consent is void. (i) It will not give rise to DJ; (ii) it may be set aside by R65 petition, even if belatedly filed.
- The court cannot compel the prosecutor to give his consent to the plea bargain.
- S23 CDDA is unconstitutional for disallows plea bargaining in drugs cases as it infringes on SC's exclusive rule-making authority.
- DOJ Circular No. 27 on plea bargaining is constitutional as the right was not removed. It merely serves as internal guidelines for the prosecutors.

1. Searching Inquiry (See *People v. Pagal*, G.R. No. 241257, September 29, 2020)

Rules if the accused pleads guilty *To a capital offense*

- Capital offense is one which under the law existing at the time of its commission and of the arraignment may be punished with death. SC held that murder remains capital offense despite the prohibition on the imposition of death penalty. Hence, the requirements shall still be observed.
- The court must: (i) conduct searching inquiry into the (a) voluntariness, and (b) full comprehension of the consequences of his plea **SIV FC**; (ii) require prosecution to prove (a) accused's guilt, and (b) the precise degree of culpability **G PDC**. Reception of evidence is mandatory.
- If the prosecution failed to present evidence to prove the guilt of accused despite having been given the opportunity to do so, he shall be acquitted. The case should not just be remanded to RTC for reception of evidence.

To non-capital offense

- Court may receive evidence from the parties to determine the penalty to be imposed (discretionary); or
- It may proceed with judgment even without receiving evidence.

2. Improvident Plea

Improvident guilty plea: (i) shall be allowed to be withdrawn at any time before the judgment of conviction becomes final, (ii) to be substituted by a not guilty plea.

H. Motion to Quash (Rule 117)

1. Grounds

POSE CAMPS

- the facts charged do not constitute an **offense**
- lack of **SM** jurisdiction – (i) improper venue, (ii) no complaint by offended party in private crimes DCASAL
- lack of **personal** jurisdiction
- the officer who filed the information had no **authority** to do so – (i) who must sign resolution

- PCAM NaReL; (ii) who must approve PC POD; (ii) the authority to file need not appear in the information, it may appear in the resolution.
- it does not conform **substantially** to the prescribed form – e.g., failure to allege qualifying or ordinary aggravating circumstance (alternative remedy: motion for bill of particulars)
 - more** than one offense is charged except when a single punishment for various offenses is prescribed by law
 - the criminal action or liability has been **extinguished** – the accused cannot be convicted of a lesser offense included in the offense charged if that the time of the filing of information, such lesser offense had already prescribed
 - it **contains** averments which, if true, would constitute a legal excuse or justification
 - accused has been **previously** convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. **CADT**

Under RRSP

- Lack of SM jurisdiction
- Failure to comply with barangay conciliation

Court action on MTQ:

- Order amendment, if based on defect curable by amendment.
- Order correction, if based on ground that the facts alleged do not constitute an offense.
- Sustain MTQ if: (i) the prosecutor fails to amend/correct, (ii) the INF still suffers defect despite amendment/ correction.
- If sustained, the court may order the filing of another INF. XPN: if based on (i) criminal action or liability is already extinguished; (2) DJ. If not such INF was filed within the period fixed, the accused shall be released.

Notes:

- Must be filed before entering plea. (i) in writing, (ii) signed by the accused or his counsel.
- Grounds not raised either due to non-filing or MTQ, or non-inclusion of the ground in the motion are deemed waived. XPNs: POSE
- Actual custody over the accused is not necessary to resolve a MTQ, only personal jurisdiction is required. Actual custody is required only in application for bail.

2. Double Jeopardy

No person shall be put twice in jeopardy for the same offense.

Requisites:

- First jeopardy attached.
- First jeopardy terminated.
- Second jeopardy is for: (i) same offense, (ii) attempt or frustration thereof; (iii) necessarily included/includes the first offense.

First jeopardy attaches IJAP

- Valid information
- Filed before a court of competent jurisdiction – (i) if there is GAD, the court is ousted of jurisdiction. e.g., grant of prosecution's motion to withdraw without personal assessment.
- After arraignment
- Valid plea has been entered – (i) if the plea was made without consent of the prosecutor or offended party (except when he fails to attend the arraignment) is void and cannot be used to invoke DJ; (ii) if the accused pleads guilty but presents exculpatory evidence, the plea is deemed withdrawn. If no not guilty plea was entered by the Court, first DJ did not attach for absence of a valid

plea; (iii) plea to a lesser penalty (not offense) is conditional plea, thus void.

First jeopardy terminated

1. CADD
2. Acquittal includes: (i) grant of demurrer to evidence, (ii) dismissal for violation of right to speedy trial.
3. If the accused appeals, the first jeopardy has not yet attached since the case was not yet terminated.
4. If the first jeopardy has not yet terminated, and a second information was filed against him for the same offense or an offense which is necessarily included or necessarily includes the former charge, he may file MTQ, not on ground of DJ but on ground of lack of SM jurisdiction. Doctrine of exclusionary jurisdiction: once a court takes cognizance of a case, it excludes other courts from exercising the same jurisdiction.

Second jeopardy

1. XPNs – The accused may be prosecuted for an offense which necessarily includes the offense charged (graver offense) if: (i) The graver offense developed due to supervening facts; (ii) The facts constituting the graver charge were discovered only after a plea was entered.
2. If a single act produces two or more offenses, the two cannot generally be split into two charges. XPNs: (i) if one is punished by RPC and the other by SPL; (ii) if the SPL contains an anti-DJ provision, i.e., that prosecution under the same shall not bar prosecution under RPC or other laws.

3. Provisional Dismissal

Termination with consent of accused

1. GR: provisional dismissal is not allowed. XPN: if with the consent of accused and notice to offended party **ECANOP**
2. A case provisionally dismissed may be revived within 1y or 2y. If not, the dismissal shall be permanent. – (i) within 1y after issuance of provisional dismissal order, if offense is punishable by imprisonment ≤6y, fine, or both; (ii) within 2y, if >6y. Conversion to permanent dismissal upon lapse said periods is automatic without need of court order.
3. If offended party is represented by private counsel, the period should commence to run from the time the private counsel was actually notified of the order of provisional dismissal.
4. Within the periods provided, the prosecution may file a motion for revival. If timely filed, the order granting may be issued beyond such periods.
5. Generally, cannot be invoked to claim DJ since made with the consent of accused.

I. Pre-Trial (Rule 118)

1. Pre-Trial Agreement

All agreements or admissions made or entered during the pre-trial conference shall be:

1. Reduced in writing.
2. Signed by the accused and counsel, otherwise,
3. Approved by the court.

****If not, they cannot be used against the accused.**

Matters covered:

1. plea bargaining;
2. stipulation of facts;
3. marking for identification of evidence;
4. waiver of objections to admissibility of evidence;
5. modification of the order of trial if the accused admits the charge but interposes a lawful defense; and

6. such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

2. Non-Appeal During Pre-Trial

The court may impose sanctions and penalties if:

1. The counsel for the accused or the prosecutor does not appear at the pre-trial conference, and
2. They do not offer an acceptable excuse.

3. Pre-Trial Order

Order reciting: (i) the actions taken, (ii) the facts stipulated, and (iii) evidence marked.

It shall (i) bind the parties, (ii) limit the trial to matters not disposed of, and (iii) control the course of the action during the trial, unless modified by the court to prevent manifest injustice.

J. Trial (Rule 119)

1. Trial In Absentia

Instances when the presence of accused at trial is required:

1. Arraignment
2. Pre-trial conference
3. During trial, when necessary for identification
4. Promulgation of judgment
5. When otherwise required by the court

****In other instances, his presence is not required. His absence is deemed waiver of right to be present and trial may proceed in absentia.**

Requirements for trial in absentia:

1. Accused was arraigned.
2. He was duly notified of the hearing.
3. His failure to appear is unjustified.

Remedy if the trial was not commenced within prescribed periods:

1. MTD on ground of violation of right to speedy trial.
2. Must be filed before trial. Otherwise, deemed waived.
3. If granted, it amounts to an acquittal even if with consent of accused. Hence, DJ may be invoked.

2. Examination of Witness for the Prosecution (See People v. Sergio, G.R. No. 240053, October 9, 2019)

In the case of **People v. Sergio**, the Court allowed the taking of deposition through written interrogatories of Mary Jane Sergio (Mary Jane) before our Consular Office and officials in Indonesia pursuant to the Rules of Court and principles of jurisdiction. Mary Jane was convicted of drug trafficking and sentenced to death by the Indonesian Government and is presently confined in a prison facility in Indonesia. The Philippine Government requested the Indonesian Government to suspend the scheduled execution of Mary Jane. It informed the Indonesian Government that the recruiters and traffickers of Mary Jane were already in police custody, and her testimony is vital in the prosecution of Cristina and Julius, her recruiters who were charged with qualified trafficking in person, illegal recruitment, and estafa. The Indonesian President granted Mary Jane an indefinite reprieve, to afford her an opportunity to present her case against Cristina, Julius, and a certain "Ike". The Court suppletorily the provisions of Rule 23 of the Rules of Court considering the extraordinary factual circumstances surrounding the case of Mary Jane. While depositions are recognized under Rule 23 of the Rules of Civil Procedure, the Court held that it may be applied suppletorily, in criminal proceedings so long as there is compelling reason — in this case, the conditions of Mary Jane's reprieve and her imprisonment in Indonesia.

There is no specific and express provision in the Rules regarding the applicability of discovery procedures in criminal proceedings.

1. Criminal proceedings are primarily governed by the Revised Rules of Criminal Procedure.

2. If there is no deficiency, Rules of Civil Procedure will not be applied suppletorily.

On Requests for admission

1. Not allowed against prosecution – (i) State is the RPI, a juridical person who cannot be privy to the execution of any document or acquire personal knowledge of past factual events; (ii) by requesting admission from the prosecution, the accused will be dictating the conduct of the prosecution on how it will prove its case which violates the principle that criminal prosecutions shall be conducted under the control and supervision of the prosecutor.
2. Not allowed against of accused – this is violative of his right against self-incrimination.

On depositions

1. In criminal cases, its availability is submitted to the sound discretion of the court and subject to the presence of compelling reasons that necessitate their application, even if all conditions for its taking and use are present. This will violate the accused's right to cross-examine the witnesses presented against him.
2. C.f.: in civil cases, once the conditions are complied with, the taking of deposition becomes a matter of right.

3. Requisites for Discharge of Accused to Become a State Witness

TBECS

1. **Two** or more accused are jointly charged with the commission of an offense.
2. The motion for discharge is filed by the prosecution **before** it rests its case.
3. The prosecution is required to present **evidence** and the sworn statement of each proposed state witness at a discharge hearing.
4. The accused **consents** to be a state witness.
5. The trial court is **satisfied** that – ANS GM (i) There is **absolute** necessity for the testimony of the accused whose discharge is requested, (ii) There is **no** other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused, (iii) The testimony of said accused can be **substantially** corroborated in its material points, (iv) Said accused does not appear to be the most **guilty**, (iv) Said accused has not at any time been convicted of any offense involving **moral** turpitude.

Two stages:

1. Testimony for discharge as state witness (discharge proceeding) – (i) if granted, whatever transpired during the hearing is already automatically deemed part of the records of the case, and admissible in evidence; (ii) if denied, the testimony of the witness during the discharge proceeding is **inadmissible**.
2. Presentation of the evidence in chief where the witness gives the testimony against his co-accused – (i) condition for the discharge to operate as an acquittal. (ii) does not affect the admissibility of evidence produced at discharge hearing.

Effect of failure to testify at second stage

1. On admissibility of evidence presented during the first stage – (i) no effect; (ii) the state witness' testimony during the discharge proceedings remains admissible against accused even if the former dies, or otherwise becomes unavailable to testify during trial; (iii) his testimony automatically formed part of the case records; (iv) the accused is given the opportunity to cross examine him during the discharge proceedings; (v) under the

rules, testimony is rendered inadmissible only if the motion to discharge him as state witness is denied.

2. On acquittal of the state witness – Non-presentation of the witness during trial on the merits would prevent the order of discharge from operating as an acquittal.

4. Effects of Discharge of Accused as State Witness

The discharge amounts to an **acquittal**, provided the discharged accused gives testimony against his co-accused during the prosecution's presentation of the evidence in chief. Failure to testify is a resolutive condition which will prevent the acquittal of the accused.

5. Demurrer to Evidence

MTD filed by accused after prosecution rested its case on the ground on insufficiency of evidence.

May be filed with or without leave of court:

With leave of court

1. MFL must be filed within 5d after the prosecution rests its case, i.e., once the judge ruled on its formal offer of evidence. The period shall run from notice of court order ruling on the formal offer.
2. If MTD was filed before the court rules on the prosecution's offer of evidence is not Demurrer but MTD on ground of violation of his right to speedy trial. In case the TC grants but reserved on appeal, the accused does not lose his right to present evidence.
3. The Demurrer must be filed within 10d from the notice of order granting the motion.

Effects is with/out leave

1. With leave – (i) if granted by TC but reversed on appeal, the accused preserves his right to present evidence; (ii) the appellate court shall remand the case to TC for reception of evidence.
2. Without leave – (i) – if granted by TC but reversed on appeal, the accused loses his right to present evidence; (ii) the appellate court shall render judgment based on the prosecution's evidence, and not remand the case to TC.

6. Revised Guidelines on Continuous Trial (A.M. No. 15-06-10-SC)

K. Judgment (Rule 120)

Forma and contents of judgment in criminal cases:

In general

1. In writing
2. Personally prepared and signed by judge
3. Clear and distinct statement of facts
4. Law upon which the judgment is based

If conviction

1. Qualification of the offense, modifying circumstances, stage of commission
2. Degree of participation
3. Penalty imposed
4. Civil liability, unless WaRP

****The accused may be convicted of as many offenses as are charged and proved, and penalty may be imposed for each offense.**

If acquittal

1. Whether the prosecution's evidence absolutely failed to prove the guilt of the accused, or it merely failed to prove the guilt beyond reasonable doubt (absolute and relative acquittal)
2. A determination if the act or omission from which the civil liability might arise did not exist **DACNE** – if none, the acquittal is presumed to be due to

reasonable doubt, and the accused may be held civilly liable.

****CVL may be acquitted even if the accused is acquitted.**

Variance doctrine:

1. If there is variance between allegation and proof, the accused may be convicted: (i) of the offense charged which is necessarily included in the offense proved, or (ii) of the offense proved which is necessarily included in the offense charged.
2. An offense necessarily includes another offense if some of the elements of the former constitute all the elements of the latter. An offense is necessarily included in another offense if some of the elements of the latter constitutes all of the elements of the former.
3. (i) An intentional crime necessarily includes its reckless form. (ii) Under Sec. 2(e) of RA 3019, manifest partiality, evidence bad faith and GIN are three distinct modes in committing the crime. One is not necessarily included or necessarily includes the others. (iii) Under the Anti-VAWC Law, psychological abuse to inflict mental and emotional anguish through deprivation of financial support [Sec. 5(i)] is distinct from the offense defined under Sec. 5(e) which is deprivation of financial support to control the woman's will.
4. This does not violate the accused's right to be informed of the nature and cause of accusations against him.

Motion for modification of judgment:

1. May be filed by the accused in case of judgment of conviction.
2. Before the judgment becomes final or the appeal is perfected.

1. Promulgation of Judgment

By reading the judgment in presence of the accused and any judge of the court where the judgment was rendered.

1. GR: the accused must be present during the promulgation of judgment. XPN: in case of light offenses, the promulgation may be made in the presence of the accused's counsel or his representative.
2. If the accused's presence is required, and, promulgation may proceed in absencia by recording the judgment in criminal docket and serving copy to accused at last known address or through counsel.

Promulgation in absencia

1. Allowed when: (i) The accused is required to appear, (ii) he is properly notified, (iii) his non-appearance is without just cause.
2. Promulgation may proceed in absencia by recording the judgment in criminal docket and serving copy to accused at last known address or through counsel.
3. Effects: (i) accused will lose remedies available to him; (ii) court shall order his arrest.
4. Remedy of accused: (i) to surrender and (ii) move for leave of court to avail of remedies, within 15d from promulgation of judgment. He shall state the reasons for his absence and prove that the same were justifiable.
5. If found meritorious, the court shall allow the accused to avail of remedies within 15d from notice of grant.

L. New Trial or Reconsideration (Rule 121)

1. May be filed any time before judgment of conviction becomes final.
2. In writing, setting forth the grounds on which it is based, with notice to the prosecutor.

Grounds

MNT

1. Errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during trial.
2. Discover of new and material evidence (i) which the accused could not have discovered during trial despite exercise of due diligence, and (ii) which if introduced and admitted would probably change the judgment. – the motion must be accompanied by the evidence sought to be introduced.

MR

1. Errors of law or fact in judgment, without need of **further proceedings.**

M. Appeal (Rule 122)

GR: Any party may appeal from judgment or final order.

XPN: If accused will be placed in double jeopardy.

1. Within 15d from promulgation of judgment, or from notice of the order appealed from. The filing of MR/MNT suspends the running of the period. If overruled, the accused has a fresh period of 15d from notice of order overruling his motion within which to perfect his appeal.
2. Once appeal is perfected, execution of judgment shall be stayed as to the appealing party.
3. Once an appeal in criminal case was filed, it throws the whole case wide open for review. Errors in an appealed judgment, even if not specifically assigned, may be corrected motu proprio by the court if the consideration of these errors is necessary to arrive at a just resolution of the case.

Judgment of conviction

1. Matters which relate to the sufficiency of evidence to convict an accused may be raised at any time, even for the first time on appeal.
2. The accused may be acquitted even on a ground not raised on appeal, such as violation of his right to be informed of the nature and cause of accusation against him.
3. An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of appellate court is favorable and applicable to them. – (i) if the conviction is reversed on appeal, those who did not appeal shall likewise be acquitted, (ii) also applies in case of reversal of the denial of MTQ.
4. Appeal by offended party on the civil aspect shall not affect the criminal aspect.

Judgment of acquittal

5. A judgment of acquittal is immediately final and executory, and the prosecution cannot appeal the same as it will place the accused in DJ.
6. XPNs: (i) When the trial court acted with GADALEJ due to a violation of due process. (ii) When the trial was a sham.
7. The judgment may be assailed via R65 petition.

Modes of appeal:

8. Notice of appeal – (i) from MTC to RTC, (ii) from RTC [O] to CA, even if pure questions of law, (iii) from RTC to SC, if the penalty imposed is DRL or a lesser penalty for an offense committed in the same occasion **OCSO**, or which arose from the same occurrence that gave rise to the more serious offense for which the penalty of DRL was imposed **ASO GRMSO**; (iv) from SB [O] to SC in criminal cases.
9. Petition for Review R42 – from RTC [A] to CA.
10. Petition for Review on Certiorari R45 – (i) from RTC to SC, on pure questions of law, (ii) from CA to RTC.

11. Other appeals to SC: (i) **certified** cases from CA: All other appeals to the SC shall be take via R45, except where the CA finds it proper to impose the penalty of DRL. In such case, the CA shall (a) render the appropriate judgment, but refrain from entering the same, and (b) certify the case and elevate the entire record thereof to the SC for review. (ii) **automatic** review from RTC: if the penalty imposed is death.
12. Decisions of RTC in criminal cases involving public officers is appealable to SB. In one case, the SC ruled that the erroneous designation of the appellate court (CA instead of SB) does not affect the validity of appeal, and that RTC has duty to forward the case to SB. N.B.: this is deviation from GR that appeals erroneously taken shall be dismissed.

N. Search and Seizure (Rule 126)

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.

Any evidence obtained in violation of [the right against unreasonable searches and seizure] shall be inadmissible in evidence for any purpose in any proceeding.

1. This is not a self-executing provision, and the aggrieved party has the duty to object to the admissibility of the evidence for it to be excluded.
2. A juridical person has legal personality to file appeals from the order quashing search warrant.

Application for a search warrant

1. Not a criminal action, but a special criminal process. The rule the criminal prosecutions must be under the direction and control of the prosecutor is not applicable.
2. The conformity of the prosecutor is not required in a motion questioning the order quashing the same.
3. Remedies against an order quashing a search warrant – (i) appeal, if no criminal case is pending yet; (ii) Petition for certiorari, if a criminal case is pending [interlocutory].

Where to file:

1. Primarily, in any court within whose territorial jurisdiction a crime was committed, but the court need not have jurisdiction over the related offense. E.g., an MTC may issue a search warrant related to drugs cases (within RTC jurisdiction).
2. Secondly, for compelling reason stated in application CORSA, any court within judicial region where crime was committed, or any court within judicial region where warrant shall be enforced.
3. If criminal action already filed, the application shall be made only in the court where criminal action is pending.

Roving warrants/Expedited search warrant procedure

1. Applies only in case of: (i) heinous crimes, (ii) drugs cases, (iii) customs cases, (iv) illegal firearms, (v) violation of AMLA, (vi) gambling **HDC FAG**
2. Requires persona endorsement by the head of NBI, BOC, PNP Anti-Crime Task Force, PDEA **NPA PC**
3. May be applied with the EJ or if unavailable, vice-EJ of the RTCs in the judicial regions where the warrants are to be implemented.

****Search warrant may be enforced or served anywhere in Ph.**

Requisites for validity:

1. Upon probable cause in connection with a specific offense
2. **POSWA** to determined by the judge upon personal examination under oath or affirmation in the form of searching questions and answers in writing of the complainant and the witnesses he may produce on facts personally known to them and attaching to the record their sworn statements.
3. Particularly describing the place to be searched, and the things to be seized, which may be anywhere in the Ph.

Probable cause

1. An offense has been committed.
2. The object sought to be produced is a subject of an offense; is stolen, embezzled, or constitutes proceeds or fruit of the crime; or used or intended to be used in committing the crime.
3. The object sought is found in the place to be searched.

Particular description

1. Only the personal properties described in the search warrant may be seized by the executing officers.
2. Ejusdem generis principle is applicable, i.e., if an enumeration of particular objects is followed by a generic word, the latter is limited to objects of similar nature as those enumerated.

Execution:

1. Search must be conducted in the presence of OFW: (i) the lawful occupant of the house, (ii) any member of his family, (iii) two witnesses or sufficient age and discretion residing in the locality. They must be present in the room where the search was conducted. Otherwise, there is no sufficient compliance with the requirements of the Rule.
2. Generally executed during daytime.
3. Search warrant is valid only within 10d from its date, after which it shall be void.
4. After seizure, the executing officer shall: (i) leave a detailed receipt of the property seized to the lawful occupant of the premises, and (ii) in the presence of two witness of sufficient age and discretion residing in the locality, in the absence of the lawful occupant.

Search v. Arrest Warrant

Search	Arrest
Seizure of personal property	Seizure of person
May issue even if no pending criminal case	May issue only if there is pending criminal case
Valid only for 10d from date	Valid until served
May be served only in daytime as rule	May be served on any day and any time
Personal examination of complainant and witness	Personal evaluation not examination
SOWPA	

Valid warrantless searches: **PIMIVES CoCu**

1. Warrantless search **incidental** to a lawful arrest
2. Seizure of evidence in **plain view** – **PAWI**: (i) prior valid intrusion, (ii) the evidence is readily apparent, (iii) it was discovered inadvertently by police officers who have the right to be where they are, (iv) seizure if evidence in plain view is justified without further search.
3. Search of a **moving** vehicle – (i) if in checkpoints, there is only brief detention of the vehicle, and

subject only to visual non-intrusive search, (ii) if there is PC to believe that an offense was committed, and an instrument related to such offense can be found in the vehicle, the latter may be subject to a more intrusive search.

4. **Consented** warrantless search
5. **Customs** search
6. **Stop** and frisk (Terry searches) – (i) conducted to prevent the occurrence of a crime, (ii) there must exist a genuine reason to warrant the belief that the person who manifests unusual suspicious conduct has weapons or contraband concealed about him, in light of the police officer's experience and surrounding conditions.
7. **Exigent** and emergency circumstances
8. Search of **vessels** and aircraft while on port
9. **Inspection** of buildings and other premises for the enforcement of fire, sanitary and building **FSB** regulations

Remedies against unlawful search

1. MTQ/Motion to suppress evidence
2. As a general rule, the right to contest the illegality of a search is personal and cannot be invoked by third persons. In case of a corporation, the action to question the search must be carried out by a duly authorized representative. As an exception, the applicant for search warrant may be estopped from questioning the standing of the corporation's representative, though not duly authorized, if the applicant themselves recognized him as the one having custody and control of the objects to be seized. As in fact, he was the one named in the warrant as the respondent. It would be inequitable for the applicants of the warrant to deny relief to the respondent as a consequence of the actions which they themselves initiated.

O. Provisional Remedies in Criminal Cases (Rule 127)

Provisional remedies in civil action may be availed in relation to the civil action deemed instituted with the criminal action insofar as applicable.

P. The Rule on Cybercrime Warrants (Section 2 of A.M. No. 17-11-03-SC only)

1. Effective 10d from issuance.
2. Subject to extension of 10d from expiration of original period, upon motion based on justifiable reasons.
3. Extra-territorial service is allowed for persons or service providers outside Ph through the DOJ-office of Cybercrime, in line with all relevant international instruments and/or agreements on the matter.

VIII. Evidence (A.M. No. 19-08-15-SC)

A. General Concepts

1. Proof vs. Evidence

Proof is the effect/result of evidence; evidence is the means of establishing proof.

1. To prove the fact/s in issue is the objective for the presentation of evidence; when evidence is sufficient, the result is the proof of the fact/s in issue.

Evidence

1. Evidence is the means, sanctioned by the ROC, of ascertaining in a judicial proceeding the truth respecting a matter of fact.
2. A fact is in issue if so put by the parties in their pleadings.

Factum probans	The evidentiary facts; the probative or evidentiary fact tending to prove the fact in issue.
Factum probandum	The ultimate facts alleged; the fact to be proved; the fact in issue to which the evidence is directed

2. Burden of Proof vs. Burden of Evidence

Distinctions	Burden of proof	Burden of evidence
Definition	The duty of the party to present evidence to prove facts in issue necessary to establish his claim /defense to make a prima facie case	The duty of a party to present evidence to establish or rebut a fact in issue after a prima facie case was established
Where lies	Always lie with a party advancing a claim, or asserting a right	Lies with a party who must establish or rebut a fact in issue
May be shifted?	Never shifts	Shifted once the party having the burden establishes a prima facie case to rebut the same

3. Equipoise Rule

Faced with two conflicting versions, where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses.

B. Admissibility of Evidence (Rule 128)

1. Requisites for Admissibility of Evidence

Substantive requirements:

- (a) Relevance*
- (b) Competence**

Procedural requirements

- (c) Authentication, identification and marking
- (d) Formal offer

Admissibility and probative value

1. Evidence is admissible if relevant + competent.
2. Probative value is considered only after the evidence was already admitted. Evidence admitted is evaluated by the Courts according to the rules to determine its probative value.

2. Relevance of Evidence and Collateral Matters

(a) Relevance*

1. Such relation to the fact in issue as to induce belief in its existence or non-existence **RFI IBEN**
2. Collateral matters are generally inadmissible. XPN: When it tends in any reasonable degree to establish the probability or improbability of the fact in issue **TRE PIFI**
3. Evidence on collateral matter may be conditionally admitted upon promise of proponent to show its relevance.

3. Multiple Admissibility

1. A piece of evidence may be offered for several purposes. The admissibility for one purpose does not affect admissibility for another.
2. Evidence offered must specify its purpose: (i) to give the adverse party the opportunity to interpose the proper objection.
3. E.g., EJ confession is admissible as against the declarant, but not against his co-accused being hearsay, unless admissible as admission by co-conspirator.

4. Conditional Admissibility

The admission of evidence appearing to be irrelevant or incompetent upon condition that its relevance or competence be shown later by the proponent.

5. Curative Admissibility

Admission of an inadmissible evidence of one party to cure the admission of improper evidence by the adverse party.

6. Direct and Circumstantial Evidence

(a) Direct

1. Proves a fact in issue without the need of making an inference from another fact.

2. Stronger kind of evidence.
3. E.g., eyewitness accounts.

(b) Circumstantial

1. Indirectly proves a fact in issue through an inference from the facts already established, but it cannot be based on other inferences.
2. Elements to suffice for conviction – (i) there is more than 1 circumstance, (ii) the facts from which the inferences are derived are proven, and (iii) the combination of such circumstances is such as to produce conviction beyond reasonable doubt.
3. May also apply to civil and/or administrative proceedings, even if the Rule mentions “conviction” – SC. E.g., in election cases.

7. Positive and Negative Evidence

(a) Positive

1. Statement of a witness affirming that a fact did or did not occur.
2. May be couched in negative term.
3. Has greater probative value.

(b) Negative

1. Statement that the witness did not see or know the occurrence of a fact.
2. Disavowal of knowledge.

8. Competent and Credible Evidence

(b) Competence**

1. Evidence is competent when it is not excluded by Constitution, law or Rules.
2. Exclusionary rules under the Const. – (i) violation of right against unreasonable searches and seizures; (ii) violation of right to privacy of communication and correspondence. **Any evidence obtained in violation of such rights [i] [ii] shall be inadmissible for any purpose in any proceeding.** (iii) violation of right of persons under investigation: to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice, (iv) violation of right of persons under investigation against torture, (v) violation of right against self-incrimination. **Any confession or admission obtained in of such rights [iii] [iv] [v] shall be inadmissible in evidence against him.**
3. Mere rule of confidentiality does not render the evidence inadmissible unless there is an exclusionary clause is provided in the law itself. – e.g., P.D. No. 603 merely sets forth a rule of confidentiality on the entries in the birth certificate but does not provide for its exclusion.
4. In case of exclusion, one remedy is the tender of excluded evidence whereby evidence excluded is made part of the record for the possibility of being considered on appeal.
5. There is no rule of evidence which bars the admission of a void contract. A void contract may be admitted in evidence, even though its provisions may be enforced.

****Competent evidence is not necessarily credible.**

C. Judicial Notice and Judicial Admissions (Rule 129)

Judicial notice and judicial admissions are statements or matter of fact which are deemed established without need of further proof.

(a) Judicial notice

1. Does not pertain to the knowledge of the judge.
2. May be mandatory or discretionary.

Mandatory judicial notice SL²AP OMG

1. **States** – (i) existence and territorial extent, (ii) political history, (iii) forms of government, (iii) symbols of nationality pegs
2. **Law of nations**
3. **Admiralty** and maritime courts of the world and their seals
4. **Political** constitution and history of the Ph
5. **Official** acts of executive, legislative, judicial branches (but not LGUs).
6. **Laws** of nature
7. **Measure** of time
8. **Geographical** divisions

Discretionary judicial notice PCO

1. Matters (i) of **public** knowledge (notoriety); (ii) **capable** of unquestionable demonstration; (iii) **ought** to be known to the judge because of their judicial functions.
2. Conduct of hearing is necessary, motu proprio or on motion – (i) Pre-/trial: On any matter; (ii) Before judgment/on appeal: On matter decisive of a material issue in the case.

Examples

1. Diplomatic relations with other countries – either mandatory or discretionary.
2. No JN – (i) rampant criminality, (ii) contract entered by GOCC in proprietary capacity, (iii) resolutions of GOCC, (iv) cases formerly tried by courts, (v) value of real property for jurisdictional purposes, (vi) nature of land as A&D, (vii) terms of a merger of private companies, even though the fact of merger itself may be of public knowledge, (viii) articles on a website.
3. JN – (i) Senate reports on inquiries in aid of legislation, (ii) clogged dockets of courts.

Foreign laws

1. Not subject to judicial notice.
2. Must be alleged and proven as fact, subject to the rule on processual presumption.
3. May be the object of stipulation.
4. XPN: **PAWN** (i) when it is within the **actual** knowledge of the court, (ii) as the rule is generally **well-known** (iii) had **previously** been ruled upon in other cases in the same court; and (iv) **none** of the parties claim otherwise, i.e., no objection. – PCI Bank v. Escolin.
5. Proof: (i) official publications; (ii) copy attested by legal custodian; (iii) if kept abroad, certified by Ph diplomatic or consular official and authenticated by seal of his office.
6. Processual presumption will not apply if the case cannot be enforced in Ph, e.g., annulment of marriage between aliens without properties in Ph.
7. Rule is not applicable to cases before administrative or quasi-judicial bodies. – they can take judicial notice of foreign law, e.g., POEA involving Social Insurance Law of Saudi Arabia.

Other cases before the same court or judge

1. Also, not subject to judicial notice.
2. XPNs: (i) when **reference** to such records is sufficiently made without **objection** from the opposing parties. The part referenced shall read into the record of a case pending; (ii) when the original record or part, is **withdrawn** from the archives by the court's direction, at the **request** or with the consent of the parties and **admitted** as a part of the record of the pending case.

Pleadings in various courts and tribunals

1. Pleadings filed in courts, QJAs or adjudicative bodies are public documents covered by the judicial notice rule. Their authenticity need not be proved, provided certified by the proper officer.

2. Pleadings filed foreign courts must be proven as fact.
(b) Judicial admission
1. Oral or written admissions made by a party in the course of the proceedings in the same case.
2. Judicial admissions are generally conclusive on the party making it – (i) it cannot be controverted by contrary proof; (ii) but if not objected to, the benefit of judicial admission may be lost.
3. It may be controverted by showing: (i) that the admission was made through palpable mistake, or (ii) that the admission was not, in fact, made. PM NIFM
4. Must pertain to a matter of fact not law or mere opinion.
5. Judicial admission is evidence against the party making it. It must pertain to a matter of fact contrary to his claim or defense. Otherwise, it becomes self-serving.
Examples
1. Admissions in pleadings, but if the pleading is amended, the admission not incorporated in new pleading becomes EJ admission which must be formally offered to be considered.
2. Failure to deny under oath the authenticity and due execution of an actionable document.
3. Failure to answer a request for admission re: facts stated, or authenticity and due execution of documents attached but for purposes of the pending action only, and the court may allow its withdrawal or amendment.
4. Stipulations of facts during pre-trial. In criminal cases, the admissions and stipulations must be reduced in writing, signed by accused and counsel, and approved by the court so that it can be used as evidence against the accused.

Not applicable
1. To testimonial evidence, e.g., testimony as to what the person read in a notebook.
2. If the contents of the document are not disputed, but the issue is whether it had been violated.
3. Document as proof of the existence of an independent fact, e.g., falsification.
4. Document as proof of its authenticity and due execution.
5. Document as proof of witness' legal age.
6. If the witness had personal knowledge of the facts contained in the document, such fact may be proved by testimony.
Original document
1. The document itself.
2. Any counterpart intended to have the same effect by a person executing or issuing it. CISEPEI E.g., a photocopy intended by one making it as an original.
3. Original photograph includes the negative or print.
4. Stored data – (i) printout or output readable by sight or other means reflect the data accurately ORRA ; (ii) both the soft and hard copies are originals; (iii) e.g., photo in mobile phone; CCTV footage.
Duplicate document:
1. Counterpart produced by means that accurately produces the original, e.g., carbon copies, photocopy.
2. Generally admissible to the same extent as an original.
3. XPNs: (i) a genuine question is raised as to the authenticity of the original, (ii) in the circumstances, it is unjust or inequitable to admit the duplicate in lieu of the original.

D. Object (Real) Evidence (Rule 130, A)

1. Requisites

1. Capable of perception by the court.
2. Relevant

2. Exclusionary Rules

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E. Documentary Evidence (Rule 130, B)

1. Definition

1. Writings, recordings, photographs WRP – (i) recording includes sounds; (ii) photographs includes still pictures, drawings, stored images, x-ray films, motion pictures or videos (technical meaning). E.g., CCTV footage.
2. Any material containing letters, words, sounds, numbers, figures, symbols, or their equivalent.
3. Offered as proof of their contents.
**Electronic document is documentary evidence (see below).
Requisites for admissibility RIAF
1. Relevant and competent.
2. Identified and marked.
3. Authenticated by competent witness.
4. Formally offered. – a person who calls for the production or inspection of a document is not bound to offer the same as evidence.

2. Original Document Rule

When the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself.
1. Not self-executory. The party against who the non-original document is offered as evidence must object. Otherwise, deemed waived.

3. Secondary Evidence

XPN to ODR (original is:)	Foundation/Predicate	Secondary Evidence
Lost or destroyed	(i) proof of existence and due execution of the original; (ii) fact of loss/ destruction, reason for non-production, (ii) lack of BF on part of offeror in causing unavailability or original	CoRT (i) by copy ; (ii) by recital of contents in authentic document; (iii) by the testimony of witnesses, <i>in order</i>
In custody control of the party against whom the evidence is offered	(i) fact of custody or control; (ii) proof of existence (iii) reasonable notice given to the adverse party; (iv) failure or refusal produce the OD, or; (v) OD cannot be obtained by local judicial processes, e.g., subpoena duces tecum, motion to produce the OD. Presupposes that adverse party is in Ph.	
Consists of numerous accounts	(i) fact of numerous accounts; (ii) cannot be examined in court without great loss of time; (iii) the fact sought to be established is only the general result of the whole; (iv) the accounts are shown to be original	Chart, summary, calculation CSC, provided: (i) OD is accessible to adverse party; (ii) court may order its production upon motion
Public record	(i) public record in the custody of a public officer; or (ii) recorded in a public office PRC RPO	Certified true copy issued by legal custodian
Not closely-related to a controlling issue	The document contains only collateral matters or incidental references	Testimony of witness making the reference suffice

4. Parol Evidence Rule

When the terms of an agreement have been reduced in writing , (ii) the writing is considered as containing all the terms agreed upon, and (ii) there can be no other evidence
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of such terms other than the contents of the written agreement, as **between the parties** and their successors in interest.

1. Applies only to contracts, wills – (i) private or public, (ii) need not be signed by two parties; (iii) includes conditions precedent.
2. Anything not indicated in the written agreement are deemed waived.
3. Not applicable to mere receipt which is just a proof of payment.
4. Applies only if the parties to the case are the parties to the instrument – (i) if at least 1 party to the case is a stranger to the contract, PER cannot be invoked.
5. A beneficiary under a stipulation pour autrui is considered a party to a written contract and is bound by the PER.

XPN: Parol evidence may be admitted modifying, explain, add **MAE** to the terms of the written agreement for the grounds put in issue in a **verified pleading VISA**

1. **Validity** of the written agreement
2. Intrinsic **ambiguity**, mistake, or imperfection **AIM** of the written agreement. – (i) mistake must be mutual mistake of fact; (ii) ambiguity must be latent. If patent, the contract is void since the court cannot make a contract as for the parties.
3. Failure to the agreement to express the true **intent** and agreement of the parties.
4. Existence of other terms agreed upon by the parties or their successors in interest after the execution of the written agreement (**subsequent** agreement).

Notes:

1. Verified pleading means complaint or answer only, not motion or manifestation.
2. If not raised in answer, remedy is to amend the answer.
3. Evidence to prove the ground must be clear and convincing.

F. Testimonial Evidence (Rule 130, C)

1. Qualifications of Witnesses

1. Able to perceive and perceiving.
2. Able to make known their perception to others.

Prior qualification

1. Not required. XPN: expert witness.
2. Prior authority to testify is also not required.

Not DQ

1. Deaf-mute, provided: (i) he can appreciate the significance and sanctity of an oath; (ii) he comprehend the facts they will testify to; (iii) he can communicate his ideas through qualified interpreter.
2. Religious or political belief.
3. Interest in outcome of case.
4. Conviction of crime, unless DQ by law.
5. Mental incapacity or immaturity (deleted).
6. Defendant declared in default, although he may no longer participate in the proceedings.

****Law may provide additional DQ.**

Matters which can be testified to

1. Factual matters within the witness' **personal knowledge**, i.e., derived from his/her own perception.
2. Refers to first-hand knowledge. If violation, objection should be lack of firsthand knowledge, i.e., the witness did not personally observe the facts testified to.
3. This is different from hearsay statement which pertains to a statement made by a declarant, testified to in court by another who heard him say

it, but the declarant himself is not presented in court. Here, the witness had personal knowledge of what he heard from the declarant, but the truth/falsity of the statement cannot be verified since the declarant was not presented in court.

2. Disqualifications of Witnesses

a) Disqualification by Reason of Marriage

H&W are disqualified to testify **against** each other during the subsistence of their marriage.

1. Covers information received even prior to the marriage. DQ is absolute and covers not just confidential information.
2. Spouses may testify **for** each other; or against the other parties to the case (co-defendant/accused of spouse)
3. Purpose of the disqualification is to preserve the sanctity or harmony of marriage, as well as the **identity of interests** of the parties. Hence, not applicable in case of illicit cohabitation.
4. DQ is removed if – (i) marriage is terminated; (ii) relation between H&W is so strained that there is no more reason for DQ.
5. MDR must be raised at the time the spouse is called to testify against the other. Otherwise, deemed waived.

XPNs:

1. Consent by affected spouse.
2. Civil case by one against the other, e.g., declaration of nullity, annulment of marriage.
3. Criminal case committed by one (i) against the other, or (ii) against the latter's direct des/ascendants.

b) Disqualification by Reason of Privileged Communications; Rule on Third Parties

Between: **SAPPO**

- (a) Spouses
- (b) Attorney and client
- (c) Physician and patient
- (d) Priest and penitent
- (e) Public officer

(a) Spouses

1. Marital communication privilege.
2. Either spouse cannot be examined with respect to communication received in confidence by one from another during the marriage.
3. Privilege subsists during or after the marriage.
4. Does not cover – (i) observations made by either during cohabitation, unless there is no communication to keep the same in confidence; (ii) dying declaration.
5. Elements – (i) Valid marriage; (ii) Communication received in confidence by one from the other; (iii) The communication was received during the marriage.

XPNs:

1. Consent by affected spouse.
2. Civil case by one against the other, e.g., declaration of nullity, annulment of marriage.
3. Criminal case committed by one (i) against the other, or (ii) against the latter's direct des/ascendants.

Marital DQ Rule	Marital communication privilege
Testimony during subsistence of marriage	Testimony during or after marriage
Communications received prior or during marriage, confidential or not	Confidential communications received during marriage

(b) Attorney and client

1. Privilege subsists during or after the engagement, even after the death of the client.

2. Attorney-client relationship – (i) consideration is not an element; (ii) communication need not be in law office, may be in casual gatherings; (iii) even if the consultation did not materialize into an actual engagement (“with the view”).
3. Test: reasonable expectation of the non-lawyer.
4. “Attorney” includes: (i) a person reasonably believed by the client as engaged in the practice of law; (ii) law student practitioner.
5. The power of CIR under NIRC to obtain from any person information regarding TP under audit or investigation is not an XPN to the atty-client privilege.

Coverage

1. Attorney cannot be examined as to: (i) any **communication** made by the client to him; (ii) **advise** given to the client, in the course of or with the view to professional employment.
2. Person assisting the attorney, e.g., secretary, stenographer, clerk, accountant, cannot be examined concerning any fact, knowledge acquired in such capacity, without the consent of both the client and the attorney.
3. Identity of the client is generally not privileged. XPNs – (i) legal advice exception: if there is strong probability that disclosure would **implicate** the client in the very matter about which he consulted the lawyer; (ii) last link XPN: if the disclosure would furnish the only link that would form the chain of testimony necessary to convict the client of a crime (implication, exposure to liability).
4. In case of corporate client, privileged communications include those received from R&FE, not just from the senior management.
5. The client is not prohibited from testifying as to the advice given to him by the lawyer since he is not prohibited by the Rules. The attorney cannot invoke the privilege.

XPNs:

1. Consent of client. – Only the client is required to consent, the attorney cannot invoke the same.
2. Furtherance of crime or fraud. – (i) services of lawyer obtained to commit or plan crime or fraud; (ii) client knew or should have known the act to be a crime or fraud; (iii) applies only to past but not future crimes. As to future crimes [relative to when communication was made], lawyer can testify.
3. Claimant through same deceased client. – (i) if communication is relevant to issue of their claims, testate, intestate, inter vivos; (ii) e.g., heirs of the same deceased client.
4. Breach of duty. – (i) if communication is relevant to breach of duty of lawyer to client, or vice versa; (ii) professional fees, professional negligence.
5. Document attested. – lawyer may be examined in relation to document wherein he is attesting witness.
6. Joint clients. – (i) if communication is relevant to a matter of common interest; (ii) they retained or consulted the lawyer in common; (iii) communication to lawyer is offered in action between any of the clients; (iv) consent of the other party is also not required for the disclosure. XPN: contrary express agreement.

(c) Physician and patient

1. Privilege subsists during or after the engagement, even after the death of the patient.
2. Psychotherapist – (i) a person licensed to practice medicine, engaged in the DT of mental or emotional condition; (ii) person licensed as psychologist by the government while engaged in the DT of mental or emotional condition.

3. Physician or psychotherapist includes a person reasonably believed by the client as engaged in the practice of medicine or psychotherapy.

Coverage

1. Physician or psychotherapist cannot be examined: (i) in a **civil** case (ii) as to **any confidential communication** made for the purpose of diagnosis or treatment **DT** of the patient's physical, mental, emotional **PME** condition.
2. (i) Between the patient and doctor, and; (ii) extending to persons participating in the DT of the patient under the direction of the doctor, e.g., members of the patient's family, nurses, lab technicians.
3. Covers medical records of a physician or hospital that would reveal confidential communication.
4. Not covered are expert opinion based strictly on hypothetical questions.

XPNs

1. Consent of patient.
2. In criminal cases. N.B.: the provision mentions that the privilege applies only to civil cases.
3. Examination of party (discovery procedure) – if the party examined wants to obtain a copy of his medical report, he waives confidentiality of past and future examinations with respect to the same condition over which the other party shall be given access.
4. Psychological evaluations in marriage nullification cases. – there is no expectation of privacy since the subject knows that the evaluation will be used in court (opinion).

(d) Priest and penitent

1. Privilege subsists during or after the engagement, even after the death of the penitent.
2. Minister or priest cannot be examined as to (i) any communication or confession made to him, or (ii) any advice given by him, in his professional character, and in the course of discipline enjoined by the church where he belongs.
3. XPN: Consent of affected person.
4. “Minister or priest” covers a person reasonably believed to be such.

(e) Public officer

1. Privilege subsists during or after his tenure.
2. The public officer cannot be examined as to communications made to him in official confidence, when the court finds that the public interest will suffer by the disclosure.
3. Purpose is to encourage free and frank communications by the public officer in the performance of their functions.
4. Covers – (i) Presidential communications privilege; and (ii) deliberative process privilege.
5. However, when there is already an ongoing criminal investigation, a blanket invocation of the privilege will not prevent inquiry into relevant evidence.

Rule on Third Parties

1. The privilege extends to 3p who may have obtained the privileged information if the original parties to the communication took reasonable precaution to protect the confidentiality **RPPC**

3. Testimonial Privilege

The privilege belongs to the witness – (i) he may not be compelled to testify; (ii) but he may opt to do so.

a) Parental and Filial Privilege Rule

(i) Descendant cannot be compelled to testify against his **direct** ascendants, includes child-parent; (ii) ascendant

cannot be compelled to testify against his **direct** descendants, includes parent-child.

1. Step-parents/children, collateral relatives are not covered.
2. Applies to both civil and criminal cases.

XPNs: If the testimony is indispensable in a **crime**:

1. Against the person sought to testify.
2. By one parent against the other.

b) Privilege Relating to Trade Secrets

A person cannot be compelled to testify about any trade secret.

1. XPNs: If the non-disclosure will conceal fraud, or work injustice, e.g., stolen, and appropriated recipe.
2. If disclosure is directed, the court shall take protective measures to protect the interest of the owner and of the parties, and furtherance of justice may require, e.g., disclosure in chambers/judge only.

4. Admissions and Confessions

***If given by party, admissible in evidence against the person giving them. If given by 3p, admissible in evidence only if conditions under the rule were complied.*

(a) Admission. – an act, omission or declaration of a **party** as to a relevant fact that is **adverse** to his interest.

By party

1. Out of court statement, otherwise, judicial admission.
2. Requisites for admissibility – (i) Must involve matters of fact and not of law; (ii) admission is categorical and definite; (iii) made knowingly and voluntarily; (iv) adverse to the admitter's interest; otherwise, self-serving, and inadmissible.
3. Must be offered in evidence.

EJ	Judicial
Out of court	In the course of proceedings
Must be offered in evidence	Need not be offered, may be taken cognizance
May be contradicted by admitter	Cannot be contradicted XPN: made through palpable mistake; the admission is not, in fact, made

Admission by silence **PHC WMN**

1. Act or declaration made (i) in the **presence**, and (ii) within the hearing or observation of a party.
2. The party **heard** and understood the statement.
3. The act or declaration naturally **calls** for action, comment, or response if not true. **ACR**
4. The facts are **within** his knowledge.
5. The facts are **material** to the issue.
6. The party said or did **nothing** when it is proper and possible for him to say or do something.

By third party

1. Out of court act/declaration A/D
2. GR: rights of a party cannot be prejudiced by the act, omission, declaration of another (first branch of res inter alios acta). XPN: vicarious admission wherein A/D of 3p may be admitted in evidence against a party due to their close relation.
3. Vicarious admissions – (i) by co-partner/agent; (ii) by conspirator; (iii) by privies. **ACP**

(i) By co-partner/agent

1. A/D of co-partner, agent, including co-**owner**, co-**debtor** (solidary not joint), other persons jointly **interest** with a party may be admitted in evidence against the party if conditions are complied with.
2. Conditions – **IAD** (i) Partnership or agency must be shown by **independent** evidence other than the act or declaration; (ii) party or agent is **authorized** by the party to make a statement on

the subject or acts within the scope of his authority; (iii) A/D is made **during** the existence of partnership or agency.

3. Also applies to EE's statements within the scope of his employment.
4. E.g., HOA and subdivision developer are jointly interested, joint venturers.

(ii) By conspirator

1. A/D of co-conspirator in furtherance of the conspiracy may be given in evidence against the co-conspirator if conditions are complied with.
2. Conditions – **IFD** (i) Conspiracy must be shown by **independent** evidence other than the act or declaration; (ii) A/D is in **furtherance** of the conspiracy; (iii) A/D is made **during** the existence of the conspiracy.
3. The court cannot motu proprio refuse to admit act or declaration as evidence on ground of lack of independent evidence. If not objected to, deemed waived.

(iii) By privies

1. A/D of one (predecessor) from whom another derives title to property in relation to the property is evidence against the successor in interest if conditions are complied with.
2. Conditions – (i) A/D was in connection with the title; (ii) made while the predecessor was holding title.

(b) Confession. – declaration by the accused directly acknowledging his guilt of the offense charged, or of any offense necessarily included therein.

1. EJ confession cannot be given in evidence against a person other than the confessor (res inter alios acta). XPN: when the confession is used as corroborative or circumstantial evidence, e.g., interlocking confession.
2. Interlocking confession – (i) EJ confessions independently made without collusion; (ii) identical in essential details and corroborated by other evidence on record; (iii) they are admissible as **circumstantial evidence** against the person implicated to show the probability of the latter's actual participation in the commission of the crime.
3. There is no confession by silence – the silence of accused during custodial investigation or trial is not admissible as evidence of his guilt.

Special rules

Offer of compromise in civil cases

1. Not an admission of any liability.
2. Not admissible in evidence against the offeror.
3. Evidence of conduct, statements made in compromise negotiations also not admissible. XPN: (i) if evidence otherwise discoverable, or (ii) offered for another purpose, e.g., to prove bias, to negate claim of laches.

Offer of compromise in criminal cases

1. May be received in evidence as an implied admission of guilt.
2. XPNs: (i) those involving quasi-offenses (criminal negligence) or (ii) those allowed by law to be compromised, e.g., BP 22.
3. E.g., offer of marriage in rape cases; plea for forgiveness.
4. Offer made prior to institution of criminal action is admissible in evidence in the criminal action eventually filed.

Plea of guilt: inadmissible in evidence against the accused

1. **Guilty plea** (i) later withdrawn, or (ii) to a lesser offense that is not accepted.

2. Statements in the course of plea bargaining (i) which did not result in a guilty plea, or (ii) which resulted in a guilty plea later withdrawn.

**** Offer to pay, or payment of medical, hospital and other expenses occasioned on the injury is not admissible in evidence as proof of civil or criminal liability for the injury (Good Samaritan Rule).**

5. Previous Conduct as Evidence

That one did or did not do a certain thing at one time is not admissible in evidence to prove that he/she did or did not do the same or similar thing at another time (second branch of res inter alios acta).

1. But may be admitted to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like **PIKICHUSS**
2. To prove custom or habit – must be characterized by uniformity, sample adequacy (multiple acts).
3. Rape shield rule – in prosecution for rape, evidence of complainant's past sexual conduct, opinion thereof or reputation are inadmissible unless relevant to the case.
4. Evidence of past sexual conduct may be admitted if (i) sex is with accused: to prove consent, or (ii) sex is with other men: to show that such other person was the source of semen, injury, other physical evidence.
5. In criminal procedure – previous criminal conduct or record of arrest not sufficient to engender probable cause that the person committed the same offense in other circumstances.

6. Testimonial Knowledge

1. Must be witness' first-hand knowledge. – a witness can testify only to those facts which he or she knows of his or her personal knowledge, that is, which are derived from his or her own perception §22.
2. Must not be hearsay.

Not hearsay if:

1. The declarant testifies at trial or hearing as to a prior out of court statement (declarant-witness DW)
2. He was subject to cross-examination.
3. The statement is:

(i) Prior inconsistent statement

1. If made under oath at a trial, or in a deposition – may be used (i) to prove TOFA, or (ii) impeach the witness.
2. If not made under oath, may be used only to impeach the witness but not to prove TOFA.

(ii) Prior consistent statement

1. May be offered to rebut an express or implied (e.g., insinuations during questioning) charge against the DW of recent fabrication or improper influence or motive.
2. Constitutes permissible bolstering.

(iii) Prior identification statement

1. One of identification of a person made after perceiving him or her.
2. Made at a time more immediate to the incident. Hence, more reliable.

7. Hearsay and Exceptions to the Hearsay Rule

Hearsay are **out-of-court** statements other than one made by the declarant while testifying at a trial or hearing offered to prove the **truth** of the facts asserted **TOFA**.

1. A statement made out of court by another person (declarant) referred to by a witness in his testimony.

2. "Statement" – (i) oral or written assertion; (ii) non-verbal conduct, if intended as assertion, e.g., nodding, pointing to the accused in line up when asked by the police.

Independently relevant statements IRS

1. A person may refer to statements made by another in his testimony, provided the testimony is not being offered to prove the fact of such statement but to prove something else, e.g., state of mind, intent, belief, mere fact of utterance, legal effect **SIBUL**.
2. If the statement will have probative value even if false, it is IRS.
3. E.g., (i) In testimony of A, he said that he heard B was seeing aliens, offered to prove B's statement of mind, not the truth of B's statement. (ii) In testimony of C, he said that he heard D told him that he owned the land, offered to prove D's state of being possessor in GF.
4. Statements having independent legal significance are also IRS – (i) offered not for the TOFA but for the legal effect of the utterance; (ii) e.g., "I accept" to prove perfection of the contract.

4-step analysis: **DAPE**

1. Declarant – a person who made an out of court statement.
2. Statement is assertive – intended to communicate a fact or belief.
3. Determine the purpose for which the declarant's statement is offered – (i) if to prove TOFA, hearsay; (ii) if not to prove TOFA, e.g., belief, state of mind, IRS.

(a) GR: Hearsay evidence is inadmissible.

1. Lack of **opportunity to cross-examine**.
2. Statement not under oath.
3. No opportunity for court to observe demeanor of the declarant.

(b) XPNs: admissible hearsay due by reason of necessity or reliability

Two groups:

1. Those where there is requirement that the declarant is dead or unavailable **3D PF**
2. Those where there is no such requirement **2RFC BLOC**

First group **3D PF**

- (i) **Dying** declaration
- (ii) Statement of **decedent** or insane person
- (iii) **Declaration** against interest
- (iv) Act or declaration about **pedigree**
- (v) **Former** testimony or deposition

(i) Dying declaration

Requisites

1. (i) Declarant died, (ii) but he was a competent witness had he survived.
2. Declaration was made – (iii) while he was dying, and (iv) under consciousness of impending death.
3. Declaration – (v) pertains to the cause and circumstances of his death, and (vi) offered in a case where his death was the subject of inquiry to prove the cause and circumstances of declarant's death.

Notes

1. May be in civil or criminal case.
2. May be offered in evidence either in favor or against defendant or accused.
3. A statement not admissible as dying declaration may usually be admitted as part of the res gestae if the requisites are complied with.

(ii) Statement of decedent or insane person

Requisites

1. The declarant was dead or insane.
2. A party testifies to a matter of fact before death or becoming insane where the declaration was made.
3. Declaration was – (i) upon personal knowledge of declarant, (ii) at a time when the matter had been recently perceived by him or her and while his or her recollection was clear. But not if made under circumstances indicating its lack of trustworthiness.
4. Declaration is offered in an action **against** the E/A, the insane, or the estate of deceased or insane.

****Intended to balance the repeal of deadman's statute. The rule now permits representatives of deceased to introduce relevant hearsay statements of the deceased.**

(iii) Declaration against interest

Requisites

1. The declarant was dead or unable to testify.
2. Declaration is – (i) against his interest, pecuniary, moral, or penal; (ii) would not have been made unless declarant believed it to be true at the time it was made.
3. Declaration is offered in an action (i) against the declarant, (ii) his successors in interest, and (iii) against third persons. But not if it tends to would incriminate the declarant and exculpate the accused **IDEA**, unless corroborating circumstances clearly indicate the trustworthiness of the statement.

****Declaration need not be ante litem mortam (before the dispute arose), may pertain to those made after the controversy.**

(iv) A/D about pedigree

Requisites

1. The declarant was dead or unable to testify.
2. The declaration – (i) pertains to pedigree of another person; (ii) occurring before the controversy.
3. The declarant – (i) is related by birth, adoption, marriage to the person, or (ii) intimately associated with the person's family as to be likely to have accurate information concerning his pedigree **BAMI**, and (iii) the relation is shown by independent evidence, i.e., other than the declaration. XPN: if the declarant's statement is about his own relationship to the person.

Notes

1. The witness need not be related to the declarant, nor to the other person.
2. The relational requirement applies to the declarant-subject.

(v) Former testimony or deposition

Requisites

1. Declarant is (i) dead, (ii) out of the Ph, (iii) cannot be found in Ph with due diligence; (iv) unavailable, or (v) otherwise unable to testify **DOFU**.
2. He testified in a former case – (i) judicial or administrative, including deposition; (ii) involving same parties and subject matter.
3. The declaration is offered in an action against an adverse party who had the opportunity to cross-examine the declarant.

****c.f.: depositions pending action which is used in the same civil action.**

Second group 2RFC BLOC

- (i) Part of **res gestae**
- (ii) **Residual** exception

- (iii) **Family** reputation
- (iv) **Common** reputation
- (v) **Business** records
- (vi) **Learned** treatise
- (vii) Entries in **official** records
- (viii) **Commercial** publication

(i) Part of res gestae

Requisites

1. Declaration was given – (i) while a startling occurrence is taking place, or (ii) immediately prior to subsequent thereto; (iii) under stress of excitement caused by the occurrence with respect to circumstances thereof **SECO**.
2. Declarations accompanying an equivocal act material to the issue and giving it a legal significance.

****Immediacy is not only a matter of time but of influence. However, if there was already a time lapse, there must be proof that the declaration was still under the influence of stress of excitement, e.g., trembling, shaking.**

(ii) Residual exception

Substantive requisites

1. Has equivalent circumstantial guarantees of trustworthiness.
2. Offered to prove a material fact.
3. More probative on point for which it is offered than other evidence which proponent can procure through reasonable efforts. – e.g., a newspaper article providing a factual account of an event which happened several years ago.
4. General purpose of the rules and interests of justice will be served by admission of the evidence.

Procedural requisites: Reasonable prior notice to the adverse party of

1. The intention to offer the statement.
2. The particulars of the statement.
3. The names and address of the declarant.

(iii) Family reputation

1. The witness is a member of the family by consanguinity, affinity or adoption. He testifies on a reputation or tradition existing in the family previous to controversy in respect to pedigree of any member.
2. Entries in family bibles or other family books or charts, engraving on rings, family portraits and the like are also admissible as evidence of pedigree without need of presenting the person who made the inscription.
3. No preliminary evidence needed since the witness belongs to the family.

(iv) Common reputation

1. Common reputation existing previous to the controversy – (i) on the boundaries or customs affecting lands in community; (ii) events of general history important to the community; or (iii) marriage or moral character of a person.
2. Monuments and inscriptions in public places are also admissible as evidence of pedigree without need of presenting the person who made the inscription.

(v) Business records

1. Record was made in writing: non-/electronic – (i) at or near the time when information was received from a person having knowledge thereof; (ii) as part of regular business practice; and (iii) kept in the regular course of business.
2. Witness is the record custodian or other qualified person. – (i) he need not be the recorder himself or have personal knowledge of the record.

3. Death or unavailability of recorded need not be proven.
4. Business records are no longer considered prima facie evidence of their contents.
5. But annotations in business records is not part of the exception. The person making the annotation must authenticate the same.

(vi) Learned treatise

1. May be admitted if – (i) the court takes judicial notice, or (ii) the expert witness on the subject testifies that the author is recognized in the profession or expert therein.
2. The author need not be presented.

(vii) Entries in official records

1. Entry is in official record made by one (i) having personal knowledge of the facts stated, or (ii) from knowledge acquired through official information, or (iii) where the declaration contained in the report is justified by another hearsay exception.
2. Entry was made in the performance of duty (i) by a public officer, (ii) by a person when enjoined by law.

Notes

1. Entries are prima facie evidence of the facts stated.
2. Entries in RD may be testified to by the registrar, even if he is not the one who prepared the technical description.
3. Entries in LCR from information supplied by solemnizing officer.
4. Logbook required under code of commerce kept by ship captain.
5. Stamp of dishonor and its reason required from drawer of check under BP 22.

(viii) Commercial publications

1. Statement of matters of interest to persons engaged in occupation contained in lists or other published compilations, published for use by such persons and generally relied upon by them.
2. Admissible if – (i) tending to prove the truth of a relevant matter stated in the compilation; (ii) published for use by persons engaged in the occupation; and (iii) generally used and relied upon by them.

8. Opinion Rule

GR: Opinion of witness is not admissible.

XPNS: (a) expert witness; (b) ordinary witness as provided by ROC.

(a) Opinion of expert witness

1. Requisites – (i) The matter requires special knowledge, skill, experience, training or education **KEETS**; (ii) the witness is shown to possess such **KEETS** (qualification).
2. They may testify on hypothetical or assumed facts.
3. Expert opinion is not necessarily binding on the court. – (i) Must be weighed based on the aid of the expert opinion in showing facts, and the logic upon which the opinion is founded; (ii) court must consider the totality of evidence.

(b) Opinion of ordinary witness

1. Requisites – (i) Proper basis is laid; (ii) pertains to specific matters only.
2. Specific matters – **HIMI** (i) **Identity** of person about whom he has adequate knowledge; (ii) **Handwriting** with which he has sufficient familiarity; (iii) **Mental** sanity of person with whom he is sufficiently acquainted; (iv) **Impressions** of

emotion, behavior, condition, or appearance of a person (shorthand impressions)

9. Character Evidence

Generally, evidence of person's character or trait of character is not admissible to prove an action in conformity therewith on a particular occasion.

XPNS (Admissibility):

In criminal cases

1. Character of offended party, admissible if **TE PIOC** tending to establish the probability or improbability of the offense charge. Usually to prove (i) unlawful aggression on the part of offended party, or (ii) accused's state of mind, i.e., that he had reasonable ground to believe that his life was in danger, necessitating a defensive action.
2. Character of accused, (i) evidence of his good moral is admissible if **PM TIOC** pertinent to the moral trait involved in the offense charge; (ii) evidence of his bad moral is admissible only as rebuttal.

In civil cases

1. Moral character of a party, is admissible if **PICIC** pertinent to the issue of character involved in the case, e.g., claim for moral damages for besmirched reputation.

In both

1. Good moral character of a witness is admissible if he has been impeached.

Proof of character: **ROS**

1. Testimony as to reputation (reputation evidence) – e.g., that witness' general reputation honesty, integrity, truth **HIT** is bad may be admitted for purposes of impeaching the witness.
2. Testimony in the form of an opinion (opinion evidence)
3. Specific instances of conduct **SIC**

SIC may be used only:

1. When character is directly in issue. – e.g., in libel cases where the defendant called complainant an adulteress, testimony of 3p who had sex with the latter may be admitted.
2. During cross-exam, not to prove the conduct but to test the witness' credibility.

G. Burden of Proof and Presumptions (Rule 131)

Burden of proof and burden of evidence (see above)

1. Presumption is a legally mandated inference drawn from a basic fact.
2. Kinds: (a) Conclusive, and (b) Rebuttable.

(a) Conclusive: evidence to the contrary is inadmissible

1. Estoppel. – whenever a party has by his own acts/ omission/declaration intentionally led another to believe a particular thing to be true, and to act upon such belief, he cannot, in any litigation arising out of such AOD, be permitted to deny such thing.
2. The tenant is not permitted to deny the title of the landlord upon the commencement of the landlord-tenant relation between them. – but the lessee may question the lessor's title by a title acquired after the creation of the lessor-lessee relationship, e.g., acquisition of property in public auction.
3. In insurance law, acknowledgement of receipt of premium in the policy is conclusive as to the receipt of such payment.

(b) Rebuttable: clear and convincing evidence is admissible to rebut

1. Presumption of innocence.

2. An unlawful act was done with an unlawful intent.
3. A person intends the ordinary consequences of his voluntary acts.
4. A person takes ordinary care of his business.
5. **Evidence that is willfully suppressed is adverse when produced.**
6. Money paid to another is due to the latter.
7. A thing is delivered a person belongs to the latter.
8. If an obligation to pay a sum of money or deliver a certain thing is delivered, it is presumed that such money is paid, or such thing is delivered.
9. Prior rents or installments are deemed paid upon the production of receipt of later rents or installments.
10. The person found in possession of a thing taken during the recent doing of an unlawful act is deemed to be taker or doer of the entire act (anti-fencing law). Otherwise, the person in possession of a thing or exercising rights of ownership thereof is deemed to be its owner.
11. Person in possession of an order upon him or her to pay something or deliver a thing has paid the money or delivered the thing.
12. A person acting in public office is regularly appointed or elected (may be challenged by quo warranto).
13. **Public duties are regularly performed.**
14. A court or judge, whether in the Ph or elsewhere, acted in the lawful exercise of jurisdiction.
15. All matters within an issue raised before a case or dispute has been laid down and passed upon by the court or judge, or the arbitrators.
16. Private transactions are done fairly and regularly.
17. The ordinary course of business was followed.
18. There is sufficient consideration for a contract. "for valuable consideration".
19. A NI is given or indorsed for a sufficient consideration.
20. A negotiable instrument was indorsed before it is due in the place where it is dated.
21. A written instrument is truly dated.
22. A mail that is duly mailed has been received in the regular course of mail. – (i) provided properly addressed; postage prepaid; mailed. (ii) registry receipt may be shown as proof.
23. Presumption of death in case of absence for several years, and under certain conditions.
24. The acquiescence of a thing results from the belief that the thing acquiesced in was done in conformance with fact or law.
25. Things happened in the ordinary course of life and regular habits.
26. Persons acting as co-partners established a co-partnership.
27. Man and woman deporting themselves as husband and wife were lawfully married.
28. The property acquired by man and woman, capacitated to marry each other, living together as husband and wife without the benefit of marriage or under a void marriage was acquired through their joint efforts, work, or industry.
29. Man and woman who are cohabitating but not capacitated to marry each other, and acquires property the actual joint contribution of money, property, and industry are presumed to have contributed equally.
30. Legitimacy. If child was born over 300 days after the dissolution of the marriage of the spouses, there is no presumption of legitimacy. Whoever claims paternity must prove the same.
31. Once the existence of a thing is established it continues to exist as is usual of things of the same nature.
32. The law was obeyed.
33. The printing or publishing of book purportedly by official authority is presumed to be so.

34. If printed or published book contains reports of cases rendered by tribunal in the place, it is presumed that such report of cases was correct.
35. A trustee having in his possession property for the benefit of another is deemed to have delivered the same to the beneficiary whenever such delivery is necessary to perfect the title of the latter.
36. Survivorship.
37. When the issue is succession and there is no proof as to who died ahead of another, the person alleging the prior death of the other must prove the same.

Notes

1. The party against whom the presumption is directed has the burden of moving forward with clear and convincing evidence to meet or rebut the presumption.
2. In case of conflict, the presumption based on weightier consideration of public policy shall prevail, e.g., presumption in favor of a valid marriage and the solidarity (FC) prevails over presumption of regularity in the performance of official duties.
3. If the conflicting presumptions are of equal weight, neither shall apply.
4. In criminal cases, the basic fact upon which the presumption is drawn must be PBRD.

H. Presentation of Evidence (Rule 132)

1. Examination of Witnesses

1. In open court – (i) for cross-examination; (ii) for the court to observe the demeanor of the witness. XPNs: (a) under RSP; (b) cases covered by JAR.
2. Under oath or affirmation.
3. Answers to be given orally. XPN: (i) the witness is incapacitated to speak; (ii) the question calls for a different form of answer.

Order of testimony

1. Direct
2. Cross
3. Re-direct
4. Re-cross

Cross examination

1. May cover all relevant matters, not just those covered by the direct examination, even in criminal cases despite express provision in Rules of Criminal Procedure limiting the scope of cross examination to matters covered by the direct examination.
2. The amendment in Rules of Evidence is more recent, and ROE covers civil and criminal proceedings.
3. Scope of cross examination is not a constitutional right. There is no vested right in Rules of Procedure.
4. The witness may be cross-examined by the adverse party on any relevant matter, with sufficient fullness and freedom **to test** his or her accuracy and truthfulness and freedom from interest or bias, (atfb) or the reverse, and **to elicit** all important facts bearing upon the issue.
5. If a witness dies before cross examination, his testimony may be expunged if there is showing of delay by the party waiting to cross. Otherwise, the testimony shall remain in the records.

a) Rights and Obligations of a Witness

(a) Rights

1. To be **protected** against improper, irrelevant, insulting questions, and from harsh or insulting demeanor. "badgering the witness".
2. To not be **examined** except on matters pertinent to the issue.

3. To not be **detained** for longer than necessary. – under one-day examination of witness rule, (i) a witness in civil case must be fully examined on 1d subject to court's discretion on whether to extend direct and cross for justifiable reasons; (ii) in criminal cases, no exceptions under RGCTCC.
4. To not give answers that will tend to **degrade** his reputation. XPNs: (i) if it is the very fact in issue, or the fact from which the fact in issue would be presumed; (ii) with respect to the fact of his **prior final conviction** for an offense to impeach him (obligation).
5. To not give answers that would tend to **subject** him to the penalty of an offense. XPN: if otherwise provided by law.

b) Leading and Misleading Questions

(a) Leading questions

1. One which suggests to the witness the answer which the examining party desires.
2. GR – not allowed.
3. XPNs – **CUPAD** (i) On **cross**-examination; (ii) witness is **unwilling** or hostile; (iii) **preliminary** matters; (iv) witness is an **adverse** party; (v) if there is **difficulty** in obtaining direct and intelligible answers from the witness who is ignorant, a child of tender years, feeble-minded or deaf-mute.

(b) Misleading question

1. Questions which assumes facts – (i) not yet testified to by the witness; (ii) contrary to those previously testified to by the witness.
2. Absolutely not allowed.

c) Impeachment of Witnesses

(a) Impeachment of adverse party witness.

Admissible evidence

1. By contradictory evidence.
2. By evidence that his general reputation for truth, honesty or integrity **HIT** is bad. – not opinion evidence.
3. By evidence of prior inconsistent statement – (i) provided predicate is laid; (ii) if the witness is not impeached in TC, the CA cannot consider his prior inconsistent statement.
4. By prior final conviction (see below)

Laying the predicate

1. Statements must be related to witness with circumstances of the time, place and persons present; if in writing, it must be shown to the witness.
2. He must be asked whether he made the statements.
3. He must be allowed to explain inconsistencies.

Inadmissible evidence

1. Evidence of particular wrongful act.
2. XPN: conviction of prior offense – (i) final, (ii) offense punishable with imprisonment >1y or (iii) involving moral turpitude, regardless of penalty.
3. XPN to XPN: if the conviction had been the subject of (i) amnesty, or (ii) annulment of conviction. But not if he is only pardoned.

(b) Impeachment of own witness.

1. GR: The proponent cannot impeach the credibility of his own witness.
2. XPNs: (i) unwilling or hostile witness; (ii) adverse party witness. They are expressly excluded by JAR. It is sufficient that they are served written interrogatories.

Unwilling or hostile witness

1. Must be declared by the court upon showing of the grounds.

2. Grounds – **MUA** (i) Interest adverse to proponent; (ii) Unjustified reluctance to testify; (iii) Having misled the proponent to call him as witness.

Admissible evidence (see above)

1. By contradictory evidence.
2. By evidence of prior inconsistent statement
3. By prior final conviction

2. Authentication and Proof of Documents

a) Meaning of Authentication

1. Proving the authenticity and due execution of a document which is offered in evidence as authentic – (i) to prove the contents, or (ii) the genuineness and due execution of the document.
2. Does not apply to object or testimonial evidence.

b) Classes of Documents

1. Public documents which are presumed authentic and need not be authenticated. – presumption may be overthrown only by clear and convincing evidence.
2. Private documents – (i) All documents not classified as public; (ii) must be authenticated.

c) Authentication of a Private Writing

If the private document is offered as authentic, its authenticity and due execution must be established: **SaGO**

1. By anyone who **saw** the document written or executed.
2. By evidence of the **genuineness** of the handwriting or signature of the maker.
3. By **other** evidence showing its due execution and authenticity – e.g., handwriting experts (authentication by circumstantial evidence)

Evidence of the genuineness of the handwriting or signature

1. Testimony by any witness who believe it to be the handwriting of the person because (i) he has seen the person write something or (ii) he has seen a writing purporting to be that of the person.
2. Comparison of the signature by the witness or court with (i) writings admitted by the adverse party as genuine; or (ii) proved to be genuine to the satisfaction of the court.

Ancient document exception

1. The private document is more than 30 years old (age).
2. Produced from a custody wherein it will naturally be found if genuine.
3. Unblemished by alterations or circumstances of suspicion.

**Exempted from authentication requirement.

Other exceptions

1. If document is not offered as authentic, it is sufficient that it be identified.
2. Self-authenticated documents or those where the information in writing could only have been known by the writer or parties thereto.
3. Reply-authenticated letter – reply to the adverse party referring to and affirming the sending to him and his receipt of the letter in question, a copy of which the proponent is offering in evidence.
4. If the genuineness and due execution of the document has been expressly or impliedly admitted

d) Public Documents as Evidence; Proof of Official Record

Public documents **WATR**

1. Written official acts of the sovereign authority, official bodies and tribunals, public officers, whether in the Ph or abroad.
2. Documents **acknowledged** before a notary public, except last will and testament (probate).

- Documents considered public under **treaties** and conventions in force between the Ph and the country of source.
- Public records in the Ph, of private documents, required by law to be entered therein; affidavits recorded in the public registry.

(a) Written official acts

Proof

- Official publication.
- Copy attested by legal custodian.
- If kept abroad, must be accompanied by certification by that the attesting officer is the legal custodian issued by a Ph foreign service officer of the stationed in the foreign country and authenticated by seal of his office.

****Subject to treaty stipulations, e.g., under Apostille convention, consular certification is dispensed with.**

Judicial record may be impeached by evidence of

- Want of jurisdiction.
- Collusion between the parties.
- Fraud on the part of the party offering the record, in respect of the proceedings.

(b) Notarial documents other than will

- No further proof required other than the document itself.
- Affidavits/Sworn certifications are not public documents since they only contain jurat, not acknowledgement.
- Prima facts evidence of facts stated.

(d) Public records or private documents

Proof

- Original record
- Attested copy by the **legal custodian**, with certification that the officer has the custody.

Notes

- Entries in public records made in the performance of official duties are prima facie evidence of the facts stated.
- Doctrine of irremovability of public records – (i) If the official copy of a public record is admissible as evidence in a case, it shall not be removed from the office where kept. XPN: upon order of the court, where the inspection is essential for the just determination of a pending case.
- Certificate of no record is admissible in evidence to prove that the concerned office do not have the record or entry if: (i) made by the legal custodian or deputy; (ii) stating that (a) after diligent search [not necessary given the presumption of regularity], (b) no record or entry of a specific tenor is found in the records of his office; (iii) accompanied by the certificate that he is the legal custodian.
- Financial statements become public documents upon filing with SEC/BIR; but ITRs are not since they are confidential.

3. Offer and Objection

a) When to Make an Offer

GR: Evidence not formally offered shall not be considered by the court.

- Purpose of the offer must be specified.
- Exhibits admitted as part of witness' testimony are not proof of the facts stated therein; they must be separately offered.
- The offer must be made orally. XPN: if written offer is allowed by judge.

XPN: If the adverse party failed to object for lack of offer, or for failure to specify its purpose, the objection is deemed waived.

When to make offer

- Testimonial evidence – at the time witness was called to testify.
- Document/Object – after the presentation of a party's testimonial evidence (last witness).

b) When to Make an Objection

Manner of objection

- Orally, specifying the grounds (specific objection). XPN: if the adverse party is ordered or allowed to submit a written offer, written comment or objection may also be allowed.
- Record of continuing objection – If it becomes reasonably apparent in the course of the examination that questions being propounded to a witness were of the same class as those to which the objection was made, the objection need not be repeated. The party should instead record his continuing objection to the class of question.

When to object

- GR – Immediately after offer is made.
- On lack of offer for testimony – as soon as the witness begins to testify.
- On question propounded – as soon as the grounds become reasonably apparent.
- In case of JAW – at the start of the presentation of the witness, move to disqualify witness or strike out JAW or answer.

****Failure to object is waiver of the objection.**

Ruling on objection

- Must be made immediately after the objection is made. XPN: if the court wants to take reasonable time to research on the objection.
- (i) must always be given during the trial, (ii) must be given at such time as to give the party against whom directed the opportunity to meet the ruling.
- The judge need not state reasons for the ruling. XPN: if the objection is based on two or more grounds, the judge must specify the reason for sustaining one or some of the grounds.

Striking out answer

- The witness was able to answer the question before the adverse party was able to fully voice out his objection.
- The question is not objectionable but the answer is not responsive.
- The witness testifies without a question being asked.
- The witness testifies beyond the limits set by the court.
- The witness makes a narration instead of answering the question.
- Answers are incompetent, irrelevant, improper.

c) Tender of Excluded Evidence

The attachment of the excluded evidence to form part of the record.

- Available if documents or objects offered in evidence are excluded by the court.
- In case of oral evidence, the proponent may state the (i) name, (ii) personal circumstances of the witness, and (iii) substance of the proposed testimony.
- Purpose is to allow the appellate court to consider the excluded evidence.

I. Judicial Affidavit Rule (A.M. No. 12-8-8-SC)

(a) Applicability. – Applicable on all actions, proceedings, incidents requiring reception of evidence on:

- First level courts
- RTC, Sha'ria District Court
- SB, CTA, CA, Sha'ria Appellate Court

- Investigating officers/bodies, authorized by SC to receive evidence, including IBP.
- Special courts QJ bodies whose rules are subject to SC disapproval.

In first level courts (RSP)

- Direct examination shall be in the form of – (i) JA; (ii) affidavits executed before investigating officers in PI/E; (iii) written statements submitted before law enforcement officers **JAW**.
- Cross/re-direct – oral testimony.

In second level courts (RSP)

- Direct examination shall be in the form of – (i) JAW, if demeanor of witness is not necessary to determine his credibility or criminal cases that are transactional in character; or (ii) oral testimony, if culpability/innocence of the accused will be based on the eyewitness' testimony.
- Cross/re-direct – oral testimony.

In criminal actions

- If maximum imposable penalty $\leq 6y$
- If accused consented, regardless of penalty.
- Regrading civil aspect, regardless of penalty.

(b) Function, form, general requirements

- JAs shall serve as substitute oral direct testimonies.
- Witness examination should be done in Q&A form.
- File and serve at least 5 days before pre-trial, preliminary conference, hearing.
- Documentary exhibits must be attached to the JAs and marked. – (i) with warranty that the same are faithful reproductions of the original; (ii) he must bring the original during PC for comparison.
- Must be subscribed and sworn to (jurat).

(c) Offer, objection and ruling

Evidence	Offer	Objection
JA	Proponent must state the purpose of the testimony at the start of presentation of witness. It is not required that the purpose must be in the JA.	Adverse party may: (i) move to DQ the witness; and/or (ii) move to strike out his affidavit, or any answer thereon on ground of inadmissibility
Documents and exhibits	Upon termination of testimony of last witness, oral offer of documentary and object evidence shall be made – (i) piece by piece; (ii) in chronological order; (iii) stating the purpose/s of offer	Adverse party may object after every piece of exhibit offered, stating legal ground for objection.

- Court shall immediately rule on the motion/objection.
- If granted/sustained, the Court shall cause the marking of the excluded answer by placing the same in brackets under initials of the authorized court personnel.
- Remedy of tender of excluded evidence may be availed.

(d) Witness examination

- Adverse party may cross-examine witness on JA and exhibits.
- Proponent may re-direct.

(e) In criminal cases

- If applicable, prosecution shall file/serve JAs of witnesses within 5d before pre-trial. No further JA, documentary and object evidence shall be admitted at trial.
- Submission of JA is optional for the accused (right to remain silent). If he opts to submit JA – (i) he may do so within 10d from receipt of prosecution's

JAs; (ii) he may be cross examined in the JAs and attachments. No counterpart provision that no further JA, documentary and object evidence shall be admitted at trial.

(f) Non-compliance

- A party failing to submit JA and exhibits within the prescribed period shall be considered waiver of the submission.
- Late submissions shall not be admitted. XPN: (i) Only one late submission shall be allowed; (ii) delay must be for valid reason; (iii) delay would not unduly prejudice the opposing party; (iv) defaulting party pays fine (1k to 5k at discretion of court).
- If the party fails to appear during his examination, the court shall not admit his JA.
- The absence of counsel is deemed waiver of client's right to cross-examine the witness present, if the absence is (i) without just cause, (ii) despite due notice.
- The court shall not admit JA not in conformance with content (§3) and attestation requirements (§4). XPNs: (i) Only one subsequent submission of compliant replacement JA shall be allowed; (ii) the replacement JA shall be filed/served before the hearing/trial; (iii) delay must be for valid reason; (iv) delay would not unduly prejudice the opposing party; (v) defaulting party pays fine (1k to 5k at discretion of court).

J. Weight and Sufficiency of Evidence (Rule 133)

(a) In civil cases

- Preponderance of evidence, i.e., superior weight of evidence.
- Evidence which is of greater weight, or more convincing than that which is offered in opposition to it.

(b) In criminal cases

- PBRD.
- Requires only moral certainty, i.e., that which produces conviction to an unprejudiced mind.
- EJ confession – (i) not sufficient ground for conviction; (ii) XPN: if corroborated by corpus delicti.
- Conviction may be based on circumstantial evidence, provided the conditions are present (see above).

(c) In administrative cases

- Substantial evidence, i.e., amount of relevant evidence which a reasonable mind may accept as adequate to justify a conclusion.

K. Rules on Electronic Evidence (A.M. No. 01-7-01-SC)

- Applies to civil actions, QJ, administrative, even in criminal cases whenever electronic evidence is used or offered in evidence.
- Rule applies whether an electronic document or electronic data message is offered or used in evidence

Electronic document

- Information/data (i) by which a right is established, or an obligation extinguished, or (ii) by which a fact may be proved, (iii) which is received, recorded, retrieved, produced, processed, transmitted, stored (3RP TSP) by electronic, optical, similar means.
- The presence of one of the modes is sufficient to render a document e-doc. e.g., handwritten document scanned (recorded and stored)
- E.g., computer-stored/generate docs; website date; emails; social media communications; **text message** (not ephemeral document); recordings; photographs.

Electronic data message

1. Information generated, sent, received or stored by electronic, optical or similar means.
2. For purposes of the Rules, the term "electronic document" may be used interchangeably with "electronic data message".

Ephemeral electronic communication

1. Electronic forms of communication the evidence of which is not recorded or retained – e.g., phone talks, chatroom sessions, streaming audio/video.
2. Must be proven by the testimony of a party to the communication or has personal knowledge thereof. In the absence or unavailability of such witnesses, other competent evidence may be admitted.

PART TWO: LEGAL AND JUDICIAL ETHICS WITH PRACTICAL EXERCISES

I. Legal Ethics

A. Practice of Law

1. Basic Concepts

a) Definition of the Practice of Law

Any activity, **in or out of court**, which requires the application of (a) law, (b) legal procedure, (c) knowledge, (d) training and experience. **LaLeKETS**

1. To give notice or render any kind of service requiring the use in any degree of legal knowledge or skill.
2. Appearance in court is not an element of practice of law.
3. Practice of law includes – (i) advising clients; (ii) preventive lawyering or taking steps to prevent a case from ripening into a full blown trial.

Elements (traditional)

1. Habituality
2. Application of LaLeKETS
3. Compensation
4. Attorney-Client relations

b) Practice of Law as a Privilege, Not a Right

1. Requires lawyers who meet the high standards of legal proficiency and morality. **LPM** – (i) standards of competence: admission to bar, MCLE; (ii) good moral character, lawyers must act in a manner beyond reproach both in their public or private life.
2. Right to practice law is not a natural or constitutional right.
3. There are qualifications both for admission and continuation of the enjoyment of the privilege, which must be complied with. Such qualifications are **strictly construed** against the applicant.
4. It is burdened with **conditions** to the legal profession, the courts, their clients, and the society. A lawyer has the **duty** to comport himself in a manner to uphold the integrity and promote the public's faith in the profession.
5. If the qualifications are found lacking the privilege may be taken away, subject to the observance of due process.
6. The Court will not unwarrantedly withhold the privilege from individuals who has shown mental fitness and moral fiber to withstand the rights of the profession.
7. Duty of public service (aiding in the administration of justice), not money, is the primary consideration.
8. It is a personal privilege of the lawyer – (i) he cannot consent anyone to use his signature and other details; (ii) this is tantamount to licensing

anybody to practice law and a usurpation of the exclusive authority vested upon SC.

Regulated profession

1. Under the Const., the sole power to regulate the practice of law and admission to the bar belongs to SC.
2. Congress cannot legislate on matters involving Bar admission, e.g., Bar Flunker's Act declared unconstitutional.
3. The executive cannot impose additional requirements before one can practice law.
4. The President, in exercise of treaty-making powers, cannot allow Spanish lawyers to practice law in the Ph, subject to reciprocity.

c) Law as a Profession, Not a Business or Trade

1. Lawyering is not primarily meant to be a money-making venture, and law advocacy is not a capital that necessarily yields profits.
2. Public service, especially to the needy and oppressed is the primary consideration; lawyer's work is not purely economic. Gaining a livelihood is not a professional but a secondary consideration.
3. A lawyer's function is to aid in the administration of justice.
4. Lawyer's fees can be regulated by the court. Money is merely incidental to the exercise of legal profession.
5. Solicitation of legal business is generally prohibited.
6. Organization – e.g., IBP capable of enforcing its standards.
7. Learning – acquisition of legal competence and proficiency.
8. Dignity of the profession must be maintained at all times.
9. Self-regulation – mechanism to discipline members of their own ranks.

2. Qualifications for Admission to the Bar (Bar Matter No. 1153)

Who may practice law: (a) admission as member to bar; (b) in good and regular standing; (c) only Filipinos⁵¹

(a) Admission as member to bar **CRAGN PLEOS**

1. Ph citizen*
2. Ph resident
3. At least 21 years of age
4. Of good moral character, and must produce before the SC, satisfactory evidence of GMC* (moral fitness)
5. No charges against him, involving moral turpitude, have been filed or are pending in any court in the Ph.
6. Pre-Law – (i) HS degree; (ii) college degree [bachelors]
7. Law course
8. Bar examination
9. Oath taking
10. Signing of the Rolls of Attorneys
11. Certificate of authority to practice law issued by Clerk of SC.

**Continuing requirements.*

Law course

1. (i) completion of all courses for Bachelor of Laws or equivalent in law school recognized by Ph government or a foreign law school, subject to additional requirements**.
2. Including, Clinical Legal Education Program.
3. PhilSAT requirement implemented by the LEB Declared by the SC as unconstitutional for

⁵¹ Under Const.

usurping the right and duty of law schools to determine for itself the criteria for the admission of students, and to apply such criteria of a case-by-case basis (academic freedom).

****Filipino citizen who graduated in foreign law school**

1. They may be admitted to take the bar examination subject to conditions (BM 1153).
2. Conditions – certification of (i) completion of all courses leading to a degree of LLB; (ii) recognition or accreditation of the law school by proper authority; **(iii) completion of all 4th year subjects in LLB academic program in law school recognized by Ph government** (gapping). He must also present separate proof of completion of bachelor's degree course.

Admission to practice of law merely creates a rebuttable presumption that the person so admitted has all the qualifications to become a lawyer.

3. Continuing Requirements for Membership in the Bar

1. Filipino citizenship
2. Possession of GMC (moral fitness)
3. Payment of PTR
4. Good and regular standing of membership in IBP
5. Payment of IBP dues, other lawful assessments
6. Compliance with MCLE
7. Faithful observance of rules and ethics of legal profession
8. Continuously subject to judicial disciplinary control.

Good moral character

1. Open to judicial inquiry, upon proper complaint, into any question concerning a lawyer's mental or moral fitness before he becomes a lawyer.
2. Any misconduct of the lawyer may be a ground for his suspension or disbarment.
3. Such misconduct may pertain even in his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor.

LEB's regulations declared unconstitutional:

1. LEB's authority over continuing legal education.
2. LEB's authority over increasing awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of the society.

4. Appearance of Non-lawyers

a) Law Student Practice Rule (Rule 138-A, as amended by A.M. No. 19-03-24-SC)

(a) Clinical Legal Education Program

1. Law course intended to provide law students with practical knowledge, skills and values necessary for the application of the law, delivery of legal services and promotion of social justice and public interest.
2. Required under AM 19-03-24-SC.

(b) Law Student Practice Rule

1. Authorizes the limited practice of law by students certified** under the rules covering activities under CLEP.
2. The LSP shall be under the supervision of SL.
3. LSPs – (i) subject to the rules on confidentiality; (ii) must strictly observe CPR; (iii) may sign legal documents stating his certificate no.
4. The SL shall personally appear in all cases pending before the **second-level courts** and in all other cases the supervising lawyer determines that his or her presence is required. The LSP may appear in first level courts without SL if determined by the latter that his presence is not required.

5. SLs have a gate-keeping function, i.e., to check the works of others assisting him.

Certifications**

Level 1: at least completed first year

1. Interview.
2. Give legal advice.
3. Negotiations.
4. Draft legal documents.
5. Representation in QJ or administrative bodies.
6. Providing legal orientations.
7. Assist in public interest advocacies for policy formulation and implementation.

Level 2: at least enrolled in 2nd semester of 3rd year

1. All under Level 1.
2. Assist in the taking of depositions and/or preparing judicial affidavits of witnesses.
3. Appearance before **courts**, QJ or administrative bodies.
4. In criminal cases, appear on behalf of a government agency in the prosecution of criminal actions.
5. In appealed cases, to prepare the pleadings.

b) Non-lawyers in Courts and/or Administrative Tribunals

(a) GR: Only persons admitted to the bar, and in good and regular standing may practice law. The following cannot practice law:

1. Juridical persons.
2. Paralegals.
3. Non-lawyers.
4. Disbarred/suspended lawyers.

(b) XPNs:

1. Law student practitioners (see above).
2. Non-lawyers appearing in administrative or labor tribunals.
3. Non-lawyers who are lawyering for themselves.
4. Non-lawyers authorized to appear for the government.

In MTC

1. In civil cases, a party may conduct his litigation in person, with the aid of an agent, friend, or attorney.
2. In criminal cases, in less/grave offenses, the accused may represent himself sufficiently appears before the court that he can protect his rights without assistance of counsel.
3. In criminal cases, in localities where members of the bar are not available, the court may appoint any resident of the province of good repute for probity and ability to defend the accused.

In RTC

1. In civil cases, a party may conduct his litigation in person, with the aid of attorney. His appearance must either be personal or by a duly authorized member of the bar.
2. In criminal cases, in less/grave offenses, the accused may represent himself sufficiently appears before the court that he can protect his rights without assistance of counsel.

In NLRC

1. A non-lawyer may appear – (i) To represent himself as party; (ii) to represent members of LLO.
2. May be – (i) a duly accredited member of legal aid office; (ii) owner/president of a corporate party.

In other tribunals

1. In cadastral court, a non-lawyer may represent a claimant.
2. In DARAB, a non-lawyer may represent a party.

c) Proceedings Where Lawyers are Prohibited to Appear as Counsels

- (a) Under Katarungang Pambarangay
 1. Lawyers are prohibited from appearing for parties during pretrial conference.
 2. XPN: if the lawyer himself is the party.
- (b) In Small Claims Cases
 1. Lawyers are prohibited from appearing in behalf of or represent the parties.
 2. XPN: if the lawyer himself is the party.
- (c) Under IPRA
 1. Lawyers are prohibited to appear as counsel for any party.
 2. XPN: the lawyer is appearing in his capacity as member of the Council of Elders or due to his obligations as member of the IP community.

5. Prohibited Practice of Non-lawyers and Appearance Without Authority

- (a) Persons who cannot practice law
 1. Non-members of Ph bar.
 2. Disbarred lawyer, until readmission.
 3. Suspended lawyer, during suspension.
- (b) Effects of unauthorized practice of law
 1. Indirect contempt.
 2. He may be subject of further investigation upon orders of the court.

6. Public Officials and the Practice of Law

a) Prohibitions and Disqualifications of Former Government Attorneys

- (a) During incumbency
 1. Public officials and EEs shall not engage in the private practice of their profession, unless authorized by Constitution or law, provided that such practice will not conflict or tend to conflict with their official functions (RA 6713⁵² §7).
 2. Subject to prior written authority the head of department.
- (b) After separation
 1. Former government lawyers can engage in the private practice of their profession.
 2. XPN: He cannot practice his profession in connection with any matter before the office he used to be with for a period of **one-year** from retirement or separation (RA 6713⁵³ §7).
 3. Subject to provisions of special laws which may provide for longer periods.

b) Public Officials Who Cannot Practice Law or Can Practice Law With Restrictions

- (a) Members of Congress
 1. They cannot personally appear as counsel before **any court** of justice, electoral tribunals, other administrative bodies – Const., art. VI, sec. 17.
 2. “Any court” includes a military court or court martial.
- (b) Local elective officials
Governors/Mayors
 1. Prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.
Sanggunian members
 1. May practice professions, engage in any occupation, except during session hours.
 2. XPNs: if member of bar, they cannot – (i) appear as counsel before any court in any civil case

wherein a LGU or any office, agency, or instrumentality of the government is the adverse party; (ii) appear as counsel in any criminal case wherein an officer or EE of the national or local government is accused of an offense committed in relation to his office; (iii) collect any fee for their appearance in administrative proceedings involving the LGU where he is an official; (iv) use property and personnel of the government except when the sanggunian member concerned is defending the interest of the government.

- (c) Other officials who cannot practice any other profession
 1. Pres., VP, cabinet members, their deputies and assistants.
 2. Members of Constitutional Commissions.
 3. OMB.

7. Lawyers Authorized to Represent the Government

1. OSG – (i) Represents the GRP, agencies, instrumentalities, officials, agents in any litigation, proceeding, investigation or matter requiring the service of the lawyer; (ii) may represent GOCC if authorized by the President or head of the office concerned.
2. OGCC – Provides legal services to all GOCCs, subsidiaries, other corporate offspring and government-acquired asset corporations.
3. National Prosecution Service – Assists SOJ in the performance of the power and functions of the DOJ relative to its role as the prosecution arm of the government, particularly in the investigation and prosecution of all criminal cases.
4. Office of the Chief State Counsel – Discharges the role of the DOJ as the Central Authority in matters involving **international legal cooperation** as Mutual Legal Assistance Treaty in Criminal Matters, Extradition Treaty and Transfer of Sentenced Persons Agreement (TSP).
5. Office of the Special Prosecutor – (i) Under the supervision and control of OMB; (ii) authorized to (a) conduct preliminary investigations, prosecute criminal cases within the jurisdiction of SB; (b) enter into plea bargaining agreements; (c) perform such other duties assigned to it by the OMB.

8. The Lawyer's Oath

I, __ do solemnly swear that I will maintain allegiance to the Republic of the Philippines, I will support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God.

I, __ do solemnly swear that:

1. I will maintain allegiance to the Republic of the Philippines, I will support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; **MaSO**
2. I will do no falsehood, nor consent to the doing of any in court; **Dnc**
3. I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; **Nw ps gfu gac**
4. I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good

⁵² Code of Conduct and Ethical Standards for Public Officials and EEs.

⁵³ Code of Conduct and Ethical Standards for Public Officials and EEs.

	<p>5. I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion.</p> <p>6. So help me God.</p>
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B. Duties and Responsibilities of a Lawyer Under the Code of Professional Responsibility

1.	Duty to society – to uphold the Constitution, obey the laws of the land and promote respect of the law and legal processes.
2.	Duty to the legal profession – to uphold the dignity and integrity of the legal profession.
3.	Duty to the courts – to be candid with and promote respect for the courts and judicial officers and assist the courts in rendering speedy and efficient justice.
4.	Duty to the client – to observe candor, fairness, loyalty to the client; hold the client's money and property in trust; serve the client with competence and diligence; and to preserve the confidence of the client.

1. To Society

Canons 1-6: UMI-PaKG

Upholding the rule of law

(1) A lawyers shall **uphold** the constitution, obey the laws of the land, and promote respect for the law and legal processes.

1. A lawyer shall not engage in unlawful, dishonest, immoral, deceitful conduct. – Immoral conduct includes: (i) having extramarital affairs, not justified on religious grounds; (ii) breach of promise to marry does not constitute gross immorality; (iii) issuance of worthless check.
2. A lawyer shall not counsel or abet unlawful activities, or activities lessening confidence in the legal system.
3. A lawyer shall not (i) encourage any suit or proceeding, or (ii) delay any man's cause, for any corrupt motive or interest.
4. A lawyer shall encourage his clients to avoid, end, settle a controversy if it will admit of a fair settlement.
5. E.g., double sale of property already sold to another supposedly in payment of debt is deceitful conduct.
6. Willful and deliberate forum shopping shows disrespect of legal processes. – also violation of Canon 10.

Service to defenseless

(2) A lawyer shall **make** his legal services available in an efficient and convenient manner, compatible with independence, integrity, and effectiveness of the profession.

1. A lawyer shall not reject the cause of the defenseless and oppressed, except for valid reasons – Valid reasons include: (i) conflict of interest; (ii) physical or mental condition by lawyer, (iii) but belief of the guilt or innocence of accused is not valid ground; (iv) withdrawal as counsel de oficio without just cause also violates the CPR.
2. If are valid reasons to reject the cause, the lawyer must render legal advice, if only to the extent necessary to safeguard the party's rights.
3. Lawyers shall not solicit legal business.
4. Lawyers shall not charge fees lower that those customarily prescribed, unless warranted by the circumstances. – a lawyer shall not resort to commercial pricing to promote his business.

Non-solicitation of legal business

(3) A lawyer **in** making his services known shall use only true, honest, fair, dignified, and objective **THFDO** information and statement of facts.

1. Lawyers shall not use or permit others to use false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair **statement or claim** regarding his qualifications or legal services. – (i) use of "expert" may be construed as self-laudatory.
2. False, misleading, assumed names shall not be used on firm names.
3. Name of deceased partner may be used provided that the fact of his death is disclosed in all communications.
4. Name of partner who accepts public office shall be dropped, unless he is allowed by law to practice law concurrently.
5. Lawyers shall not give anything of value to members of the media in anticipation of publicity for his legal business.

Allowable advertisements

1. Publication in reputable law lists of brief biographical and informative (factual) data. (i) "Reputable law list" are those published primarily for the purpose, not merely incidental; (ii) publications in daily paper, magazine, trade journal, society program is not proper.
2. Use of simple professional card.
3. Simple announcement of the opening of law firm or charges in the partnership, associates, firm name, office address
4. Ads, announcement in any legal publication, including books, journal and legal magazines.

(4) A lawyer shall **participate** in the development of the legal system by initiating and supporting efforts in legal reform and improvement of the administrative of justice.

(5) A lawyer shall **keep** abreast of legal developments, participate in continuing legal education programs, support efforts to achieve the highest standards in law schools and the practical training of law students, and assist in the disseminating law and jurisprudence.

1. MCLE – requires earning of 36u every 3y cycle through seminars, lectures, writing of articles, books, teaching, other activities.
2. XPNs: President, DOJ Secretary, SC Justices, etc.
3. Non-compliance with MCLE – (i) if repeated and constitutes disobedience to court orders, IBP and SC as a whole, may be a ground for disbarment; (ii) may also result in the dismissal of pleading.
4. A non-compliant lawyer must – (i) pay a non-compliance fee of 1k, and (ii) still comply wit the MCLE requirements within 60d from notice. Otherwise, he will be listed as delinquent member of IBP. The non-compliance fee does not grant exemption from the MCLE compliance, it is merely a penalty.

(6) These canons shall apply to the lawyers in government service in the discharge of their tasks.

1. Their primary duty of prosecutors is not to convict but to see that justice is done. They must not suppress facts, conceal witnesses capable of establishing innocence of the accused only to secure conviction. – this is subject to disciplinary action.
2. Government lawyers must not use their position to promote or advance their private interests; nor allow their private interests to interfere with their public duties. – incudes advancing the interest of relatives.
3. Former government lawyers must not accept engagement or employment in connection with any manner he had intervemed with during his government service. – subject to 1-yr ban rule under RA 6713.

Discipline of government lawyers

1. GR: A government lawyer may not be disciplined as member of the Bar for misconduct in the discharge of his duties as a government official. – they are governed by the Code of Conduct and Ethical Standards for Public EEs.
2. XPN: The SC has disciplinary authority over a government lawyer if the misconduct also constitutes his oath as a lawyer.

2. To the Legal Profession

Canons 7-9: UCA

(7) A lawyer shall at all times, uphold the dignity and integrity of the legal profession, and support the activities of the integrated bar.

1. A lawyer shall be liable if he made any false statement or suppressed any material fact in connection with his application for admission to the bar.
2. He shall not support the application of one known to him to be unqualified.
3. Lawyers shall not engage in conduct adversely reflecting on his fitness to practice law nor behave in a scandalous manner to the discredit of the legal profession, whether in his public or private life.
4. He must not do any act that will undermine the public's confidence in the law or those who practice it.

The IBP

1. State-organized official national body of lawyers where membership is mandatory.
2. This is not violative of the constitutional freedom to associate. – (i) the integration does not make a lawyer a member of any group of which he is not already a member; (ii) once a person passes the bar examinations, he automatically becomes a member of the bar; (iii) a lawyer is free to attend or not attend the meetings or events of his chapter.
3. The only compulsion is the payment of annual dues which is a legitimate imposition intended to elevate the quality of professional legal services by requiring that the cost of improving the profession in this fashion be shared by the subjects and beneficiaries of the regulatory program, the lawyers.
4. Requirement of proof of payment if IBP dues – (i) for notarial commission; (ii) for application before JBC.
5. Non-payment of dues for 6m will make the member not in good standing.
6. Non-payment of dues for >6m is sufficient ground for IBP to seek the lawyer's disbarment or the striking out of his name in the Roll of Attorney.

(8) A lawyer shall conduct himself with courtesy, fairness and candor **CFC** towards his professional colleagues, and shall avoid harassing tactics against opposing counsel.

1. A lawyer must not use abusive, offensive, improper language in his professional dealings. – including through facebook and other social media posts.
2. A lawyer shall not encroach upon the professional employment of another lawyer. – he may however give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.
3. Lawyers must treat opposing counsels and other lawyers with courtesy, dignity, civility.

(9) A lawyers shall not, directly, or indirectly, assist in the unauthorized practice of law.

1. Covers persons in the position to know or intervene in the unauthorized practice of law but failing to do so (Senior Partners).

2. A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the bar in good standing.
3. Lawyers are prohibited from dividing or stipulating to divide a fee for legal services with persons **not licensed** to practice law. XPNs: – (i) Pre-existing agreement with a partner or associate to pay money over a reasonable period of time to his estate or other persons specified in the agreement upon his death; (ii) Undertaking of a lawyer to complete unfinished business of a deceased lawyer; (iii) Inclusion of non-lawyer EEs in a retirement plan, even if the plan is based in whole or part, on a profit-sharing agreement.

3. To the Courts

Canons 10-13: OOMER

Duty of candor

(10) A lawyer owes candor, fairness, and good faith to the courts.

1. A lawyer shall not do any falsehood, nor consent to the doing of any in court. He shall not mislead the court nor be misled by any artifice.
2. A lawyer shall not knowingly misquote or misrepresent (i) the contents of a paper, (ii) the language or argument of opposing counsel, or (iii) the text of a decision or authority.
3. He should not knowingly cite as law a provision already rendered inoperative by repeal or amendment.
4. He should not assert as fact that which has not been proved.
5. A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice. – e.g., forum shopping. It is also punishable by indirect contempt.

Duty of respect

(11) A lawyer shall observe and maintain the respect due to the courts and judicial officers and shall insist on the same conduct by others.

1. A lawyer shall appear at court hearings.
2. He shall punctually appear at court hearings.
3. He shall abstain from scandalous, offensive, language or behavior before the courts.
4. He shall not attribute to a judge, motives not supported by the record, or have no materiality the case.
5. He shall submit a grievance against a judge to the proper authorities only. – not air his grievances in social media.
6. These are intended to promote confidence in the fair administration of justice and guarantee the stability of judicial institution.

Assistance in the speedy and efficient administration of justice.

(12) A lawyer shall exert all efforts and consider it his duty to assist in the speedy and efficient administration of justice.

1. A lawyer shall not appear for trial unprepared.
2. He shall not file multiple actions arising from the same cause.
3. He shall not allow an extended period for filing to lapse without making the proper submission or without offering an explanation for his failure to do so.
4. He shall not unduly delay a case, impede the execution of judgment, misuse court processes.
5. He shall not talk to his witness during a break or recess in trial while the witness is still under examination.
6. He shall not knowingly assist a witness to misrepresent himself or to impersonate another.
7. He shall not abuse, browbeat or harass a witness or needlessly inconvenience him.

8. He shall not testify in court on behalf of client, except – (i) on formal matters; (ii) on substantial matters where his testimony is essential to the ends of justice. During his testimony, he shall entrust the case to another lawyer considering that the roles of counsel and witness are inherently conflicting. A witness must be independent, while the counsel must act as an advocate.

(13) A lawyer shall rely on the merits of his cause, and refrain from any impropriety which tends to influence or gives the appearance of influencing the courts.

1. A lawyer shall not extend EO attention or hospitality to judges nor seek opportunity for cultivating familiarity with them.
2. He shall not make public statements in media regarding a pending case tending to arouse public opinion for or against a party.
3. He shall invite interference by another branch or agency of the government in the normal course of judicial proceedings.
4. Essentially, the lawyer must actively avoid any act which tends to influence or may be seen to influence the outcome of an ongoing case to prevent dilution of people's faith in the judiciary.
5. Influence peddling is prohibited, i.e., promising to gain a favorable outcome for complainant's case by resorting to his influence among staff in the office where the case was pending.
6. The primary duty of lawyers is not to their clients but to the administration of justice. Dishonorable, unfair, dishonest acts resorted to by lawyer, even in pursuit of his devotion to client's cause is condemnable and unethical.

4. To the Clients

Canons 14-22: **NOT FiSeR CPreW**

(14) A lawyer shall not refuse his services to the needy.

1. A lawyer shall not decline to represent a client solely on account of race, sex, creed, status of life, or his opinion of the person's guilt.
2. A lawyer shall not decline appointment (i) as counsel de officio, (ii) as amicus curiae, or (ii) a request from IBP for rendition of free legal aid – XPN: for serious and sufficient cause as when the acceptance will be prejudicial to the client.
3. A lawyer may not refuse to accept representation of indigent client. XPN – (i) if he is not in a position to work effectively or competently; (ii) he labors under conflict of interest between him and the prospective client, or between a present client and the prospective client. XPN to XPN: if there is express written consent of all the parties after full disclosure.

(15) A lawyer shall observe candor, fairness, **loyalty** in all his dealings and transaction with the client.

1. Two concepts relevant to the duty of loyalty to clients – (i) conflict of interest; (ii) privileged communications.
2. When advising client, the lawyer must give **candid, honest** opinion/assessment on the merits and probable results of the case.
3. If the case is found defenseless, the lawyer must confer with client to discuss possible options, but he must not abruptly drop the case without notice or explanation.
4. Lawyer may act as mediator, conciliator, arbitrator, upon written **consent** of all parties concerned.
5. A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.
6. The lawyer shall impose upon his client **compliance with the laws** and the principles of fairness.

7. A lawyer engaged in another profession concurrently with practice of law shall make clear to his client whether he is acting as lawyer or in another capacity.
8. The lawyer is both an agent and fiduciary.

Conflict of interest

1. A lawyer must not represent a client if the representation is directly adverse to any of his (i) present clients, (ii) former clients, or (iii) to his own interest.
2. In conferring with prospective client, the lawyer must ascertain ASAP if there is a conflict of interest. If so, the lawyer must immediately inform the prospective client.
3. GR: A lawyer shall not represent conflicting interest. XPN: **by written consent of all parties concerned after a full disclosure of the facts.**
4. The nature of attorney-client relations is fiduciary considering the information acquired in the course of the engagement.
5. Tests – (i) whether the lawyer is duty-bound to fight for an issue or claim in behalf of one client, and at the same time, oppose that claim for another client; (i) if the acceptance of new relation would prevent the full discharge of lawyer's duty of undivided fidelity and loyalty to the client or would invite suspicion of unfaithfulness or double-dealing in the performance of such duty; (iii) a lawyer would be called upon in the new relation to use against a former client any confidential information acquire through the previous engagement.
6. To determine whether a conflict of interest exist, it is necessary to first ascertain whether a lawyer-client relationship existed. This is possible despite absence of any express or written agreement as to attorney's fees.
7. The prohibition holds even if (i) the conflict is remote or merely probable, or (ii) the lawyer acted in GF and with no intention of representing conflicting interests.
8. The prohibition applies to present and former clients. Hence, termination of attorney-client relations will not justify the lawyer in accepting an engagement adverse to that of a former client. – (i) he shall not do anything injurious to a former client; (ii) he should not disclose or use any of the client's confidence acquired in previous relation.
9. Lack of delicadeza is not ground for disciplinary action against lawyer – there is no prohibition for the lawyer from practicing his profession upon election as director of cooperative. His acting as counsel to the members of the Board. This does not constitute conflict of interest.

Privileged communications

1. The lawyer shall be bound by the rule on **privileged communication** in respect of matters disclosed to him by prospective client.
2. Even if the engagement did not materialize, the lawyer is bound to maintain the confidence of the prospective client.
3. Purpose is to allow a free flow of ideas without fear that what is said will be divulged or used against him.
4. But if the communication is for some purpose, e.g., pursuant to other contract, other than on account of (prospective) attorney-client, it is **not privileged**.
5. **Confidential communication** is the voluntary disclosure of information for which the client expects the information is not disclosed to any third person aside from those reasonably necessary for its transmission or the accomplishment of the purpose for which it was given. – (i) The purpose must not be for information purposes only, but to seek legal advice

<p>as to his rights or obligations; (ii) If the advice was given in another capacity, e.g., accountant or business consultant, the privilege does not attach.</p> <ol style="list-style-type: none"> Not confidential information – (i) compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to opposing party; (ii) offer and counter-offer for settlement; (iii) document given by client to counsel not in his professional capacity. Atty-client relationship notwithstanding personal relationship between the parties. That the legal advice was give as a personal favor does not negate the lawyer's duty of confidentiality. <p>(16) A lawyer shall hold in trust all money and properties of the client that may come to his possession.</p> <ol style="list-style-type: none"> Twin duty to account and return. The lawyers must account for all money or property collected for or from the client. He must not co-mingle the funds of each client separate with each other, and with his own. He must deliver funds and property to his client when due or upon demand, subject to right of retention. Failure to return the client's money upon demand gives rise to the presumption that the lawyer has misappropriated the same for his own use to the prejudice of and in violation of the trust reposed in him. In one case, the SC disbarred a lawyer for misappropriating funds belonging to the client. He shall not borrow money from the client. XPNs: if client's interests are fully protected by nature of the case or by independent advice. He shall not lend money to the client. XPN: if the interest of justice, he has to advance necessary expenses in legal matter he is handling for the client. <p><i>Lawyer's lien (right of retention)</i></p> <ol style="list-style-type: none"> Lawyer has a lien over funds for: (i) lawful fees and disbursements; (ii) judgment and executions he has secured for client under ROC. He may apply funds of client in his possession so much may be necessary to satisfy the liens, giving prompt notice to the client thereafter. <p>(17) A lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed upon him.</p> <p>(18) A lawyer shall serve his client with competence and diligence.</p> <ol style="list-style-type: none"> A lawyer must not undertake legal service which he knows he is not qualified to render. XPN: if he can obtain a competent collaborating counsel with client's consent. He must not handle any legal matter without adequate preparation. He must not neglect a legal matter entrusted to him. – Ordinarily, the negligence of the lawyer binds the client. XPN: if the negligence is so gross that it is tantamount to denial of due process. A lawyer must endeavor diligently to protect his client to the point that no life, liberty or property of the client shall be taken without due process of law. He shall keep the client informed of the status of his case, and shall respond within a reasonable time to the client's request for information <p>(19) A lawyer shall represent his client with zeal within the bounds of law.</p> <ol style="list-style-type: none"> The client is entitled to the benefit of any and every remedy and defense that is authorized by the law, and he may expect his lawyer to assert every such remedy or defense. 	<ol style="list-style-type: none"> While the lawyer has duty to his client, he also has a correlative duty to the society, the bench and the bar. He must always act within the bounds of law. A lawyer shall only employ fair and honest means to attain the lawful objectives of his client and shall not present unfounded criminal charges to obtain improper advantage in any case or proceeding (malicious prosecution). If a lawyer learns that his client perpetrated fraud, he shall promptly call on the client and rectify the same; in case of failure, he shall terminate the relationship with the client according to the ROC. The procedure in handling the case is within the control of the lawyer, and he shall not allow the client to dictate the same. Disbarment charge against lawyers for "endlessly persecuting" the complainant is not proper when all the lawyers did was avail of remedies under the law or rules – MR, appeal, etc. <p>(20) A lawyer shall charge only fair and reasonable fee</p> <ol style="list-style-type: none"> Fairness must be both to the client and other lawyers. Divisions of fees is allowed – (i) In case of referral, in proportion to the work performed and responsibility assumed; (ii) must be with the consent of client. Since sharing if fees means sharing of accountability to and control over the work. A lawyer shall not accept any fee, rewards, costs, commission, interest, other compensation related to his professional employment from anyone other than the client. XPN: if with full knowledge and consent of client. Lawyer shall avoid controversies regarding his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud. <p><i>Considerations</i></p> <ol style="list-style-type: none"> time spent, extent of service novelty and difficulty of question involved importance of SM skill demanded probability of losing other employment customary charges for similar services, schedule of fees of IBP chapter amount involved in controversy, benefits resulting to client from the service contingency or certainty of compensation character of employment, whether occasional or established professional standing <p>(21) A lawyer shall preserve the confidence and secrets of his client even after the attorney-client relation is terminated.</p> <ol style="list-style-type: none"> A lawyer shall preserve the confidence and secrets of his client even after the attorney-client relation is terminated. Attorney-client relations is strictly personal and highly confidential and fiduciary. Only by the confidentiality and protection will a person be encouraged to repose his confidence on the lawyer. It is only with full disclosure of the facts of the case by the client to his attorney that adequate legal representation will result in the ascertainment and enforcement of rights or the prosecution or defense of client's cause. A lawyer shall not reveal confidences or secrets of his client. XPNs – (i) when authorized by client after acquainting himself with the consequences of disclosure; (ii) when required by law; (iii) when necessary to collect his fees or to defend himself, his EEs, associates or by judicial action. He shall not use information acquired in the course of employment to the client's disadvantage, to his own advantage, or to that of a third person.
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<p>XPN: if client consents upon full knowledge of the circumstances.</p> <ol style="list-style-type: none"> He shall not give information from his files to an outside agency seeking information for auditing, statistical, bookkeeping, accounting, data processing, any similar purpose. XPN: with written consent of client. He shall not reveal that he has been consulted about a particular case. XPN: if to avoid possible conflict of interest. Lawyer may disclose the affairs of the client to the partners/ associates. XPN: if prohibited by client. He shall avoid indiscreet conversation about client's affairs even with members of his family. A lawyer shall adopt measures to prevent those whose services are utilized by him from disclosing or using confidences or secrets of the clients. <p>(22) A lawyer shall withdraw his service only for good cause and upon notice appropriate under the circumstances.</p> <p><i>Good cause</i></p> <ol style="list-style-type: none"> Pursuit by client of an illegal or immoral conduct in connection with the matter he is handling. If client insists that the lawyer pursue conduct violative the canons or rules. In case of inability to work with co-counsel which will not promote the best interest of the client. Mental of physical condition of lawyer which renders it difficult for him to carry out the employment effectively. Deliberate failure by client to pay fees for the services or to comply with the retainer agreement. Election or appointment to public office. Similar cases. <p>Duties upon withdrawal</p> <ol style="list-style-type: none"> To turnover all papers and property to which the client is entitled, subject to a retainer lien. To cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter. 	<p>misconduct calling for the exercise of disciplinary action, and (ii) contumacious conduct warranting application of the contempt power. However, the court's disciplinary authority is broader than its power to punish for contempt with respect to a lawyer. The court's disciplinary authority may come into play w/n the misconduct constitutes contempt of court.</p> <ol style="list-style-type: none"> The decision in an administrative proceeding shall also include an order to the court to reconstitute any amount unduly obtained by the lawyer. – (i) require the complainant to litigate his claim in another proceeding, will be both unfair and inequitable; (ii) the receipt of the acceptance fee is not extraneous or a purely civil matter since the same was given on account of the attorney-client relation. If a respondent died during an administrative proceeding, the case against him shall be automatically terminated. It cannot proceed as to deprive the lawyer from his retirement benefits. The complainant has the burden of proving the charge with substantial evidence. An administrative complaint is not the proper remedy where judicial recourse is still available as MR, appeal, petition for certiorari against the act of a lawyer in the exercise of his official duties. <p>(b) Disciplinary authority</p> <ol style="list-style-type: none"> The SC, as the guardian of the legal profession, has the ultimate disciplinary power over attorneys. Under Const., SC has sole power to rule on the disciplinary cases of lawyers, and to impose appropriate penalties. IBP role is merely recommendatory – (i) SC may adopt, reject, disregard the same; (ii) it may be given investigatory functions for which it refers proposed actions to the court. Rulings on disciplinary cases attain finality and enforceability only upon the SC's own determination that they must be imposed.
<p>C. Suspension, Disbarment, and Discipline of Lawyers</p> <p>1. Nature and Characteristics of Disciplinary Actions against Lawyers</p> <p>(a) Disciplinary actions against lawyers are sui generis proceeding.</p> <ol style="list-style-type: none"> They are neither purely civil nor criminal. It is an investigation by the court into the conduct of its officers. Imprescriptible. No private interest is involved – (i) It continues despite (a) desistance of complainant; (b) failure of complainant to prosecute; (c) failure of respondent to answer the charges against him despite numerous notices; (ii) the RPI in the case is the court who determines whether the respondent is still fit to practice law as its officer; (iii) the complainant is not a party, and his interest in the outcome is one shared in general with the others in the proper administration of justice. It may be conducted by SC motu proprio. Rules of evidence are not strictly applied. A lawyer may be disbarred based on the application of res ipsa loquitur. Highly confidential. Public interest is the primary objective – to protect the court and the public from abusive unethical lawyers. The sanctions are imposed – (i) to deter others from similar misconduct; (ii) to remove from the profession a person proven unfit (cleansing the ranks); (iii) as an indication to the public that the court will maintain the ethical standards of the profession. Any act on party of the lawyer visibly tending to obstruct, pervert, impede and degrade the administration of justice is both (i) professional 	<p><i>Discipline of lawyers in government service</i></p> <ol style="list-style-type: none"> SC has the exclusive jurisdiction to regulate the practice of law, even those employed in the government service. It has plenary disciplinary authority over members of the legal profession. GR: A lawyer who holds a government office may not be disciplined as a member of the bar for misconduct in the discharge of her duties as government official (administrative duties). XPNs: (i) If the misconduct also constitutes violation of lawyer's oath and the CPR, then he may likewise be subject to disciplinary sanction by the Court; (ii) upon termination of proceedings; or (iii) if the proper government agency refuses to act despite referral by the court. Government work requiring the use of legal knowledge is considered practice of law. <p>(c) Sanctions</p> <ol style="list-style-type: none"> Admonition/warning. Reprimand. Suspension. Disbarment. Fine. Restitution or damages. <p><i>Disbarment</i></p> <ol style="list-style-type: none"> Ultimate discipline of an attorney, which is the taking away of his/her license to practice law often for life. It come only after investigation and opportunities for the attorney to explain his/her improper conduct. The issue to be determined is whether the respondent is still fit to continue to be an officer of

the court in the dispensation of justice, or to be allowed the privilege as attorney.

4. There is no double disbarment in Ph. However, the penalty may still be imposed if only to maintain a record of his violations which may have a bearing in case he applies for reinstatement.
5. However, second disbarment is possible. A prior disbarment is not a bar to a subsequent disbarment where the grounds are present.

Limitations

1. Shall be imposed only for the gravest offenses of lawyers – e.g., (i) conviction by final judgment for crimes involving moral turpitude; (ii) pending 14 administrative cases against respondent which shows propensity to violate the lawyer's oath.
2. Exercised with caution. – (i) it should not be exercised in an arbitrary and despotic manner, (ii) and should not be exercised at the pleasure of the court or from passion, prejudice, or personal hostility; (iii) it ought always to be exercised on the **preservative and not on the vindictive** principle.
3. Presumption of innocence. – There is presumption that the lawyer subject of the proceedings acted consistently in accordance with his oath.
4. Burden of proof. – (i) the burden of proof is on the complainant to prove by substantial evidence the allegations in the disbarment complaint; (ii) the act charged and the lawyer's motivations must be clearly demonstrated; (iii) mitigating/aggravating circumstances should also be considered.
5. Substantial evidence. – (i) More than mere scintilla; such relevant evidence as a reasonable mind might accept to support a conclusion; (ii) although rules of evidence are not strictly observed, the decision must have something to support itself.

Mitigating circumstances

1. Old age.
2. Frequency/rectification. – e.g., a lawyer who sired 3 illegitimate children with the same woman, who later married her.
3. Pari delicto is not a defense in disbarment proceedings. The inquiry focuses on the conduct of the lawyer not of his co-principals.

Effects of disbarment

1. The lawyer loses all his privileges as member of the bar.
2. If the lawyer occupies a position requiring membership to the Bar, he must also desist from holding the said position.
3. A judgment of suspension or disbarment is self-executory.
4. The practice of law by a disbarred or suspended lawyer renders him liable for contempt of court (willful disobedience to a lawful order).
5. Disbarred lawyer's name cannot be part of a firm name since it may mislead the public into thinking that he is still authorized to practice law. Any lawyer who appears under a firm name containing that of a disbarred lawyer commits indirect contempt of court.
6. A lawyer's disbarment in the foreign jurisdiction does not automatically result in his suspension or disbarment in the Ph – (i) it will be a ground if the basis of such disbarment includes any of the grounds for disbarment in the Ph; (ii) the decision of the foreign court only constitutes prima facie evidence of the unethical acts committed by the lawyer; (iii) the lawyer must be given due process following ROC.
7. SC may still give suspension to a disbarred lawyer, if only for the purpose of recording the same to his personal file with OBC which should be

considered in should he apply for the lifting of his disbarment.

(d) Examples

1. Suspension of lawyer for mauling a person who allegedly swindled his client – (i) lawyers must uphold the rule of law and not the rule of men; (ii) the lawyer should not have taken the law in his own hands; (iii) every person is presumed innocent and deserves a day in court.
2. Suspension of lawyer who disclosed confidential information disclosed by client.
3. Disbarment proceedings is not proper when the lawyer is merely performing his official duties as municipal administrator in implementing closure orders. Also, the determination against whom the order shall be directed is purely discretionary. The proper remedy is to challenge the order in the proper venue.
4. Further suspension for practice of law while suspended – (i) willful disobedience to lawful order of the court, breach of lawyer's oath to obey the laws and the legal orders of the duly constituted authorities therein; (ii) 6m suspension is usual.

2. Grounds

1. Deceit, malpractice, other gross misconduct in office. – (i) gross misconduct means improper, wrongful conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error of judgment; (ii) a lawyer may be disbarred or suspended for misconduct, **whether in his professional or private capacity**, showing him to be wanting in moral character, honesty, probity, and good demeanor or unworthy to continue as an officer of the court.
2. Grossly immoral conduct. – (i) conduct that is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency; (ii) simple immoral conduct is not a ground for disbarment.
3. Final conviction of a crime involving moral turpitude.
4. Violation of lawyer's oath.
5. Willful disobedience of any lawful order of a superior court – e.g., practicing law while suspended or disbarred.
6. Corruptly or willful appearing as an attorney for a party to a case without authority so to do.
7. Non-payment of IBP dues.

N.B.: Loss of Ph citizenship also ipso facto terminates the privilege to practice law in Ph.

1. If the Ph citizenship was reacquired pursuant to R.A. No. 9225, the lawyer may apply with the proper authority for license or permit to engage in the practice of law.
2. Subject to compliance with additional conditions to restore the lawyer's good standing as member of the Ph bar.

Misconduct of lawyer in private capacity

1. GR: not a ground for disciplinary action against him.
2. XPN: if so gross that it affects his fitness to be a member of the legal profession.

3. Proceedings (Rule 139-B of the Rules of Court, as amended)

(a) Institution

1. By SC motu proprio.
2. By IBP upon verified complaint of any person. Complaint (i) shall state clearly and concisely the

facts complained of; (ii) shall be supported by affidavits of persons with personal knowledge of the facts alleged or by supporting documents.

IBP Proceedings

1. Filing of verified complaint.
2. Investigation by grievance officers. Actions – (i) refer to SC if respondent is judge or government officer; (ii) dismiss if found unmeritorious; (iii) direct the filing of answer if found meritorious.
3. Upon receipt of answer, grievance officers shall submit report to IBP Board of governors.
4. Review by Board.
5. Transmission of Resolution to SC. – not binding to SC but merely recommendatory.

SC Proceedings: investigation may be referred to:

1. OBC
2. Any officer of SC
3. Judge of lower court.

D. Notarial Practice (A.M. No. 02-8-13-SC, as amended)

1. Qualifications of a Notary Public

1. Ph citizen.
2. Over 21 years.
3. Resident for at least 1 year and maintains regular place of work or business in the city or province where the commission is to be issued.
4. **Member of Ph Bar in good standing, with clearances from OBC of SC and the IBP.**
5. Must not have been convicted in the first instance of any crime involving moral turpitude.

*** Notarial commission may be issued by an Executive Judge to any qualified person who submits a petition in accordance with these rules.*

Under exceptional circumstance, the SC issued notarial commission to non-lawyers in Batanes, subject to additional conditions.

1. Upon application of the judge, due to lack of lawyers in the locality.
2. Additional conditions – (i) the applicant must hold a Bachelor of Laws degree with proof of school where he graduated from and (ii) presentation of a certificate of good moral character issued by at least 2 local executives.

Judges may also perform notarial acts:

1. MTC and MCTC judges are empowered to perform the functions of notaries public ex officio – (i) but only if there is direct relation to the performance of their functions as judges; (ii) otherwise, they will be engaging in the unauthorized private practice of law.
2. MTC and MCTC judges assigned in municipalities with no lawyers or NP may also perform notarial acts in their capacity as notaries public ex officio – (i) All notarial fees charged shall be for the account of the government and turned over to the municipal treasurer; (ii) a certification made in the notarized document attesting to the lack of any lawyer or NP in the municipality or circuit.

Notes

1. Government lawyers must secure the prior written authority of head of office.
2. Sha'ria Lawyers are not members of Ph bar – (i) they are not authorized to practice law; (ii) they cannot be issued a commission.
3. Notarization is considered **practice of law**.

2. Term of Office of a Notary Public

2 years commencing the first day of January of the year in which the commissioning is made, unless earlier revoked or the notary public has resigned under the Rules and ROC.

3. Powers and Limitations

1. The notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court.
2. NP's principal function is to authenticate documents, i.e., to lend it evidentiary value.
3. The NP's duty is impressed with public interest and must be done with accuracy and fidelity.

(a) Specific powers

1. Acknowledgements.
2. Oaths and affirmations.
3. Jurats.
4. Signature witnessing.
5. Copy certifications.
6. Any other act authorized under the Rules.
7. Authority to certify the affixing of signature by thumb or other mark if: (i) Affixed in the presence of the NP and two disinterested witnesses; (ii) witnesses sign their own names; (iii) Notary public writes below the mark: "Thumb or other mark affixed by (name) in presence of (witnesses) and undersigned notary public"; (iv) NP notarizes the signature by mark though acknowledgment, jurat, signature witnessing.
8. Authority to sign on behalf of a party: (i) If a party is physically unable; (ii) NP is directed by the person to sign or mark in his behalf; (iii) Signature of NP is affixed in the presence of 2 disinterested witnesses; (iv) witnesses sign their own names; (v) NP writes below his signature: "Signature affixed by notary in presence of (witnesses)"; (vi) Notary public notarizes his signature by acknowledgment, jurat.

Acknowledgement

1. Transforms private to public document. They are admissible in courts, administrative agencies, without further need for authentication. XPN: last wills and testament (ROC).
2. The documents are clothed with the presumption of regularity.

The NP shall verify:

1. The signer's identity.
2. Voluntariness of participation in the transaction.
3. Basic awareness the instrument/transaction.
4. But not the determination of the legality or accuracy of the instrument. Also, the truth or falsity of its contents is the responsibility of the client, not the NP.

(b) Mandatory refusal to notarize

1. Transaction is unlawful or immoral. – e.g., lawyer shall not facilitate the disintegration of marriage/family by encouraging separation of spouses and EJ dissolving the CPG through notarized "Kasunduan ng paghihiway".
2. Signatory shows signs that he does not understand the consequences of the act, based on the notary's judgement.
3. The signatory appears not to act of his own free will, based on the notary's judgement.

(c) Prohibitions

1. Perform notarial act outside his regular place of work, subject to exceptions in case of EO circumstances.
2. Performing notarial act where the principal is – (i) not in his presence; (ii) not personally known to him or not identified by competent evidence of identity.

(d) Disqualifications: A NP cannot perform a notarial act if **PRS**

1. he is a **party** to the instrument.

2. he will **receive** any commission, fee, advantage, right title, interest, cash, property, or other consideration, except as provided in the Rules. – e.g., receiving proceeds from the REM notarized by him.
3. he is the **spouse**, common-law partner, as/descendant, relative of principal up to 4th degree (con/aff).

Limitations: The NP must not notarize if

1. Persons involved are not present before him. – execution of instrument and personally appearance before the NP are not delegable since what are stated in the instrument are facts, they have personal knowledge of, and are personally sworn to.
2. Persons involved are not personally known or there is no competent evidence of identity.
3. Knowledge or good reason to believe that the transaction is unlawful or immoral.
4. Signatory's demeanor indicating that he is not acting of his free will.
5. Notarial certificate is false or incomplete.
6. The NP's duty is not delegable to his associates.

4. Notarial Register

1. Chronological official notarial register of notarial acts consisting of a permanently bound book with numbered pages, which must be kept, maintained, protected, and provided for lawful inspection as provided for in the Rules.
2. The NR shall be issued by the Solicitor General to any NP upon request and upon payment of the cost.
3. The register must be duly paged on the first page, the SG shall certify the number of pages which the books consists.

Duty to make entries

1. Failure to make entries is a violation of duty under the CPR to uphold and obey the laws of the land and to promote respect for law and legal process.
2. The duty is not must be personally fulfilled by the NP and not delegable, otherwise, there is clear contravention of the express provisions of the notarial rules.

5. Jurisdiction of Notary Public and Place of Notarization

GR: A notary public shall not perform a notarial act outside the **territorial jurisdiction of the commissioning court**, and outside his regular place of work or business.

XPN:

1. Only in exceptional situations at the request of parties.
2. Only in the following sites **within his territorial jurisdiction** – (i) public offices, convention halls, similar places where oaths of office may be administered; (ii) public function areas in hotels, similar places for the signing of instruments or documents requiring notarization; (iii) hospitals, other medical institutions where a party to an instrument is confined for treatment; (iv) any place where a party to the instrument requiring notarization is under detention.

6. Competent Evidence of Identity

(a) ID cards

1. passport
2. driver's license
3. PRC ID
4. NBI clearance
5. police clearance
6. postal ID
7. voter's ID
8. Barangay certification
9. GSIS e-card

10. SSS card
11. Philhealth card
12. senior citizen card
13. OWWA ID
14. OFW ID
15. seaman's book
16. alien certificate of registration/immigrant certificate of registration
17. government office ID
18. certification from the National Council for the Welfare of Disable Persons
19. DSWD certification.

****The ID must bear photograph and signature. Hence cedula has long been disregarded as competent evidence of identity.**

(b) Oath or affirmation of one credible witness

1. not privy to the instrument, document or transaction
2. personally known to the NP
3. who personally knows the individual.

(b) Oath or affirmation of two credible witness

1. not privy to the instrument, document or transaction
2. each personally knows the individual and
3. shows to the notary public documentary identification.

7. Sanctions

Revocation of the notarial commission by the Executive Judge.

Grounds

1. any ground for denial of application
2. fails to keep notarial register.
3. fails to make the proper entry or entries in his notarial register concerning his notarial acts.
4. fails to send the copy of the entries to the executive judge within the first ten (10) days of the month following.
5. fails to affix to acknowledgments the date of expiration of his commission.
6. fails to submit his notarial register, when filled, to the executive judge.
7. fails to make his report, within a reasonable time, to the executive judge concerning the performance of his duties, as may be required by the judge.
8. fails to require the presence of a principal at the time of the notarial act.
9. fails to identify a principal based on personal knowledge or competent evidence.
10. executes a false or incomplete certificate under S5 RIV.
11. knowingly performs or fails to perform any other act prohibited or mandated by these rules.
12. commits any other dereliction or act which in the judgment of the Executive Judge constitutes good cause for revocation of commission or imposition of administrative sanction.

II. Judicial Ethics

A. Sources

1. New Code of Judicial Conduct for the Philippine Judiciary

1. Took effect on June 1, 2004.
2. Based on the Bangalore Draft which is intended to be the Universal Declaration of Judicial Standards applicable in all judiciaries.
3. The adoption is (i) to update and correlate the Code of Judicial Conduct and the Canons of Judicial Ethics adopted for the Philippines, and (ii) to stress the Philippines' solidarity with the universal clamor for a universal code of judicial ethics

2. Code of Judicial Conduct

1. Took effect on October 20, 1989.
2. Superseded by the New Code of Judicial Conduct.
3. In case of deficiency or absence of specific provision in the New Code, the Canons of Judicial Ethics and the Code of Judicial Conduct shall be applicable in a supplementary character.

B. Qualities

1. Independence

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of fair trial.

1. Judges shall exercise the judicial function independently (i) based on their assessment of the facts and (ii) in accordance with a conscientious understanding of the law, (iii) **free of any extraneous influence**, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.
2. In performing judicial duties, judges shall be **independent from judicial colleagues** in respect of decisions which the judge is obliged to make independently.
3. Judges shall **refrain from influencing** in any manner the outcome of litigation or dispute pending before another court or administrative agency.
4. Judges shall **not allow family**, social, or other relationships **to influence judicial conduct or judgment**. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.
5. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but **must also appear to be free therefrom to a reasonable observer**.
6. Judges shall be independent in relation to society in general and in relation to the particular parties to a dispute which he or she has to adjudicate.

Two concepts

1. Decisional independence. – Freedom to decide. The judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law.
2. Institutional independence. – Freedom from encroachment. Describes the separation of the judicial branch from the executive and legislative branches of the government; the collective independence of the judiciary as a body.

Constitutional safeguards to judicial independence:

1. SC, as a constitutional body, cannot be abolished by legislature.
2. The members of SC are removable only by impeachment (and quo warranto).
3. The SC may not be deprived of its minimum original and appellate jurisdiction. Its appellate jurisdiction may not be increased without its advice or concurrence.
4. SC has administrative supervision over all inferior courts and personnel.
5. SC has exclusive power to discipline judges/justices of inferior courts.
6. Members of judiciary have security of tenure.
7. Members of the judiciary may not be designated to any agency performing QJ or administrative functions.
8. Salaries of judges may not be reduced.
9. The judiciary enjoys fiscal autonomy.

2. Integrity

Integrity is essential not only to the proper discharge of the judicial office but also to the **personal demeanor** of judges.

1. Judges shall ensure that not only is their **conduct above reproach**, but that it is **perceived** to be so in the view of a reasonable observer.
2. The behavior and conduct of judges must reaffirm the people's **faith** in the integrity of the judiciary. Justice musty not merely be done but must also be seen to be done.
3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.
4. Applies not only to the decision itself, but also to the process by which decision is made. A judge must render a decision in a manner free from suspicion as to his fairness and integrity.

3. Impartiality

Integral part of due process. – Due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge.

1. Judges should always be wholly free, disinterested, impartial and independent.
2. A judge has both the duty (i) of rendering a just decision and (ii) of doing it in a manner completely **free from suspicion** as to its fairness and integrity.
3. A judge shall reach his conclusions only after all evidence is in and all the arguments are filed on the basis of the established facts and the pertinent law.

(a) Appearance of impartiality.

1. The judge must not only be impartial but must also appear to be impartial.
2. Parties must believe in the judge's sense of fairness; otherwise, they will not seek his judgment.
3. Meeting litigants outside of court setting and giving them advice gives the appearance of impartiality.
4. Manifest partiality is a clear notion or plain inclination or predilection to favor one side rather than the other.
5. However, bias and partiality can never be presumed by the sole ground that the judge rendered decision adverse to a party.
6. The judgment enjoys regularity in the performance of official duties.

(b) Practice of law

1. Judges are not allowed to engage in the private practice of law or give professional advice to clients during their incumbency as judges (ROC/NCJC).
2. Under NCJC, unless prohibited by the Constitution, a judge may engage in the practice of any **other profession** provided that such practice will not conflict or tend to conflict with his judicial functions.
3. This could affect the public's perception of the court's integrity and independence.
4. The duties of an attorney-at-law (advocate) is inherently incompatible with the high official functions, duties, powers, discretion, privileges of a judge.

(b) Freedom of expression

1. Judges are entitled to freedom of expression, belief, association, assembly.
2. However, in the exercise of the right, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
3. This applies to their online expression.
4. E.g., the wearing of off-shouldered suggestive dress and posting the same for public viewing via

social app by a judge, was found by the Court to be improper.

(c) Financial interest

1. Judges are covered by the requirement to file SALNs which is aimed at curtailing and minimizing the opportunities for official corruption and maintaining a standard of honesty in the public service.

(d) Permissible activities

1. Subject to proper performance of judicial duties, judges may: write, lecture, teach, participate in activities concerning the law, legal system, administration of justice or related matters; appear at public hearing before an official body concerned with matters relating to the law, legal system, the administration of justice and related matters; engage in other activities if it will not detract from the dignity of the judicial office or otherwise interfere with the performance of official duties.
2. Any activity done by a judge during official office hours must be covered by the proper leave or by a proper office order.

(e) Prohibited activities

1. Judges of inferior courts and the court personnel are enjoined from playing in or being present in gambling casinos.
2. Going to cockpits and placing bets is ground to hold the judge administratively liable, even if the cockpit is registered and authorized. His mere presence in such place is prohibited as a conduct is unbecoming of a judge and impairs respect due him and the courts.

(f) Principle of **sub judice**

1. Restricts comments and disclosures pertaining to the judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice.
2. Means "under or before a judge or court", under judicial consideration, "undetermined".

4. Propriety

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.
2. They must accept **personal restrictions** that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. – e.g., SC found improper the act of judge **posting** himself naked with tattoos (not the mere act of having tattoos but posting the same).
3. Judges shall avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.
4. Judges shall not participate in the determination of a case in which any member of their family **represents** a litigant or is **associated** in any manner with the case.
5. Judges shall not allow the use of their residence by a lawyer to receive clients or other lawyers.
6. In exercising, freedom of expression, judges shall conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
7. Judges shall inform themselves about their personal fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of their family.
8. Judges shall not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to

convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.

9. Confidential information acquired by judges in their judicial capacity shall not be used or disclosed by for any other purpose related to their judicial duties.
10. Judges shall not practice law whilst the holder of judicial office.
11. Judges may form or join associations of judges or participate in other organizations representing the interests of judges.
12. Judges and members of their families shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties.
13. Judges shall not knowingly permit court staff or others subject to their influence, direction, or authority, to ask for, or accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done in connection with their duties or functions.
14. Subject to law and legal requirements of public disclosure, judges may receive a token gift, award or benefit appropriate to the occasion provided the same might not reasonably be perceived as intended to influence him or give rise to an appearance of partiality.

5. Equality

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

1. Judges shall be aware of, and understand, social diversity including those arising from race, color, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status, etc.
2. Judges shall not manifest bias or prejudice towards any person or group on irrelevant grounds.
3. Judges shall consider for all persons without differentiation on any irrelevant ground, immaterial to the proper performance of duties.
4. Judges shall not knowingly permit court staff or others subject to his or her influence, direction, or control to differentiate between persons concerned, in a matter before the judge on any irrelevant ground.
5. Judges shall require lawyers to refrain from manifesting bias or prejudice, except on legally relevant grounds.

6. Competence and Diligence

Competence and diligence are prerequisites to the due performance of judicial office.

1. Judges shall devote their professional activity to judicial duties, including other tasks relevant to the judicial office or the court's operations.
2. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities.
3. Judges shall keep themselves informed about relevant developments of international law.
4. Judges shall perform all judicial duties efficiently, fairly and with reasonable promptness.
5. Judges shall maintain order and decorum in all proceedings before the court. He shall be patient, dignified and courteous in all official dealings. He shall require similar conduct from others.
6. Judges shall not engage in conduct incompatible with the diligent discharge of judicial duties.

C. Disqualification of Judicial Officers

1. Compulsory

1. If he, his wife or child is pecuniarily interest as heir, legatee, creditor or otherwise.

2. If he is related – (i) to either party within 6th degree (con/aff), or (ii) to counsel within the 4th degree.
3. If he has been an executor, guardian, administrator, trustee, or counsel.
4. If he has presided in an inferior court where his ruling or decision is subject to review.

2. Voluntary

A judge may, in the exercise of his sound discretion, DQ himself, for just and valid reasons other than the grounds for compulsory DQ.

1. The presumption is that the judge will dispense justice in accordance with law and evidence.
2. SC will not require a judge to inhibit in the absence of clear and convincing evidence to overturn such presumption.

D. Discipline and Administrative Jurisdiction Over Members of the Judiciary

1. Supreme Court

a) Impeachment

(a) Impeachable officers

1. President; VP; SC members; ConCom members; OMB
2. Other than the President, they are qualifiedly immune from suit which would affect their eligibility to hold the office extraneous of the grounds for impeachment. e.g., SC officials are immune from disbarment suits.

(b) Grounds **TCG BOB**

1. Treason; Culpable violation of the Const.; Graft and Corruption; Bribery; Other high crimes; Betrayal of public trust.
2. Only acts committed by an impeachable official as such during his incumbency may be the subject of impeachment, but not acts committed by him prior election or appointment as impeachable official.

(c) Effects of impeachment

1. Not equivalent to removal. Impeachment is merely a process. Only upon a finding of guilt by a vote of 2/3s of all the members of the Senate can impeachment lead to the penalty of removal and/or disqualification from public office. The President's power grant pardon does not extend to impeachment cases.
2. An official is considered impeached upon filing of the Articles of Impeachment by the Congress upon the vote of 1/3 of all its members (HR)

(d) Procedure

1. Initiation – (i) filing of complaint, (ii) referral to committee, (iii) recommendation of committee, (iv) approval or override by Congress.
2. Filing of Articles of Impeachment
3. Impeachment proceedings

Initiation

1. Exclusive power of the House of Representatives.
2. Modes: (i) verified complaint filed by any Member, (ii) verified complaint by any citizen upon a resolution of endorsement by any Member, (iii) verified complaint/ resolution filed by at least 1/3s of all Members (Articles of Impeachment).
3. (i)(ii) The complaint shall be referred to the proper committee [on Justice] who shall come up with a resolution/recommendation (dismiss/file) by majority vote. The committee resolution may be affirmed or overridden by 1/3s vote of all members >> Filing of Articles of impeachment.
4. Impeachment was deemed initiation upon its filing and referral to the proper committee. No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

5. Upon filing of Articles of Impeachment, custody over the official is conferred to the Senate for the conduct of the impeachment trial.
6. An impeachment proceeding may be comprised of more than 1 complaint, provided that both complaints are **referred** to the proper committee at the same time within the prescribed periods, even if filed on different dates.

Impeachment proceedings

1. Senate has the sole power to try and decide impeachment cases.
2. It shall be conducted based on its internal rules; Rules of Court (inhibition) are not necessarily binding. Rules on impeachment need not be published, they only need to be promulgated. Impeachment is a sui generis, political rather than a judicial exercise.
3. If the President is on trial, the CJ shall preside, but shall not vote.
4. Conviction requires 2/3s of all members. The judgement shall not extend further than (i) removal from office and (ii) disqualification to hold any office. The liability of the official shall be fixed in a separate proceeding.
5. Judicial review on the basis only of GAD only.
6. The resignation of an impeachable officer renders moot the impeachment trial (decision). Alternative view: not necessarily since aside from removal, it may also lead to a pronouncement of his disqualification to hold public office.
7. AmJur. The preventive dismissal of an officer pending impeachment trial is considered an unnecessary molestation.

(e) Impeachment v. Quo warranto

Distinctions	Quo warranto	Impeachment
Nature	Judicial	Political
Jurisdiction	Cognizable only by the Supreme Court	Congress is the prosecutor, the trier, and the judge
Who may file	Member of Congress or citizen with endorsement of a member	SolGen or any person claiming right to the position
End result	Ouster + additional penalties as reimbursement of costs to the rightful holder of office; further judgment as justice requires	Removal and perpetual political disqualification from holding public office; presupposes the validity of election or appointment
Purpose	To determine the legal right, title, eligibility, or qualifications of the incumbent to the contested public office and oust the holder of its enjoyment	To determine whether the public officer committed any of the impeachable offenses and vindicate the breach of the trust
Nature of holding	The official is a de facto officer who does not enjoy security of tenure	The official is a de jure officer who enjoys security of tenure and can be removed only upon just cause (impeachable grounds) and observance of procedural due process
Process	Judicial determination	Political process undertaken by Congress
Governing rules	Dictated by the Rules of Court	Const., Rules of impeachment promulgated by Congress
Ground	Act/omission committed prior to or at the time of appointment/ election relating to an official's qualifications as to	Only acts committed by an impeachable official as such during his incumbency may be

	render such appointment or election invalid is a proper subject of a quo warranto petition. Such act/omission if committed <u>during</u> incumbency cannot be the subject of a quo warranto petition.	the subject of impeachment, but not acts committed by him prior election or appointment as impeachable official.
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2. Lower Court Judges and Justices

a) Sanctions Imposed by the Supreme Court on Erring Members of the Judiciary

(a) Judicial immunity – A judge cannot be subjected to liability, civil, criminal, or administrative, when he acts within his legal powers and jurisdiction, even though such acts are erroneous.

1. Acts of judge in his judicial capacity are not subject to disciplinary actions, even though these may be erroneous, provided he acted in good faith and without malice.
2. The proper remedy of an aggrieved party is not an administrative charge against the judge but a petition for the review of his decision.

(b) XPNs

1. Judges may be held civilly or criminally liable by express provisions of law.
2. Lower court judges are also subject to the disciplinary authority of the SC. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

(c) Manner of filing administrative complaints against judges

1. Motu proprio by SC
2. Verified complaint – (i) with affidavits of persons having personal knowledge of the facts alleged, or (ii) substantiating documents.
3. Anonymous complaint with **public record of indubitable integrity** (ROC).

(d) Charges against judges

Serious charges

1. Bribery.
2. Dishonesty and violations R.A. No. 3019.
3. Gross misconduct constituting violations of the Code of Judicial Conduct.
4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding.
5. Conviction of a crime involving moral turpitude.
6. Willful failure to pay a just debt.
7. Borrowing money or property from lawyers and litigants in a case pending before the court.
8. Immorality.
9. Gross ignorance of the law or procedure.
10. Partisan political activities.
11. Alcoholism and/or vicious habits.

Penalties

1. Dismissal from the service.
2. Forfeiture of benefits, except accrued leave credits.
3. DQ from reinstatement or appointment to any public office, including GOCCs.
4. Suspension from office without salary and benefits for >3m but ≤6m.
5. Fine of >20k but ≤40k.

Less Serious Charges

1. Undue delay in rendering a decision or order, or in transmitting the records of a case.
2. Frequently and unjustified absences without leave or habitual tardiness.
3. Unauthorized practice of law.

4. Violation of Supreme Court rules, directives, and circulars.
5. Receiving additional or double compensation unless specifically authorized by law.
6. Untruthful statements in the certificate of service.
- and
7. Simple Misconduct.

Penalties

1. Suspension from office without salary and benefits for ≥1m but ≤3m.
2. Fine of >10k but ≤20k.

Light Charges

1. Vulgar and unbecoming conduct.
2. Gambling in public.
3. Fraternizing with lawyers and litigants with pending case/cases in his court.
4. Undue delay in the submission of monthly reports.

Penalties

1. Fine of ≥1k but ≤10k.
2. Censure.
3. Reprimand.
4. Admonition with warning.

III. Practical Exercises

A. Demand Letter

[Date]

Name
Address
[Addressee]

[Subject] FORMAL AND FINAL DEMAND

Dear [Salutation]: **DASS**

[Body]

We write on behalf of our client, (client) regarding your obligation in the amount of (amount), which became due and demandable last (date). (circumstances of default) **CADD**

Formal and final demand is hereby made upon you to settle your obligation within (10 days [period]) from receipt hereof or make an arrangement favorable to our client within the same period of time. Otherwise, we shall be constrained to initiate the filing of civil and/or criminal cases against you to protect the rights and interests of our client. **DPAO**

We trust that you will give preferential attention on this matter.

Very truly yours,
Sgd. (counsel)

B. Deed of Sale of Real Property and Deed of Sale of Personal Property

Real property

Important: Consent, Object, Cause (including manner of payment)

[Title] DEED OF ABSOLUTE SALE

This Deed of Absolute Sale made and entered in the City of Manila (place) on the 9th day of August 2023, (date) by and between (parties): **PDP**

(ABC [name]), legal age, Filipino [citizenship], [status] and a resident of the City of Manila, Philippines, hereinafter referred to as the Seller; **NACSR**

-and-

(XYZ), legal age, married, Filipino, and a resident of the City of Manila, Philippines, hereinafter referred to as the Buyer;

RECITALS:

That the Seller is the absolute owner of 100sqm parcel of land, more or less [size], situated in the City of Manila [location], covered under TCT-12345 [TCT], of the Registry of Deeds of the City of Manila, and more particularly describe as follows: **ASL TRP**

[Technical Description]

That for and in consideration of the total sum of P1,000,000.00, Philippine currency, the Seller hereby unconditionally sell, convey, and transfer, free from all liens and encumbrances, the above-mentioned 100sqm parcel of land in favor of the buyer, his heirs, successors and assigns subject to the following terms and conditions: [manner of payment]

1. The total consideration of P1,000,000, Philippine Currency, shall be paid in full upon execution of this agreement, which receipt is acknowledged upon the signing of this Deed; (consideration)
2. The Seller shall be responsible for the payment of Acknowledge and Notarial Fees; and (fees)
3. The Buyer shall be responsible for the Capital Gains Taxes, DST, and all other Transfer Taxes. (taxes) CFT

In witness hereof, the parties hereby affix their signatures this 8th day of August 2023 at City of Manila, Philippines.

Sgd. (Seller) ID No.
Sgd. (Buyer) ID No.

Signed in the presence of:
Sgd. (Witness 1)
Sgd. (Witness 2)

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA)S.S.

BEFORE ME, a Notary Public for and in the City of Manila this 8th day of August 2023, at City of Manila, Philippines, personally appeared (name) with ID No. (12345) issued on (June 16, 2022) at (City of Manila), known to me to be same person who executed the forgoing instrument, and they acknowledged to me that the same is their own free and voluntary act. BNP NIKAFV

Witness my hand and seal.

Sgd. (Notary Public)

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 2023.

Personal property

[Title] DEED OF ABSOLUTE SALE

This Deed of Absolute Sale made and entered in the City of Manila (place) on the 9th day of August 2023, (date) by and between (parties): PDP

(ABC [name]), legal age, Filipino [citizenship], [status] and a resident of the City of Manila, Philippines, hereinafter referred to as the Seller; NACSR

-and-

(XYZ), legal age, married, Filipino, and a resident of the City of Manila, Philippines, hereinafter referred to as the Buyer;

RECITALS:

That the Seller is the absolute owner of a certain motor vehicle more particularly describe as follows:

MAKE/TYPE:
CHASSIS NO.:
ENGINE NO.:
PLATE NO.:
COLOR:

That for and in consideration of the total sum of P1,000,000.00, Philippine currency, the Seller hereby unconditionally sell, convey, and transfer, free from all liens and encumbrances, the above-mentioned motor vehicle in favor of the buyer, his heirs, successors and assigns subject to the following terms and conditions: [manner of payment]

1. The total consideration of P1,000,000, Philippine Currency, shall be paid in full upon execution of this agreement, which receipt is acknowledged upon the signing of this Deed; (consideration)
2. The Seller shall be responsible for the payment of Acknowledge and Notarial Fees; and (fees)

3. The Buyer shall be responsible for the DST and all other Transfer Taxes. (taxes) CFT

In witness hereof, the parties hereby affix their signatures this 8th day of August 2023 at City of Manila, Philippines.

Sgd. (Seller) ID No.
Sgd. (Buyer) ID No.

Signed in the presence of:
Sgd. (Witness 1)
Sgd. (Witness 2)

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA)S.S.

BEFORE ME, a Notary Public for and in the City of Manila this 8th day of August 2023, at City of Manila, Philippines, personally appeared (name) with ID No. (12345) issued on (June 16, 2022) at (City of Manila), known to me to be same person who executed the forgoing instrument, and they acknowledged to me that the same is their own free and voluntary act and deed. BNP NIKAFV

Witness my hand and seal.

Sgd. (Notary Public)

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 2023.

C. Contract of Lease

[Title] CONTRACT OF LEASE

This CONTRACT OF LEASE made and entered in the City of Manila (place) on the 9th day of August 2023, (date) by and between (parties): PDP

(ABC [name]), legal age, Filipino [citizenship], [status] and a resident of the City of Manila, Philippines, hereinafter referred to as the Lessor; NACSR

-and-

(XYZ), legal age, married, Filipino, and a resident of the City of Manila, Philippines, hereinafter referred to as the Lessee;

RECITALS:

That the Lessor is the owner of the LEASED PREMISES, a residential property situated at (address);

That the Lessee desires to lease the above-mentioned Leased Premises, and the Lessor is willing to lease the same to the Lessee;

That for and in consideration of the foregoing lease premises, the Lessor leases unto the Lessee, and the Lessee hereby accepts from the Lessor the leased premises, subject to the following terms and conditions: ODC

1. Term of Lease. This lease shall be for a period of 1 year, from (date) to (date), renewable under terms and conditions mutually agreed upon by the parties.
2. Monthly Rental. The monthly rental rate for the leased premises shall be five thousand pesos (P5,000.00), payable to the Lessor to be deposited at BDO Account No. 12345 not later than the 5th of every month.
3. Deposit. The Lessee shall, upon signing of the Contract of Lease and before moving-in, deposit the amount of fifteen thousand pesos (P15,000.00), equivalent to three (3) months rental. The two (2) months deposit shall be applied to first and last months of rentals due. The remaining one (1) month deposit shall answer for damages to the Leased Premises, unpaid utility bills, if any, at the time of the termination of the lease. Otherwise, the said one (1) month deposit shall be refunded to the lessee within thirty (30) days after the termination of the lease.
4. Purpose. The Leased Premises shall be used for exclusively by the Lessee for residential purposes only and shall not be diverted to other uses. The violation of this term shall entitle the Lessor to rescind this Contract of Lease, without prejudice to its other rights under the Law.

5. **Improvements.** The Lessee shall not make any structural changes, alterations, or improvements in the Leased Premises without prior written consent from the Lessor. Any such changes, alterations, or improvements, shall, upon the termination of this Contract of Lease, be for the benefit of the Lessor without any obligation to pay or refund its value or cost to the Lessee.
6. **Termination.** Any violation of the foregoing terms and conditions by the Lessee shall entitle the Lessor to terminate this Contract of Lease, without prejudice to its other rights under the Law. The Lessee may also terminate this Contract of Lease by giving a 30-day written notice to the Lessor. **TreD PIT**

IN WITNESS HEREOF, the parties hereby affix their signatures this 8th day of August 2023 at City of Manila, Philippines.

Sgd. (Lessor) ID No.
Sgd. (Lessee) ID No.

Signed in the presence of:
Sgd. (Witness 1)
Sgd. (Witness 2)

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA)S.S.

BEFORE ME, a Notary Public for and in the City of Manila this 8th day of August 2023, at City of Manila, Philippines, **personally** appeared (name) with ID No. (12345) issued on (June 16, 2022) at (City of Manila), **known** to me to be same person who executed the forgoing instrument, and they **acknowledged** to me that the same is their own free and voluntary act. **BNP NIKAFV**

Witness my hand and seal.

Sgd. (Notary Public)

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 2023.

D. Special Power of Attorney

[Title] SPECIAL POWER OF ATTORNEY

I, ABC, of legal age, Filipino, married, with residence at Quezon City, **do hereby, appoint, name, and constitute** **ANC XYZ**, of legal age, Filipino, single, with residence at Quezon City, **as my true and lawful attorney-in-fact, for and on my behalf, to perform the following acts:**

1. [Enumerate specific authorities]

HEREBY GIVING AND GRANTING unto my said attorney-in-fact full power and authority to perform all acts requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do as personally present, with all power of substitution and revocation and HEREBY RATIFYING AND CONFIRMING all that my said attorney-in-fact shall lawfully do or cause to be done by virtue thereof. **GGRC**

In witness hereof, I hereby affix my signature this 8th day of August 2023 at City of Manila, Philippines.

Sgd. (Principal) ID No.

Conforme:
Sgd. (Agent)

E. Verification and Certificate of Non-forum Shopping

[Title] VERIFICATION AND CERTIFICATION AGAINST SHOPPING

I, ABC, of legal age, Filipino, married, with postal address at Quezon City, after having been duly sworn in accordance with law, hereby depose and state that:

7. I am the [plaintiff] in the above-mentioned case;
8. I caused the preparation of the foregoing [complaint];
9. The allegations therein are true and correct based on my personal knowledge, or based on authentic documents; **ATC BPK BAD**
10. The [complaint] is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; **H Cud Nicol**
11. The factual allegations therein have evidentiary support, or if specifically so identified, will likely have evidentiary

support after a reasonable opportunity for discovery.

FAES ISIWLES AROD

12. I certify that (a) I have not commenced any action or filed any claim involving the same issues in any court, tribunal or agency, and to the best of my knowledge, no such other action or claim is pending, and **NCAFC ISI CTA** (b) if I should thereafter learn that the same or similar action or claim has been filed or is pending, I shall report that fact within five (5) calendar days from notice thereof to this Honorable Court, and to the court, tribunal or agency where the original pleading was filed. **LSFP RF5C**

In witness hereof, I hereby affix my signature this 9th day of August 2023 in Quezon City.

Sgd. (Affiant)

F. Judicial Affidavit

Important: Avoid leading questions

Republic of the Philippines
National Capital Judicial Region
Regional Trial Court
City of Manila
Branch 123

ABC,
Plaintiff

-versus-

XYZ
Defendant

[Civil Case No.:
For:]

JUDICIAL AFFIDAVIT

I, ABC, of legal age, Filipino, married, with postal address at City of Manila, after having been duly sworn to in accordance with law, hereby depose and state that:

PRELIMINARY STATEMENT

The person examining me is Atty. DEF at the City of Manila. The examination was conducted on the 8th of August 2023.

I am **aware** under oath that I may face criminal liability for false testimony or perjury, and further warranting that the copies or reproductions of the documents attached hereto are faithful copies or reproductions of the original.

PURPOSE OF OFFER OF TESTIMONY

The testimony of ABC is being offered to prove:

1. That he is the plaintiff in the above-mentioned case;
2. The material allegations in the complaint;
3. xxx
4. Such other matters which are relevant to the Complaint filed by the plaintiff in the instant case.

QUESTIONS AND ANSWERS

Q1:

A1:

xxx

IN WITNESS HEREOF, I hereby affix my signature this 9th day of August 2023 in the City of Manila, Philippines.

Sgd. (Affiant)

SUBSCRIBED AND SWORN to before me on this 9th day of August 2023 at the City of Manila, Philippines, affiant having executed to me his ID with ID No. 1234 as competent proof of identity.

Sgd. (Notary Public)

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 2023.

ATTESTATION

I, Atty. DEF, attest under oath:

1. That I personally conducted the examination of the ABC, the plaintiff in the above-mentioned case;
2. That I faithfully recorded the questions propounded to the same witness and the corresponding answers he gave; and
3. That neither I nor any person present coached the said witness regarding his answers.

Sgd. (Atty)

G. Notarial Certificates

AFFIDAVIT OF LOSS

I, ABC, of legal age, Filipino, married, with postal address at the City of Manila, after having been duly sworn in accordance with law, hereby depose and state:

1. That [issuance of document]
2. [Circumstance of loss]
3. [Diligent efforts at search]
4. That I executed this Affidavit of Loss to attest to the truth of the foregoing and for purposes of [state purpose].

IN WITNESS HEREOF, I hereby affix by signature this 9th day of August 2023 at the City of Manila Philippines.

Sgd. (Affiant)

SUBSCRIBED AND SWORN to before me this 9th day of August 2023 at the City of Manila, Philippines, affiant having executed to me his ID with ID No. 12345 as competent proof of identity.

Sgd. (Notary Public)

Doc. No.: ____;
Page No.: ____;
Book No.: ____;
Series of 2023.

1. Jurat

SUBSCRIBED AND SWORN to before me this 9th day of August 2023 at the City of Manila, Philippines, affiant having executed to me his ID with ID No. 12345 as competent proof of identity.

Sgd. (Notary Public)

Doc. No.: ____;
Page No.: ____;
Book No.: ____;
Series of 2023.

2. Acknowledgment

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA)S.S.

BEFORE ME, a Notary Public for and in the City of Manila this 8th day of August 2023, at City of Manila, Philippines, personally appeared (name) with ID No. (12345) issued on (June 16, 2022) at (City of Manila), known to me to be same person who executed the forgoing instrument, and they acknowledged to me that the same is their own free and voluntary act. **BNP NIKAFV**

Witness my hand and notarial seal.

Sgd. (Notary Public)

Doc. No.: ____;
Page No.: ____;
Book No.: ____;
Series of 2023.

H. Motions

1. Motion for Summary Judgment

Republic of the Philippines
National Capital Judicial Region
Regional Trial Court
City of Manila
Branch 123

ABC,

Plaintiff

-versus-

XYZ

Defendant

[Civil Case No.:
For:]

MOTION FOR SUMMARY JUDGMENT

Plaintiff, by counsel, unto this Honorable Court, most respectfully states:

1. That plaintiff sued the defendant for [xxx];
2. That the defendant served his answer stating that [xxx]
3. That based on such answer and the supporting affidavits, depositions, and admissions, hereto attached, and made an integral part hereof, there is no genuine issue as to any material fact; consequently, a summary judgment may be rendered as a matter of law.

WHEREFORE, it is respectfully prayed that this Honorable Court render a summary judgment in the instant case.

City of Manila, Philippines. August 9, 2023.

Sgd. (Atty.)

2. Motion to Dismiss

Grounds: Lack of SM jurisdiction; res judicata; litis pendentia; prescription. [Other grounds must be raised as an affirmative defense in the Answer]

Republic of the Philippines
National Capital Judicial Region
Regional Trial Court
City of Manila
Branch 123

ABC,
Plaintiff

-versus-

XYZ

Defendant

[Civil Case No.:
For:]

MOTION TO DISMISS

Defendant, by counsel, unto this Honorable Court, most respectfully states:

1. That the assessed value of the subject real property alleged in paragraph 5 of the Complaint is merely THREE HUNDRED THOUSAND PESOS (P300,000.00);
2. [Cite provision of law conferring jurisdiction];
3. That clearly, this Honorable Court has no jurisdiction over the subject matter in the case at bar.

[That clearly, the instant case is barred by another action pending between the same parties for the same cause.]
[That clearly, the instant case is barred by prior judgment.]
[That clearly, the instant case is barred by the statute of limitations.]

WHEREFORE, it is respectfully prayed that the instance Complaint be dismissed for lack of jurisdiction.

Other reliefs just and equitable are likewise prayed for.

City of Manila, Philippines, August 9, 2023.

Sgd. (Atty.)

3. Motion to Declare in Default

Republic of the Philippines
National Capital Judicial Region
Regional Trial Court
City of Manila
Branch 123

ABC,

Plaintiff

-versus-

XYZ

Defendant

[Civil Case No.:

For:]

MOTION TO DECLARE DEFENDANT IN DEFAULT

Plaintiff, by counsel, unto this Honorable Court, most respectfully states that:

1. On (date), a copy of the Summons and Complaint together with its annexes was personally served upon the defendant in her given address and received by defendant herself. A copy of Sheriff's Return of Summons is hereto attached as "Annex A".
2. Upon verification however, the records show that the defendant has failed to file her Answer within the reglementary period specified by the Rules of Court despite proper service of Summons and the Complaint;
3. As such, it is respectfully prayed that defendant be declared in default pursuant to the Rules of Court and that the Honorable Court proceed to render judgment as the Complaint may warrant.

WHEREFORE, it is respectfully prayed that the defendant be declared in default pursuant to the Rules of Court and that the Honorable Court proceed to render judgment as the Complaint may warrant.

Other reliefs just and equitable are likewise prayed for.

City of Manila, Philippines, August 9, 2023.

Sgd. (Atty.)

I. Quitclaims in Labor Cases

RELEASE, WAIVER, AND QUITCLAIM

I, ABC, of legal age, Filipino, married, with postal address at Quezon City, after having been duly sworn in accordance with law, hereby depose and state that:

1. I was an employee of XYZ Corporation with business address at (address);
2. I acknowledge that I have received from the Company the sum of (Pxxx.xx), representing full, final, and complete settlement of any salaries, wages, and other benefits to which I am entitled under existing laws and the company's policies, rules and regulations;
3. I hereby release forever and absolutely discharge the Company, its company, its subsidiaries, affiliates, stockholders, officers, directors, employees, representatives, and agents from any and all suit, action, claim, offense, felony, sum of money, damages and demands whatsoever, which in law in equity I ever had, now have or which I, my heirs, successors and assigns may have.
4. I further warrant that I will not institute any action and will terminate pending actions, if any, against the company, its subsidiaries, affiliates, stockholders, officers, directors, employees, representatives and agents by reason of my abovementioned employment. In this connection, I hereby agree that this instrument may be pleaded as an absolute and final bar to suit or suits or legal proceedings that may hereafter be prosecuted by me, my heirs, successors and assigns, or any third party who may have any interest in my employment with the company, without prejudice to the company and legal claim against me.
5. I finally declare that I have read and fully understood the consequences and import of signing this document, and the release, waiver and quitclaim hereby given is made willingly and voluntarily and with full knowledge of my rights under the law.

IN WITNESS HEREOF, I hereby affix by signature this 9th day of August 2023 at City of Manila, Philippines.

Sgd. (Employee).

SUBSCRIBED AND SWORN to before me this 9th day of August 2023 at City of Manila, Philippines, affiant having executed before me ID with ID No. 12345, as competent proof of identity.

Sgd. (Notary Public)

Doc. No: ____;
Page No: ____;
Book No: ____;
Series of 2023.

J. Information in Criminal Cases

Republic of the Philippines
National Capital Judicial Region
Regional Trial Court
City of Manila
Branch 123

People of the Philippines,

-versus-

XYZ

Accused

[Crim. Case No.:

For:]

INFORMATION

The undersigned Assistant City Prosecutor accuses XYZ for (crime) under (penal law), committed as follows:

That on or about (date) in (place) and within the jurisdiction of this Honorable Court, the above-named accused with (intent), did then and there willfully, unlawfully and feloniously cause (act) by (how committed), to the damage and prejudice of the Private Complainant in an undetermined amount.

CONTRARY TO LAW.

City of Manila

August 9, 2023.

Sgd. (ACP)

Assistant City Prosecutor

Roll No.

IBP Lifetime no.

MCLE Compliance No.

Valid until

Approved:

Sgd.

City or Provincial Prosecutor.

This is to certify that the instant complaint has been examined and evaluated and filed pursuant to the Revised Rules on Criminal Procedure; that based on the sworn statement of the complainant, as well as the other pieces of evidence submitted before me, there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof.

City of Manila

August 9, 2023.

Sgd. (ACP)

SUBSCRIBED AND SWORN to before me this 9th day of August 2023 at City of Manila, Philippines, affiant having executed before me ID with ID No. 12345, as competent proof of identity.

Sgd. (Notary Public)

Doc. No: ____;

Page No: ____;

Book No: ____;

Series of 2023.

WITNESSES:

1. Name, address.

Bail recommendation

Attachments: